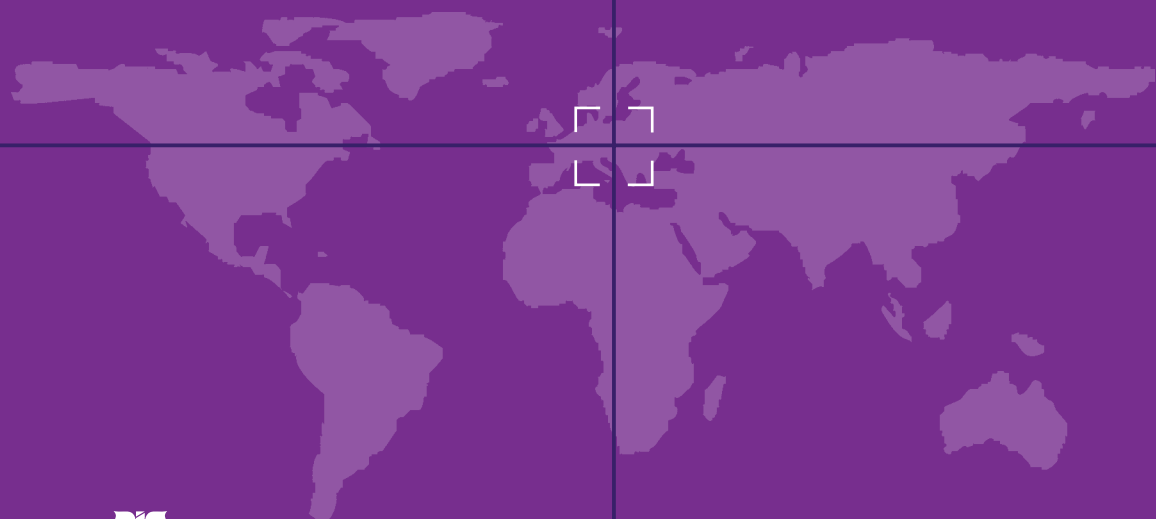


Criminal Justice and Security in Central and Eastern Europe

From Common Sense to Evidence-based Policy-making

25-27 SEPTEMBER, 2018 // LJUBLJANA // SLOVENIA



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CRIMINAL JUSTICE AND SECURITY IN CENTRAL AND EASTERN EUROPE: FROM COMMON SENSE TO EVIDENCE-BASED POLICY-MAKING, CONFERENCE PROCEEDINGS

Gorazd Meško, Branko Lobnikar, Kaja Prislan, Rok Hacin

ABSTRACT

Starting in 1996 and reconvening for its twelfth session in 2018, the Biennial International Conference Criminal Justice and Security in Central and Eastern Europe addresses contemporary challenges in the field of criminal justice and security by encouraging the exchange of the latest views, concepts, and research findings from criminal justice and security studies among scientist, researchers, and practitioners from all over the globe, mainly from Central and Eastern Europe.

This year's Conference is subtitled From Common Sense to Evidence-based Policy-making. The theme of the Conference covers a wide range of topics related to the policing strategies and criminal justice policy development. Authors contributed more than fifty papers that focus on evidence-based policy-making and evidence-based policing, criminal investigation, penology and punishment, security issues, organised crime and corruption, crime analysis, crime prevention, and legal perspectives.

Keywords: conference, criminal justice, security, Central and Eastern Europe, Slovenia

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INTRODUCTION: ON THE TWELFTH CONFERENCE 'CRIMINAL JUSTICE AND SECURITY IN CENTRAL AND EASTERN EUROPE: FROM COMMON SENSE TO EVIDENCE- BASED POLICY-MAKING'

It is our honour and pleasure to present the conference proceedings of the twelfth *Biennial International Conference Criminal Justice and Security: From Common Sense to Evidence-based Policy-making* held on 25 - 27 September, 2018, in Ljubljana, Slovenia. This year, the Faculty of Criminal Justice and Security, University of Maribor, is celebrating its 45th anniversary (1973-2018), hosting this international biennial criminal justice and security conference since 1996 and proving not only its staff's persistence and commitment to teaching students and adhering to high academic standards in conducting national and international research, fostering cooperation with universities in Slovenia and abroad and the development of the university curricula, but also their efforts aimed at strengthening cooperation with practitioners in the fields of policing, criminal justice and security. The Conference is also supported and coorganised by the European Group of Research into Norms (GERN), Guyancourt, France, the Slovenian Police, DCAF – a Centre for Security and the Rule of Law, Office Ljubljana, the Max Planck Balkan Criminology Network, and the Slovenian Research Agency (the project on *Safety and Security in Local Communities*, 2015-2018, number P5-0397; bilateral subprojects on *Community Policing and Prevention of Radicalisation in Slovenia and Croatia*, 2018-2020; and *Safety and Security in Tourist Resorts in Slovenia and Russia*, 2016-2018). The project of safety and security in local communities emphasises that adoption and implementation of global, international, national and local security policies impact the quality of life of people in local communities. The human security is an idea consisting of health security, environmental security, personal security, community security and political security. It requires evidence-based policy-making and implementation of policies to assure safety and security of people, taking into account 'security and safety problems' while following the principles of the rule of law, respect of human rights, and dignity.

Recently, the United Nations (UN) adopted sustainable development goals that are related to the quality of life on a global level, emphasising no poverty, no hunger, good health and well-being, quality education, gender equality, clean water and sanitation, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace, justice and strong institutions, and partnership for the goals. Some conference papers are in line with the sustainable development goals of the UN.

The primary aim of the Conference is to engage in the exchange of views, concepts, and research findings among scientists, researchers, and practitioners covering a broad range of policy-making challenges, crime control and prevention policy-making, and evidence-based policing. The papers emphasise knowledge-based responses to crime and disorder, not to mention a wide array of contemporary security issues and themes in criminology, criminal justice, law, security studies and related disciplines by the experts, either researchers, policy-makers or practitioners. Hence, the papers highlight new ideas, methods, and findings spanning numerous research topics and applied areas relating to policy-making, evidence-based policing, emphasizing the role of science in evidence-based responses to security threats, deviance, and crime.

The concept of evidence-based policymaking in the field of criminal justice and security as well as that of evidence-based policing and their evolving natures make it a challenging

topic of research. And while the concept itself is not unfamiliar to Central and Eastern European scholars in criminal justice and related disciplines, it is a lack of research into rapidly changing security threats that is more challenging, perhaps. The papers included in this publication reflect different views, but when viewed collectively, they will provide the reader with a rich and diverse overview of and a deeper insight into the type of issues and research currently emerging in the region. The papers show, quite evidently, that regional scholars are becoming increasingly interested in and receptive to exploring and examining the importance of evidence-based responses to crime and other threats, not to mention the ever-changing nature of regional criminal activities, safety and security challenges, i.e. the threats that are not based on perceptions only but which also require firm legal regulations and proper action to protect people's values.

It is important to mention that the great majority of the Conference participants and contributors to this volume are not native English-speaking researchers and practitioners, and many of them are doctoral students. Therefore, we would like to thank the authors for all their efforts in writing their papers in English. All the papers underwent a blind peer review; unfortunately, in the editorial process, a number of them had to be excluded for various reasons. This publication comprises 55 papers, and the majority of contributions come from the Central and Eastern European regions. We hope that further to inspiring a continued interest in and the expansion of both richness of the topics and the areas studied, they will attract attention from other regions of the world to perhaps give rise to comparative projects that could benefit wider global criminology, criminal justice, and security research communities.

Finally, we would like to acknowledge the support of all peer reviewers for their helpful comments on draft papers, and the members of the programme and organising committees for their support in organising this significant traditional scientific event.

And last but not least, our sincere thanks go to the authors of the papers who made this publication possible.

Ljubljana, September 2018

PLENARY PAPERS

**FROM COMMON
SENSE TO
EVIDENCE-BASED
POLICY-MAKING
AND EVIDENCE-
BASED POLICING**

FROM EVIDENCE-BASED POLICY-MAKING TO EVIDENCE-BASED POLICING – A BOUNDED RATIONALITY PERSPECTIVE

Gorazd Meško¹

ABSTRACT

The paper² presents some challenges to evidence-based policy-making as occasioned by bounded rationality. Bounded rationality limits the ideal type concept of evidence-based policy-making due primarily to the limited rationality of individuals, the frequent lack of pertinent information being available to guide action, the cognitive limitations of humans, and the limited amount of time people have to make decisions in the world of practice. Evidence-based policing is discussed in some detail with respect to these particular limitations. Illustrative examples are drawn from Slovenian practice and policy-making in the fields of crime prevention and crime control, as well as some projects related to the promotion of democratic policing – in particular the prevention of secondary victimisation, community policing and procedural justice. This discussion is framed in terms of police reform in a young, maturing democratic country.

Keywords: policy-making, policing, evidence-based, policing, research

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INTRODUCTION – ON THE POLITICS OF EVIDENCE-BASED DECISION-MAKING

Cairney's *The Politics of Evidence-based Policy Making* (2016) triggered my reflection upon the last 25 years of my academic career, and my own involvement in policy-making processes and researching in policing.³ The title of the book suggests that the 'politics' associated with evidence-based policy-making are perhaps as important as the methodological challenges of determining "what works best" in policing. I initially read studies on crime control policy and crime prevention in Slovenia (Bavcon, 1996, Jager, 1998), and then expanded my horizons to examine ideas, initiatives, programmes and the evaluation of crime prevention efforts carried out in Western countries. For this purpose, I conducted post-doc research on crime prevention in Western Societies, resulting in a textbook (Meško, 2002) and the organization of a national conference on crime prevention (Meško, 2004). In the process of examining a variety of prevention ideas, initiatives, and evaluation studies, I learned that criminologists who want to introduce ideas and research to policymakers and practitioners need to not only develop strong research skills, but also need to become skilled in the effective communication of ideas to policy-makers, police professionals and often even lay people who are stakeholders in public safety (Reed, 2007).

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2 This paper is based on a national project Safety and security in local communities in Slovenia (2015-2018), financed by the Slovenian Research Agency, grant number P5-0397.

3 I recommend this book to everyone involved in policy-making, ranging from policy-makers to practitioners and to researchers who are not experienced in political science and (policy) implementation science. Besides this book, another essential reading authored by the same scholar on Understanding Public Policy (Cairney, 2012) is also of great importance for understanding public policies and their implementation. Cairney's (2016) reflection on evidence-based policy-making accurately reflected my experience in my practice as a former practitioner, researcher and a member of several policy drafting working groups.

Let me start with a working definition of evidence-based policy-making (EBPM). It is admittedly a rather vague term rather than a precise prescriptive policy-making process. From a critical academic perspective, it is an “ideal” often difficult to attain in full as a matter of practice. Among the main criticisms of the concept are that many policy-makers and many police practitioners as well either do not understand or consciously ignore science-based recommendation; even when they are amendable to implement such suggestions, they often do not know how to act on the evidence produced by scientists. There are two extreme views on the critical side; first, there is the “naïve” view on EBPM that an unproblematic link should exist between scientific evidence, policy decisions, and outcomes. The second extreme critical view holds that “politics” is hopelessly pathological as evidenced by policy makers continually ignoring sound evidence on policy improvements to maintain status quo policies and practices knowingly sub-optimal. Despite these known barriers to EBPM, examples of “good practices” DO EXIST which elicit reasonably good cooperation among all stakeholders in the policy-making process. So, we need to be aware that there is some prospect for research-based evidence to gain more ground in police practice, but at the same time it is not fully accepted by key policy-makers and many police practitioners (Cairney, 2016). In the following section some basic terms are explicated to dispel either ill-considered or “naïve aspirations” in policy-making.

BASIC TERMS

The first term requiring clarification is *policy*. There is no single universally accepted definition of policy, but I will follow the working definition offered by Cairney (2016) – namely, “*the sum total of government action, from signals of intent to the final outcomes.*” In doing so I take into account that it is problematic to conflate what people say they will do and what they actually do; policy outcomes can differ greatly from policy intent. Policy is made through the ongoing cooperation between elected and unelected policymakers and among other actors with no formal role in the process. Policy-making is also affected by the power of some key actors deciding not to act in the way expected by some formal policy dictate (Cairney, 2012). It is also essential to take into account policy instruments or components that make up policies (e.g., levels of spending, economic incentives/penalties, regulations and laws, codes of conduct, public services, educational campaigns, research funding, advocacy, organisational capacity and readiness for change, as well as resources available for policy-making processes).

Policy-makers are those people who make policies. This is admittedly an intuitive definition featuring two crucial distinctions – first, between elected and unelected policy-makers such as civil servants (mainly analysts), and second between individual people and organisations. We should not forget those people who make and influence policy, people who collectively can be referred to as a “policy community.” This is a collection of people who have both formal responsibility and exercise informal influence (Cairney, 2016). We need to acknowledge as well the “whisperers” and “brokers” who possess no formal positions or responsibilities, but who can have quite a strong informal influence (Dobovšek & Meško, 2008). Policy-making to many people conveys the notion that there is a single policy-maker or authoritative source in charge of policy, but in reality, there are always multiple actors involved in the process of policy-making and ongoing refinement.

Evidence and scientific evidence can be defined as an argument or assertion backed up by empirical information derived from an established, *bona fide* scientific process. Scientific evidence can be defined broadly, but must entail using specific research methods; randomised control trials and meta-analyses (i.e., the systematic review of randomised control trials

published in high-status peer-reviewed journals) are among the most highly regarded forms of such evidence. Scientific contributions to the research literature are expected to be objective and bias-free, but in reality they sometimes emerge from positivist and constructivist positions of largely value-free experts. Policy-makers tend to take a limited number of scientific contributions into account in their deliberations (Cairney, 2016), and sometimes completely ignore arguments of specific scientists and experienced interest groups, choosing instead to merely respond to the most prominent demands of the 'public' (Flander & Meško, 2013). Well-informed observers of the process such as Šelih (2009), Petrovec and Mihelj Plesničar (2009), and Kanduč (2009) have been quite critical about the quite limited impact of criminological knowledge and research on policy-making, especially over the last 20 years.

THE CHALLENGING WORLD OF POLICY-MAKING

People involved in policy-making would be well-advised to study the *psychology of policy-making* because policy-making processes are inherently uncertain and ambiguous. People are known to make use of cognitive shortcuts, to reflect their biases toward specific sources of evidence (be they against their values or perceived expectations of their superiors), and often use heuristics when making decisions. Evidence is seldom sufficiently conclusive to remove all uncertainty, and in actual problem-solving processes ambiguity, persuasion and argument are all necessary tools. Clarity and comprehensiveness of arguments communicated with other participants can prevent some misunderstandings of "different languages" (e.g., languages of policy-makers, practitioners, bureaucrats, and researchers) that participants use to express their points of view. I delivered several lectures recently on the politics of policy-making and policing at universities abroad, and gained feedback from scholars from several different academic and policy-making cultures (Bosnia and Herzegovina, Canada, Czech Republic, UK, and the USA). The suggestion that policy-making processes should take into account all of the following was widely shared: *institutions* (e.g., police in a democratic society, rules, norms and proclaimed values), *ideas* (e.g., beliefs of the actors, and proposed solutions), *networks* (e.g., relationships between policymakers and other partners), *context* (e.g., socioeconomic factors, especially the economic crisis), and *formative events* (e.g., anticipated, such as elections and unanticipated, such as crises).

In some cases, policy-makers have ignored some compelling scientific evidence for years and then, very quickly, pay enormous attention to the very same evidence as they revisit policy. This can be the result of the replacement of policy-makers following elections or the occurrence of a so-called focusing event. It is also well known that governments copy policies (i.e., policy diffusion) from each other, often without much consideration of social contexts (Cairney, 2016) and possible unintended consequences associated with such practices (Grabosky, 1996; Meško & Kury, 2009).

An important observation is that policy-making also reflects competition among ideas thought appropriate for policy-making; policy-making is often more about the dominance of one interpretation of the world and social reality than the well-considered solution to a known problem of governance. This dominance is difficult to overcome because effectively challenging accepted ideas requires a lot of compelling arguments and effective advocacy, and it takes time to overcome an ensconced status quo. It is sometimes the case that what we now take for granted has often taken decades to become accepted as official policy (Cairney, 2012). In this sense, we have to be aware that pure evidence-based policy making exists only in the naïve imagination of an ideal type policy-making model; in reality, policy-making in the criminal justice realm is more or less best conceived of as "bounded evidence-based policy-making."

ON BOUNDED EVIDENCE-BASED POLICY-MAKING

“Bounded evidence-based policy-making” implies a notion of bounded rationality while “evidence based” implies rationality or a scientific approach to policy-making. We have to be aware that scientists represent only one of the active participants in policy-making processes. It follows that scientists – including criminologists – would be wise to learn more about the findings of “implementation science” (Nilsen, Stahl, Roback, & Cairney, 2013) to reduce the so-called “evidence-policy gap” widely noted in the policy science literature.

It is also important to note that while evidence-based policy-making is not seen the same way in all cultures, it does nonetheless consist of mostly the same basic elements. Evidence-based policy-making is predominantly an Anglo/American term, and like other such terms and ideas transferred from the English-language research literature it requires contextualisation and serious reflection upon its broader applicability. Some well-intended (‘universal’) models of policy-making and problem-solving sound very attractive and comprehensive in applicability in the English-language literature, but when translated and implemented in practice elsewhere the model processes do not work as intended. This is sometimes due to an oversimplification of a complicated process in which contextual factors are of great importance.

In theory and practice we talk about the ‘ideal’ type of evidence-based policy-making and the factors that produce an ‘optimal’ policy process. The evidence-policy gap related to demand and supply of evidence, cognitive limits of policy-makers, and a rather typically unpredictable policy-making environment make this process challenging. The use of modern technology in data archiving, data processing, and ever-more sophisticated analyses make the work of contemporary researchers more productive than ever. Likewise, their networks of collaborators are more extensive than ever before. However, none of these major noteworthy advances have solved the problem of bounded rationality (Cairney, 2016), and the vast majority of the literature on evidence-based policy-making (and evidence-based policing) has been published in the limited area of the UK, the USA and Australia (Cairney, 2016).

RATIONALITY OF POLICY-MAKING?

It is important at this point to differentiate between comprehensive and bounded rationality. Comprehensive rationality represents an optimal policy process, while the idea of ‘bounded rationality’ occurs when ideal conditions of policy-making are not met. The concept of bounded rationality was first explicated by the Nobel Laureate Herbert Simon (1947), and reflects the idea that in actual decision-making in organisations the rationality of individuals is limited by the information they have, the cognitive limitations of their minds, and the finite amount of time they have in which to make a decision (Cairney, 2016).

In this regard, several factors play a crucial role in this process, ideally and then optimally: (a) the values of society are reflected in the values of policy-makers (or at least they think so, it is about satisfying different publics); (b) a small number of policy-makers control the policy process from its centre (power is shared across many government departments, and non-governmental actors). [This is an opportunity for scientists to supply evidence to the most relevant policy-making venues.]; (c) it is possible to separate values, required by policy-makers to identify their aims, from the facts produced by organisations to assess the best way to achieve them (facts and values are hard to separate since the measures used for evaluation are political, rarely scientific); (d) an organisation acts optimally by ranking

its aims according to its leader's preferences and undertaking a comprehensive search for information (in reality policy-makers struggle to make choices between competing aims, and organisations are unable to gather comprehensive levels of information); and, (e) policy is made in a linear way: policy-makers identify their aims, the bureaucracy produces a list of all the possible ways to achieve those aims, and the policy-maker selects the best solution (in practice, policy-making in much less ordered and predictable policy-makers often have unclear aims, policy solutions often exist before problems arise in the minds of policy-makers and policy-makers often try to legitimise policies made in the past) (Cairney, 2016; Cohen, March, & Olsen, 1972).

For the scientist who believes that bounded rationality represents a 'deviance' in proper policy-making, every policy-making experience can be frustrating because the scientific findings are negotiated with other partners in the process. It is also essential to adjust the level of communication and the use of terminology to the level of shared understanding. Scientists as suppliers of information are valuable partners in this process, and also other partners usually have limited or partial knowledge about the problems under consideration. Generally, participation in the policy-making process becomes a "learning opportunity" for scientists. It is a challenge for all members of the group to learn about other perspectives and try to get a better understanding of the complexity of the problems being addressed. In drafting policies, research is of great importance for sure, but also the experiences and insights gained by practitioners from practice are also important factors to be taken into consideration. Not to forget, social context and a variety of other factors typically influence the process of policy-making (e.g., political situation, proclaimed values, time limitations, level of personal involvement, the evidence available, persuasion ability, constructive problem solving, and finances). In this section I discuss several past projects which were significant challenges vis-à-vis the provision of scientific evidence AND constituted great learning opportunities used to improve my understanding of the complex process of policy-making.

An excellent example of research supporting policy-making and police practice improvement are applied projects (characterised as 'focused research projects') financed by the Slovenian Ministry of the Interior and the Slovenian research agency. Before a public call for research proposals is issued, a discussion takes place between representatives of the Ministry and researchers to set priorities on the topics to be studied. Participation in these discussions is no guarantee of having one's project(s) funded; the criteria for assignment of research projects to researchers are exacting and those who decide on funding for proposals submitted are independent of the researchers involved in the discussion of the research agenda undertaken at the onset.

EXAMPLES OF GOOD PRACTICE

NATIONAL CRIME PREVENTION AND CRIME CONTROL PROGRAMMES

After the initial problem with lack of evidence on crime prevention and crime control in the late 1990s (Jager, 1998), the Ministry of the Interior financed a literature review of crime prevention research. The main criticism of the resulting report from the policy-makers was that it was too general and not useful for policy-making and practice. Jager (2002) discussed communication problems existing between academia and policy-makers, especially regarding 'bounded rationality' (and political priorities) but he used different terminologies – relying

upon the concepts of mutual expectations, capability, willingness, priorities, and mindset. For this reason, another literature review was conducting at the beginning of the 2000s as part of a post-doc study on crime prevention “Western style” (Meško, 2002). The timing was propitious because Slovenia was on the path to join the EU. The process of unification and harmonisation of regulations and practices in the field of crime prevention was required on the part of Slovenia for gaining membership. At first, the task seemed rather simple, but the EU was also at the beginning of its efforts to develop common policies regarding crime control and crime prevention. I soon learned that ideas about good and ‘workable solutions’ for crime prevention faced about the same evidence shortages as experienced in Slovenia. It took quite a long time (almost ten years) to conclude this policy-making process and draft a reasonably comprehensive Slovenian crime prevention and crime control programme,⁴ which the National Parliament adopted in 2007 (*Resolucija o nacionalnem programu preprečevanja in zatiranja kriminalitete za obdobje 2007-2011*, 2007).

Later, new national crime prevention and crime control policies for the period 2012-2016 were drafted. The work ran smoother than in the first policy document because the majority of the core group members were the same and a certain amount of trust had been established among them. Debates were typically constructive and in accordance with contemporary crime problems in Slovenia. In the meantime, a significant EU research project was conducted (CRIMPREV, 2006-2009) which provided us in Slovenia with an opportunity to learn about crime, criminality and crime prevention in Europe and get valuable insights regarding the larger European crime and crime prevention picture. Participation of Slovenia in the *European Sourcebook on Crime and Criminal Justice Statistics* was also beneficial. However, the Faculty of Criminal Justice and Security and the Institute of Criminology had conducted quite a significant amount of research that could be used as an ‘evidence supply’. For the first time in crime prevention and crime control policy-making, the final draft of the policy document was publicly discussed at the Faculty of Criminal Justice and Security (Anželj, 2011) at the University of Maribor, and well-informed representatives of policy-makers, practitioners, research institutions and NGOs were present to provide comments and suggestions after reading draft documents. This was not the case with the final draft of the national programme, which was only posted on the internet page of e-administration (GOV SI) without a public and professional debate as was done in 2011.

Both the 2012-2016 work and a draft of a new resolution for 2018-2022 featured an important declarative statement that crime prevention should be based on knowledge, research, and timely information, and it should be incorporated in the social policy of the state (*Resolucija o nacionalnem programu preprečevanja in zatiranja kriminalitete za obdobje 2012-2016*, 2012, 2017). The national policy guidelines for preventing crime in Slovenia are also worth mentioning, for they form part of the Resolution of the National Plan on Preventing and Combating Crime 2012–2016. The Resolution stresses the importance of systematic and coordinated implementation of all activities performed by governmental institutions, civil society, and citizens that could in any way contribute to crime prevention and control (Anželj, 2011). The ongoing and long-term provision of safety for the people of the Republic of Slovenia, which consequently ensures that people feel safe and secure, is the fundamental goal of the Resolution. One of its general objectives is to improve cooperation between law enforcement, criminal justice system professionals, state authorities, local communities, research organisations, and non-governmental organisations.

⁴ The original title of the programme is The Resolution on the National Plan of the Prevention and Combating Crime (2007).

My participation in drafting the national crime prevention and crime control programmes led me to understand that despite much constructive debate and the persistent seeking after ‘common denominators’ (common understanding of the problems and possible proposed solutions), so-called “facts” and “findings” sometimes do not *speake for themselves*. In the social sciences generally, and in criminology in particular, the interpretation of research findings is crucial; this is particularly the case in the policy-making process. All legislation features bound on ideas used in addressing problems, and professional and political beliefs are often more determinative of policy-making outcomes than is relevant research. I learned that there were definite language barriers between different interests within the criminal justice policy community; the often legalistic language of policy-making was spoken by some, the language of practice was spoken by others, and the language of science was spoken by others. Likewise, there were often different perspectives on timescales; practitioners’ and scientists’ pace of work differs, so that policy-makers tend to value timely and directly responsive research but scientists value work of broader insight and face lengthy time-lags in their publication which generally need to demonstrate some connection to the testing of disciplinary theory. The incentives at play among the policy-making actors differs greatly; for the academic researcher their work is usually a contribution in kind and permits an enhancement of one’s credentials, while for some participants the major incentive is to either prevent or facilitate (depending on their “politics”) critical findings of research challenging established policies and practices. This mixed bag of incentives was the case in the initial work in the 2000s; later much research was able to cover some of the crucial topics of the national programme (e.g., situational and social crime prevention, community policing, problem-oriented policing, intelligence-led policing, organised crime) which in the beginning lacked sufficient (empirical) research evidence (Meško & Kury, 2009).

FROM EVIDENCE-BASED POLICY-MAKING TO EVIDENCE-BASED POLICING

A recent report on evidence-based policing (Fyfe, 2017) provides a comprehensive overview of the topic. The concept was developed by Sherman (1998) and postulated a setting in which police administrative rank officers and their staff work together to create, review and make use of the best available evidence to inform existing policies, practices and decisions. This process can lead to major enhancements in police effectiveness when properly supported by ongoing collaboration with academics and other non-police partners working as stakeholders in an ongoing collective action to promote public safety. The ‘best available’ evidence will emerge from the use of appropriate research methods and sources for the questions being explored by practitioners, and the research done should be carefully conducted, peer-reviewed and transparent in its methods, limitations, and how its conclusions were reached.

Any theoretical basis and context of this type of research should also be made clear. Where there is little or no formal research to go on, other types of evidence such as professional consensus and peer-review may be regarded as the ‘best available’ if gathered and documented carefully and transparently. Such research can be used to EITHER (a) develop a better understanding of an issue by describing the nature, extent and possible causes of a problem or looking at how a change was implemented OR (b) assess the effect of a policing intervention by testing the impact of a new initiative in a specific context or exploring the possible consequences of a change in policing. Evidence-based policing does not provide definitive answers that command officers and their staff should apply uncritically. They are encouraged to reflect on their practice, consider how the ‘best available’

evidence applies to their day-to-day work, and learn from their successes and failures in implementing the ideas believed to be best available practices. This approach should mean that officers and staff ask probing questions, sometimes challenge accepted practices, and seek to innovate in the service of the public interest (Fyfe, 2017).

Evidence-based policing is an approach that values the use of research, science, evaluation and analysis to inform decision-making within police organisations. The research can relate to a wide range of policing activities and functions, ranging from the evaluation of specific policing intervention projects to addressing crime and enhance well-being, to full assessments of the management and governance of policing systems (Lum & Koper, 2015).

Use of research evidence to inform policing policy and practice is seen as increasingly important, both at a strategic and operational level. Strategically, evidence-based approaches are essential in political, economic and social terms (Fyfe, 2017):

- *Politically*, evidence-based approaches today are central to the governance, accountability and legitimacy of policing. In his 2011 Benjamin Franklin Medal Lecture on ‘Professional Policing and Liberal Democracy’ Lawrence Sherman (2011) made the case that ‘police legitimacy may be established, not just on the basis of effectiveness under the rule of law, but on demonstrated police mastery of a complex body of knowledge generated by scientific methods of testing and analysis’;
- *Economically*, in the context of diminishing resources, developing policy and practice on a robust evidence base is vital to the future sustainability of the police service: ‘The identification of effective and cost-efficient practices and policies is essential if policing is to gain legitimacy and secure investment in an increasingly sceptical world of public services in which the competition for public finance is growing ever more acute’ (Ayling, Grabosky, & Shearing, 2009); and
- *Socially*, evidence-based approaches are vital to claims about police professionalism: While ‘crime fighting’ and ‘law enforcement’ exemplified the understanding of police professionalism in the UK and the US during the 1970s and 1980s (Stone & Travis, 2011), since the 1990s there has been a gradual shift towards developing a ‘new’ police professionalism characterised by increased accountability, a greater focus on legitimacy, and moves towards evidence-based practice. Herman Goldstein (1990), in his analysis of problem-oriented policing, has argued that ‘The building of a body of knowledge, on which good practice is based and with which practitioners are expected to be familiar, may be the most important element for acquiring truly professional status’ (p.46). Although, in the past, the police did not place much value on higher education and scientific research (Neyroud, 2009), the quest to make policing more effective in addressing crime and to enhance levels of legitimacy has driven necessary changes in the relationship between police organisations and the research community. There is now a range of innovative approaches to the building of healthy and sustainable collaborative relationships between researchers and police practitioners (see Cordner & White, 2010; Fyfe, 2013; Johnston & Shearing, 2009; Murji, 2010).

In addition to these strategic reasons for promoting evidence-based practice, there are more immediate operational benefits to policing to be had. These benefits include (Lum & Koper, 2015):

- The benefits from employing strategies and tactics that are shown to reduce crime, increase legitimacy and address community concerns: ‘Policies deemed harmful or ineffective could be discarded (or at least critically questioned), potentially saving law enforcement agencies time, money, frustration and blame’;

- The requirement of police organisations to access their information and data to undertake outcome evaluations and analysis. This may, in turn, lead to improvements in managerial accountability, better data recording, collection and analysis, and improvements in information technologies to address these needs; and
- The potential to increase officer satisfaction with police work, providing innovative and creative ways to tackle problems and challenge the status quo.

SOME EXAMPLES OF RESEARCH THAT SUPPOSEDLY IMPACTED POLICY-MAKING AND POLICING IN SLOVENIA

On the one hand, the research impact of Slovenian researchers in the international criminology realm has been quite positive for a rather small country with only limited research resources. On the other hand, vis-à-vis Slovenian society the country's research institutes have been actively involved in police reforms (Meško & Lobnikar, 2018) and in documenting and researching the development of policing in the country. About ten years ago a report on the development of policing in Slovenia was presented by Meško and Klemenčič (2007), focusing primarily on the development of legitimacy in the police and policing since the independence of Slovenia.

The following sections present a discussion of research projects that have contributed to the improvement of the quality of policing in the country. It also depicts the country's attempt to move towards goals typical of the most developed police forces policing democratic societies.

VICTIMOLOGY AND POLICING

A project on victims of property crime (Meško, 2000; Umek & Meško, 1999) was one of the first research projects aiming to reduce secondary victimisation of crime victims in police proceedings. This project resulted in publication of a booklet *When I become a victim of crime* (orig. Ko postanem žrtev kaznivega dejanja) (Policija, n.d.). This has been used in police training settings and with victims of crime who report criminal offences; crime victims can get a copy of the informative booklet at any local police station. In the field of 'police victimology' a project on the satisfaction of victims of property crimes was later conducted (Dvoršek, Maver, & Meško, 2006) which studied victims' perceptions of procedural justice, kindness and effectiveness of police investigations. The authors discovered a wide variety of good reasons for being procedurally just, ranging from the effectiveness of crime investigations (victims are a good source of information for the investigation of a case and for the possibility of preventing future victimisation), psycho-social (victims expect police officers dealing with their case to help them to recover their psychological balance) to strategic (satisfaction of victim with investigation proceedings can be an important indicator of the effectiveness of police work, which for long has been unable to boast a high clearance rate of property crimes).

A relatively high appraisal of police work by victims of property crimes is consistent with the results of previous domestic research studies. What contributed to a high appreciation of the professionalism of police proceedings by victims of property crimes is not only their positive assessment of the taking of a professional approach to a crime scene investigation and the collection of relevant information at the time of reporting a crime and the subsequent investigation, but also procedural justice (in this study kindness, understanding and support) of police officers at the first contact, the feeling that information from the victims have been

valuable to the police, their advice on victims' self-help, and providing further information on the progress of the investigation. It can be concluded that the new strategic orientation of the police in dealing with victims has produced some results and that a different approach towards victims of property crime can also be noted. At the level of implementation, there are still some shortcomings, which can be eliminated by basic and on-the-job (refresher) training in communication skills. Recently, the EUCPN (2016) published recommendations for EU police forces on how to help prevent secondary victimisation.

CRIME ANALYSIS AND POLICING

In the field of crime analysis, a study on geographical distribution of deviance in Ljubljana was conducted (Meško, Dvoršek, Dobovšek, Umek, & Bohinc, 2003) to facilitate *problem-oriented policing* in the capital city of Slovenia. The results of the study were presented to the city of Ljubljana Safety Council and to police chiefs who might use GIS in crime analysis. Also, police crime analysts were trained to conduct crime analysis with the ArcGIS program, and later, researchers of the Institute of Criminal Justice and Security translated *Crime analysis for Problem Solvers in 60 Small Steps* (Clarke & Eck, 2008) into Slovenian. The book was distributed to all police departments and the country's Police Academy. The next step was the establishment of a laboratory for crime analysis at the Faculty of Criminal Justice and Security, University of Maribor, and the inclusion of crime analysis in the curriculum of the undergraduate and master's programmes of study in criminal justice and security. The students have studied crime mapping for the past six years, and researchers as well have used the program in their research on crime analysis in Slovenia.

COMMUNITY POLICING, PROBLEM-ORIENTED POLICING, INTELLIGENCE-LED POLICING

Since the late 1990s, community policing and other new forms of policing have been studied (Meško & Lobnikar, 2018), and while introduced as a panacea for many social and security problems, its limitations have been duly noted. An essential part of community policing is the building of safety/security partnerships (i.e., local safety/security councils). The first evaluation of the role of such councils was done in 2004 (Meško & Lobnikar, 2005). Meško and Lobnikar (2005) conducted a study focusing on the functioning of local safety councils in Slovenia. The findings showed that in regards to solving local safety problems, ad hoc approaches are based on a temporary partnership in which the police represent the most active participant according to more than 50% of respondents. More than 80% (53 police officers and 89 representatives of local governments) of respondent felt that the police perform their tasks well and that the local administration should cooperate more closely in solving local safety problems and preventing crime. According to respondents, the police bear the most significant responsibility for local crime control and safety problems, followed by local/city administrations, individuals, schools, social services, and families. Social crime prevention measures are recognised as priorities, whereas the least appropriate preventive measures seem to be citizen patrols, private security at schools, police repression, strict law enforcement, designing out crime, private security, situational crime prevention, and personal and property insurance. The research results imply that the most significant *obstacles* to local safety endeavours were as follows: 1) unclear roles of institutions and representatives of civil society in such activities, 2) diverse understanding/conceptualisation of safety problems, 3) diverse understanding of partnership, 4) vertical relations among partners; 5)“just a

discussion on diverse problems and the lack of executive powers, lack of political will and departmentalism”, 6) one’s questionable willingness to listen to those who do not share the same view of the problem; 7) feeling that such councils are an extended police arm (in all cases the police initiated the establishment of such councils), 8) ignorance and apathy of local citizens (crime prevention is not an attractive and “profitable” activity), 9) centralised arrangements and local problem solving (no firm legal background), 10) “informal for the purpose of formal” – cooperation based only on good will of representatives on state/local institutions, and 11) local administration and civil society without any responsibility or legal framework. *Advantages* of such councils could be: 1) democratisation of formal social control and control over the police, 2) cooperation of (responsible) citizens and knowing each other, 3) development of more active cooperation between all local key persons, 4) facilitating of “safety consciousness” and discussions on local problems and 5) “communities that care” mentality (Meško and Lobnikar, 2005). Recently, intelligence-led policing was introduced in the Slovenian police and assessed (Potparič & Wilson, 2013) showing strong potential for more efficient criminal investigations.

TRUST AND LEGITIMACY

Legitimacy has been emphasised in studies on evidence-based policing, and in addition to legality, legitimacy is a crucial issue of contemporary governance and policing. A project on legitimacy in policing, criminal justice and execution of penal sanctions was conducted between 2013 and 2016 in Slovenia, and the findings support the ideas on the importance of perceptions of legitimacy of the police by the public, and also self-legitimacy of police officers (a kind of professional self-image and self-esteem). It is not just about being procedurally fair, people also expect the police to be effective in doing their ‘business’ (Meško & Tankebe, 2015; Reisig, Tankebe, & Meško, 2012, 2014).

CONCLUDING REMARKS

An overview of the development of policy-making and policing over the course of the past two decades shows the growing orientation towards evidence generation and gathering, and the increased presence of research-based policy documents on the state (government) and organisational (police) levels. The implementation of derivative best practices policies is quite another story, however.

A biennial conference on Policing in Central and Eastern Europe was established in 1996 (Pagon, 1996) and numerous participants, who presented papers and took part in discussions (including policy-makers and practitioners), have contributed to the development of knowledge on policing and social control in the region and beyond. The efforts of researchers of the Institute of Criminal Justice and Security at the FCJS-UM have resulted in numerous high-quality studies published in international and national peer-reviewed journals. These publications have had an important impact, not only on the development of the university criminal justice and security curricula but also to the enjoyment of greater respect and recognition for Institute researchers in public, policy-making and professional debates. The research focus of Slovenian researchers has been right in line with developments in Europe in this regard. After joining the EU, these developments were reinforced due to the inclusion of Slovenian researchers in European and international research teams.

Moreover, Institute publications over the course of the past decade have been more internationalised with the help of a special issue of *Policing – An International Journal of Police*

Strategies and Management (2009), and the publication of the *Handbook on Policing in Central and Eastern Europe* (Meško, Fields, Lobnikar, & Sotlar, 2013), and *Trust and Legitimacy in Criminal Justice: European Perspectives* (Meško & Tankebe, 2015).

Research has supported police reforms in Slovenia (Meško & Lobnikar, 2018) both in the roles of active participants in policy-making and as independent “observers,” studying changes in policing, especially from the public opinion perspective and later also views of the police. Recently, after the adoption of a new community policing strategy in 2013 (Police, n.d.), Lobnikar, Prislán, and Modic (2016) presented a new model for evaluation of community policing which confirmed previous research findings on efforts to develop community policing in Slovenia (Modic, Sotlar & Meško, 2012). In a broader sense of criminological research used in policy-making, Slovenian criminology, criminal justice, and security studies have produced a number of high quality studies in a country which, in comparison to wealthier Western European countries, invests much less in research.

Involvement of researchers and police practitioners in activities of the United Nations, EU institutions, Council of Europe, CEPOL, FRONTEX, DCAF, OSCE and other international institutions has contributed to catching up with the more developed countries where evidence-based policy making and evidence-based policing are set ideals and efforts directed to meet these highly set goals are of relatively long standing. In reality, such active involvement is a valuable learning process well worth experiencing, and can provide a good test of the impact of research in real-life situations.

What can be done to improve the underdeveloped relationship between researchers, policy-makers, and practitioners? From the perspective of researchers, it is essential to assure a satisfactory amount of high-quality research that can be used in the policy-making process. I would also like to emphasise the importance of trust and readiness for a dialogue in the ‘bounded rationality’ processes involved. Policy-makers need to be able to take into consideration competitive and often controversial views, and practitioners would be well served to enhance their understanding and critical reading of increasingly prolific research studies (Shults, 2017).

In these collaborative processes involving the multiple languages of researchers, practitioners, and policy-makers, it is important not to forget the basic principles of the rule of law, human rights and respect for human dignity. Grabosky’s (1996) travelling preachers, critics and analysts, appear in policy-making processes and implementation of crime control and prevention policies, and all three (sometimes as one person) contribute to a more productive process of understanding and proper responding to crime and other socially undesirable behaviours.

In addition, I believe that the time is right for a new overall mentality among police chiefs; they have the power of implementation of policies – be they progressive, status quo, or regressive. It is time for police leaders who are more problem-solving oriented than structure-maintenance focused, who are capable of building and sustaining multi-organisational coalitions (diplomacy and persistence), able to share responsibility, control and credit (leadership skills), and are analytically inquisitive. Data matters, so police leaders must be rational decision makers, have strong interpersonal skills, are people-focused (less authoritarian, willing to listen and hear not only pass orders), and are institutional mission focused as opposed to bureaucratic in orientation. Efforts in this direction are already being implemented in the Police Academy of Slovenia and partner academic institutions supporting the development of police and policing in young democratic country.

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BEYOND COMMON SENSE: SURVEILLANCE SOCIETIES

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ABSTRACT

This paper² highlights some questions that stand at the heart of current police policy, e.g. the consequences of the transformation thesis, the militarisation of police, as well as the ‘pluralisation of policing’. The relentless emphasis on security, the media focus on violence, the need to find returning investment forms after the collapse of the bipolar world order and the political necessity of making people feel safe, creates policing practice similar to the military experience. Should the military suppressing a riot be considered performing a policing function? Should persons who have limited rather than generalised law enforcement powers, such as customs agents, be considered as police?

Keywords: police, penal common sense, pluralisation of policing, securitisation, over-policing

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INTRODUCTION

Science, as we know it, is a creation of the last three hundred years. From the birth of modern science, from the 17th century to the first half of the 20th century, it seemed clear what science was and what it was not. “The medieval world was passive and symbolic; it saw in the forms of nature the signitures of Creator. A hundred year later, at the Industrial Revolution, the interest shifted to the creation and use of power. The great historicial movement must underlie everything that can be said about science. Science has entered into the life and structure of society” (Bronowski, 1978: 12).

The great science historians of the nineteenth century saw natural progression as a linear progression - at least since the 17th century. According to Kuhn (1962), however, the history of science is a discontinuous process in which the results of normal scientific cognition in the typical paradigms of periods separated by successive scientific “revolutions” do not fit in any sort of development.

The aim of the paper is twofold. Firstly, to highlight relationship among (penal) common sense, scientific logic and some innovations in the field of policing. Secondly, to analyse some questions, and some controversial issues that have had implications on recent police reforms and functioning.

WHAT IS COMMON SENSE AND WHAT IS NOT

In the natural sciences the special knowledge requirement is less exposed to laic truths without proper preparedness. However, there is much greater uncertainty in the field of the social sciences, and in the examination of phenomena related to the human community, behaviour, deeds, and decisions. First, it seems that the simplest criterion for classifying a new scientific idea into a pre-modern, modern or postmodern period of science history is

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the relation of thought to common sense. A scientific theory can not contradict common sense because it should be simple, perceptive, and understandable to anyone. It seems that observations controlled by common sense can reveal the context of the world. With common sense that is able to experience and know the social environment, truth and/or value can be recognised. So for many, common sense is the entrance hall of science, a kind of approach, a bit of half-truth, that helps to understand the complexity of a globalised world (Bodó, 2010).

There is no doubt that a special relationship exists between common sense and scientific rationality. Nowadays, two aspects of knowledge production can be identified: knowledge is privileged and democratised at the same time, thanks to new knowledge-transfer IT tools. This situation facilitates the acquisition of knowledge, but it does not control the reliability of the knowledge, allowing the spread of a variety of fake news (European Commission, 2018).

COMMON SENSE AND SCIENTIFIC LOGIC

Common sense, experience, logic, and rationalisation are available for interpreting the events of today in the absence of competency. According to Lilienfeld: “[T]he foremost obstacle standing in the way of the public’s erroneous belief that common sense is a dependable guide to evaluating the natural world” (Lilienfeld, 2006). In 1776, Thomas Paine used the title “Common Sense”, suggesting that the American political future should be considered with sound judgment in practical matters. The common sense view is based on natural science experience. It describes a belief or interprets ordinary life events that seem to be meaningful for most people. It is proof of a correct judgment, a view that does not rely on esoteric knowledge. Common sense seeks to correlate the events of the world with human experience, so it fits well into the human scale. But why is it that we increasingly experience that penal politics and policy-making is an area where common sense fails? How could we discover that common sense is false?

For every scientific discovery, the task is the interpretation of the world: “to formulate a coherent, logical, necessary system of general ideas, in whose categories all the elements of our experience can be interpreted” (Szigeti, 2013). Scientific knowledge is based on four requirements: (a) the requirement of objectivity; (b) a need of immanent phenomenon explanation; (c) an inner historical requirement of theorizing; and the requirement of the role of practice over theory (Szigeti, 2013).

There are some areas of science where special knowledge is an expectation: natural science is part of this. No one thinks he will understand quantum physics or the rules of genetics without any pre-existing knowledge.

There is much greater uncertainty when it comes to social sciences that are related to the human community, behaviour, actions and decisions. Since impersonal (social) processes can not be understood without the knowledge of social sciences (for this reason, these sciences have been created), and this literacy is mostly lacking, it seems plausible to decide there is no complexity at all, but just a simple act of follow-up action known in everyday life (Bodó, 2010).

PENAL COMMON SENSE AND EVIDENCE-BASED POLICING

Common sense is often used as a powerful rationale for treating criminality. The evidence-based policy in relation to crime looks like plain common sense. According to a widespread

view, one of the most important roles of education is the nurturing of common sense. McNulty (1994) provides empirical evidence of the process by which police officers collectively generate common sense knowledge, emphasizing the role of work-related routines. That practice illustrates how common sense knowledge is generated within the context of everyday life routines. It challenges the idea that common sense knowledge is innate, spontaneously generated, or simply transmitted from one generation to the next. On the contrary, common sense knowledge is highly valued in police culture as a means of dealing with the many ambiguous situations that officers face. It starts from the beginning, when police recruits are taught to accept and respond effectively to the ambiguity intrinsic in most situations. Sentas (2014) has recently demonstrated the “extraordinarily coercive nature of contemporary Australian counter-terrorism law (where neither an intention to support violence or an actual act of terrorism is needed, it seems) and the thinking behind it, the ability of the police to justify their intrusive harassment of ethnic minorities (in the name of prevention), and the catch twenty-two situation the policed find themselves in where failure to cooperate with such repressive measures is to have something to hide (thereby rendering police attention legitimate)”.

It seems that evidence, or even pseudo-evidence, gained currency in the policy process. Common sense ideas about crime are powerful influences on policy, and they are not easily overturned by research evidence, which may contradict them. Even where there is space for research to have an impact on policy and practice, it can easily mislead, if treated uncritically and unreflectively (Tilley & Laycock, 2000: 15).

Loïc Wacquant was one of the first European thinkers who asked how and why penal common sense appeared in the European continent (Wacquant, 1999). He analysed the processes whereby a new ‘penal common sense’ aiming to criminalise poverty and thereby normalise precarious wage labor has incubated in America and is being internationalised, alongside the neoliberal economic ideology which it translates and complements in the realm of ‘justice’. He identified three operations in the transatlantic diffusion of a new doxa on ‘security’, which encompassed the policing and carceral management of the increased poverty and marginality that are the socio-logical consequence of these economic policies in advanced societies.

TOWARD A NEW REFLECTIVE APPROACH

POLICING – INNOVATION IN CRIMINOLOGY

Policing became an important area of innovation in criminology and in practice over the last few decades. During the 1970s social scientists and ethnographers started to discover the police as a new domain of research (Manning, 1977). Manning attempted to articulate a perspective on policing as an activity, as an organisation, as a set of symbolic repertoires and situated actions, as a source of myth, drama and common sense theories of social conduct (Ponsaers, 2016).

Policing studies are arriving in a new era. Postmodern implications on police reforms and theoretical approaches of policing turned towards a new reflective approach by adapting the reflective notions of critical theories. Neoliberalism has emerged as one of the key concepts for studies of cultural and political-economic change on a global scale. At the centre of these interpretations is the challenge of its limits. There is a need to move beyond the surface, in order to find those social forces that offer these approaches “to cure” social instabilities, increasing inequalities and public fears of crime and consequences of globalisation, as well

as to hide emerging new forms of governmental regimes. To assess the new forms of police surveillance would transform a state, based on the rule of law, into a postliberal preventive or precautionary surveillance state.

According to the transformative thesis of Jones and Newburn, police and policing have become increasingly distinct (Jones & Newburn, 2002). Due to this late modern transformation, the police lost their monopoly on the field of policing and police face a crisis concerning their identity. In the past thirty years the states' monopoly in policing diminished due to the creation of a host of private and community-based agencies set up to prevent crime, deter criminality, catch law breakers and investigate offences (Bayley & Shearing, 1996). Such 'pluralisation of policing' means a fracturing of the state monopoly, increasing the number of private security agents and citizen policing. There is also a growing doubt by the police service about its own effectiveness concerning policing strategies. These late modern symptoms increased the role of reflection in policing studies, in particular that of critical theories (Kerezi & Nagy, 2017).

COMMON SENSE – COGNITIVE PROCESS – COGNITIVE LIMITATIONS

Police officers are like other human beings. Their's common sense understandings about the world and human behaviour may also form a lens through which the police force interprets the meaning of matters such as reasonableness and normality of human behaviour. However, they may be unconsciously impacted by cognitive limitations. Police officers' factual assumptions may be influenced by their own cultural worldviews. The police officers' use of common sense can be the vehicle through which error and discrimination enter the investigation and criminal procedure (Burns, 2016). It seems that a police force's construction of common sense is a cognitive process with the consequent impact of bounded rationality, heuristics, biases, emotion and cognitive illusions. While common sense and common understandings will always be an inevitable part of the decision-making process, more attention is required to address the limitations and consequences of common sense policing.

QUESTIONS AT THE HEART OF CURRENT POLICING

The following part of the article introduces some questions that stand at the heart of current police policy, e.g. the militarisation of police, the 'pluralisation of policing' or the role of information technology products in the transformation process. When analysing the process, a question can be raised whether the extension of police surveillance eroded long-established constitutional limits on state power, thereby transforming a state based on the rule of law into a state based on risk assessment and safety (Frohman, 2015). There is a need to outline the ways in which states formerly governed by the rule of law transform into precautionary surveillance states.

This was driven by a number of different factors. In the late 1960s "gun violence was essentially a black, inner-city problem, and the Gun Control Act of 1968 was intended to block the flow of cheap handguns. [...] A quarter-century later, the 1994 federal assault weapons ban recognised the increasing prevalence and danger to society of military-style weapons and ammunition" (Wilson, 2016). The burst of privacy legislation at the beginning of the "1970s was not due to the use of new technologies, but rather to public concern about the expansion and intensification of population surveillance. For instance, the deepening of the welfare state, the growing interest in social planning, and the informationalisation of

capitalism all gave rise to an unquenchable thirst for personal information” (Frohman, 2017: 76). Countries which responded to the emergence of domestic terrorism (e.g. Spain, Italy, and Germany) started to form national police information systems. A mix of separate and loosely related factors was assembled, stressing the risk that anything can happen anywhere. The media focused on each outburst of violence, and the political necessity of making people feel safer than they actually are. All of these factors create expectations for civilian law enforcers similar to those that soldiers and their commanders experience (Wilson, 2016). What have also changed are visible features (eg. wearing special uniforms, using military-style weapons, etc.), legislative rules and the legitimacy for police to use force. The beginning of an era with relentless emphasis on security, a violence-focused media, as well as the need to find returning investment forms after the collapse of the bipolar world order (at the end of 1990s), and the political necessity of making people feel safe, creates policing practices similar to the military experience.

THE ‘PLURALISATION OF POLICING’

What do the police mean in a society? Although the interpretation of policing is still clear – law enforcement activity by empowering the use of legitimate force – there are now a lot of exceptions that can overwhelm the contours of this concept. But the questions remain the same: are the security guards employed by private firms regarded as law enforcement? Should the suppression of a riot by the military be considered performing a policing function? Should persons who have limited rather than generalised law enforcement powers (e.g. customs agents) be considered as police? (Bayley, 1979)

If the budgets shrink, it is likely that a greater number of duties traditionally carried out by sworn officers will be undertaken by civilians. Civilian employees are playing a larger role in crime prevention and control. Can the number of civil employees be added to the ranks of police? Hutchins reported that there were almost 28,000 employees of Canadian police services in 2013, and while most were in support roles, a growing number are engaging in duties that were previously the domain of sworn officers (Hutchins, 2014: 11). This is not the case in Hungary, where the police have been steadily collecting personal and financial resources over the last decade. In this regard, a growing number of police and non-police stake-holders are being involved in policing activities aimed at achieving security. This development is discussed as ‘pluralisation of policing’ (Devroe & Terpstra, 2015).

The role of private security officers must also be considered in future studies of social control. Public police are increasingly working for private buyers of their services in user-paying policing arrangements. This development, along with that of the private sponsorship of police, has raised empirical questions about the nature of policing in the early 21st century, and whether it serves the public good rather than private interests (Lippert, Walby, & Wilkinson, 2016).

If we want to look at the real contexts, one can question the relationship among the actors of policing. If we assume not only a complementary division of labour - as does to the status quo oriented literature - but contradictions and disagreement, private security organs can be judged as a kind of refeudalisation, a privilege that violates the right to equality. There are ordinary citizens who have basic public security provided by the police, and there are also those persons who may have additional security needs - if they can afford it financially, of course. That is, because of wealth differences, there are security differences emerging between citizens (i.e. ordinary people) and the citizens (i.e. privileged people) (Szigeti, 2001).

CONCEPT OF POLICING: SERVANTS OF THE STATE

In the 1970s and 1980s new technologies, new forms of criminality and new surveillance practices made it more necessary than ever to renegotiate the informational relations between the state and its citizens in the fields of welfare and security (Frohman, 2015).

Most critical theories see the police as ‘servants of the state’ (Platt & Cooper, 1974), i.e. a group which unquestioningly and consistently carries out orders received from the state and those controlling it (Platt & Cooper, 1974). This concept of policing presumes too much, as it deducts the meaning of police work from prior models of capitalist development and its key factor, the class struggle. However, this concept lacks the notion of the relative autonomy of the state and the relative autonomy of the police. Currently, there is little discussion of the concrete links of policing to social bases; of the varieties of policing organizations; the implications of a service orientation in police departments; of differentiations among oppressed groups; or of the needs of those without power when it comes to protection of persons and property (Kerezi & Nagy, 2017).

THREE MYTHS IN POLICING: SECRECY, HIERARCHY, LEGITIMISED VIOLENCE

Alleviating insecurity requires that we confront its mythic dimensions, the politics inherent in new configurations of security provision, and the structural obstacles to achieving equality in societies. The noble vocation of the police officer can become a moral menace to the fact that these three myths are plagued by corporations. “The myth of violence combines hardness with brutality, and the goal is sanctioned with the principle of effectiveness. The myth of hierarchy gives the impression that the organisation also has an information monopoly. It can monitor the society without control and it is free to access the data obtained, although the purpose of police knowledge gained from public policy can only be the service of the community, and the only aim that legitimise criminal intelligence is to prepare the case for justice. The myth of secrecy is reassuring: you believe that there is no responsibility for infringements. And responsibility and prosecution is often far behind (Finszter, 2011).

Modern law enforcement police practice places real values in the place of myths: the rule of law, professional competence and the respect of human rights.

SECURITISATION AND OVER-POLICING

The securitisation of poor inhabitants is not a new phenomenon; however, the methods of targeting and selecting undesired citizens got a new lease of life (Nagy, 2016). The concept of security marks the political process when it raises a question from the normal course of politics to questions that call for extraordinary solutions, extends extreme politics, or presents a certain group of state or society as a threat to life. Securitisation processes increase the role of surveillance techniques in state bureaucracies to select and expose targeted groups, such as the Roma in Hungary or migrants in Europe. Late modern European societies are developing a new understanding of control as a form of social sorting that leads to blurred lines between safety and social security (Nagy, 2016). Control of populations by spatialisation and social sorting is the central aspect of securitisation because the most powerful states determine and export the priorities of control to the international system, as in the case of securitisation and policing migration (Coutin, 2005).

The political use of securitisation can be related to the concept of governmentality (Foucault, 1977). Population control, legitimised by references to security, takes form

through selected governmental incentives that are constructed by selecting surveillance data (Nagy, 2016). The central argument of security studies is that consumerist Western societies seek security while individuals sacrifice solidarity for the course of welfare. In this frame, competitive market relationships are shaping the rules of social inclusion based on economic production and social conformism. Veronika Nagy's thesis (2016) develops a new understanding of welfare policing as well as how financial aspects defined as threats contribute to recent securitisation processes.

Scholars argue that some districts, patrol zones, or neighbourhoods within a given city – neighbourhoods or patrol zones that have high minority populations – might be over-policed (Comack, 2012; Tanovich, 2006). Ruddell and Thomas (2015) found, for instance, that there was a significant positive relationship between security officers and the size of the black population, in their study of three-hundred urban US counties. Thus, it is possible that individuals, corporations and non-governmental organizations may deploy more security officials in places with a high percentage of minority residents (Ruddell & Thomas, 2015).

THE CHANGING ARCHITECTURE OF CRIME CONTROL

The super powers' relationship changed with the collapse of the Soviet Union, and armaments decreased temporarily around the late 20th century. In the transition from the 20th to the 21st century, crime control became an excellent arena for the development of peak technologies. As global politics changed, a buyer's market had to be found that was able to use and needed these peak technologies. On one hand, the fight against terrorism regularly requires the application of such new tools which themselves require constant development (such as iris diagnostics or the Echelon surveillance system, etc.). On the other hand, other areas of criminal justice (such as the execution of sanctions, electronic personal tracking systems, personal tracking devices suitable for satellite tracking and mobile phones) may also serve as a buyer's market. The geographic information system (GIS) appeared among the tools of regional control at the turn of the 21st century. In the end, high technology appeared in crime control (Kerezi, 2013).

The citizens' fear of crime became a high-priority criminal policy issue all over Europe. The intention to moderate it has, paradoxically, become linked to the generation of other fears. As it also has been pointed out by Hörnqvist (2003), that this situation was initiated by the two-directional development process of criminal law, which exceeded its limits of competence both upwards and downwards:

- by occupying areas “upwards” (the best example for which is the fight against terrorism), the borders between ‘war’ and ‘crime’ are merged. In this, regular state emergencies are made to look like traditional war, and coercive tools are applied to an excessive extent; and
- in the “downward” occupation of territories by criminal law (some examples for which are local crime prevention and the ‘zero tolerance’ policy) the borders between crime and undesired, or uncivilised forms of behaviour are also merged. In this area, the borders of competence between the police and social services become uncertain (Grier & Thomas, 2001).

It seems like the application of new forms of control is typical for both new trends of development and both types of “territorial occupation” are accompanied by the intensive deployment of the new technical devices. The exercising of control was of course characterised by the application of technical devices earlier as well. Even then, there were

two typical forms of control: (a) regional control and (b) control over persons. These days, it is not only in regional control that high-tech regional supervisory devices are used, but due to the intolerance towards uncivilised forms of behaviour and the intention to check the criminals (more intensively), it is the most advanced technical devices that are deployed in the controls over persons as well.

CONTROVERSIAL ISSUES: POLICE GUARDING AND STATE-PAID POLICE

Although there is a common agreement on the key task of police, i.e. ‘guarding’ with the potential or actual use of force, there is a general disagreement on two key issues:

- first, what is the police guarding - order in general, the state itself, a moral consensus, a specific class interest, the vanguard party, people, property, the capitalist system, or the interests of all?; and
- second, there is disagreement whether only guards employed by the state and paid from public funds are considered police, or the work of privately employed guards might also be considered as policing.

In the last twenty years the ‘perception of insecurity’ – formerly to be dealt with by social policy – is being eroded at both the macro (‘war on terror’) and micro (‘public order’) levels (Hörnqvist, 2004). The policy control over lower social strata has migrated horizontally, from social policy to criminal justice policy, where it has grown steadily more symbolic and less substantive since the 1990s. The “fast and furious bend toward penalisation observed at the fin de siècle is not a response to criminal insecurity but to social insecurity. The expansion and intensification of the activities of the police, courts, and prisons over the past quarter-century have been anything but broad and indiscriminate” (Wacquant, 2010).

We are arguing for a much more open debate on policing than has hitherto been heard and a greater degree of openness by the police to the discovery and discussion of some of the central principles that underpin the activities of the service.

POLICE FUNCTIONS

The police are not the only organisation in liberal democratic societies who hold a mandate to use coercive force (Sharp, 2005), but as Bittner stated: “The policeman and the policeman alone, is equipped, entitled and required to deal with every exigency in which force may have to be used’ (Bittner, 1974: 35).

The ‘common sense’ view of the police would no doubt assert that policing is all about crime. The police function comprises a mix of crime control, order maintenance and social service functions (Andrew, 2014). Some research findings suggest that urban agencies receive proportionately more order maintenance calls, small town agencies receive proportionately more service calls, and both types of agencies receive similar proportions of law enforcement-related calls. The “bulk of citizen requests for police assistance involve resolving disputes, complaining about the non-criminal behaviours of others, and requesting public service assistance, such as calling a breakdown van for a disabled motorist” (Johnson & Rhodes, 2009).

The above analysed examples of common sense also tell us that the police perform other functions: they enforce traffic regulations; they respond to calls from the public for all manners of assistance; they manage disorder on the streets; they search for lost children

and much more. Yet we know from research that the police spend more time dealing with matters that are not related to crime than they do directly with crime (Sharp, 2005). In fact, both research and common sense tell us that policing is far more complex than it first appears. The police have been granted extensive new powers to deal with newly emerging threats, ranging from locally-based crime, disorder to international terrorism and to migration. However, many of the reforms are taking place without proper evaluation or with little apparent understanding of potential long-term consequences.

UNCLEAR SENSE OF PROFESSIONALISM

In recent years calls have been made for police forces to become more ‘professional’ (Faull, 2013: 18). These calls came from the government, civil society and the Police itself. Yet beyond a common sense interpretation, it remains unclear what ‘professional’ and ‘professionalism’ mean in relation to police.

The fundamental change in the issues dominating discussions about policing is that discussions have moved away from a focus on what is legal or effective in crime control and toward a concern for how the actions of the police influence public trust and confidence in the police. This shift in discourse has been motivated by two factors. Firstly, the recognition by public officials that increases in the professionalism of the police and dramatic declines in the rate of crime have not led to increases in police legitimacy. Secondly, greater awareness of the limits of the dominant coercive model of policing and of the benefits of an alternative and more consensual model based on public trust and confidence in the police and legal system (Tyler, Goff, & MacCoun, 2015).

A leading criminologist Shadd Maruna asks: are we able to make a decisive shift from targeted programmes of intervention within a predominantly punitive criminal justice culture, to a much more pervasive rehabilitation ethos that extends to entire institutions, services and communities? Speaking about the debate between the advocates of rehabilitation versus incarceration, Maruna argued that the conclusions reflected the broader context for criminal justice policy (ideological presumptions, financial limits) but also, crucially, what it is we care about. If we value redemption and forgiveness as social norms we should prefer rehabilitative strategies, but incarceration will be favoured if principles of shaming and punishment are seen as more necessary for social flourishing (Maruna, 2011).

DISCUSSION: KIPLING’S FABLE

Threats of terrorism, natural disaster, identity theft, job loss, illegal immigration, and even biblical apocalypse — all are perils that trigger alarm in people today. Although there may be a factual basis for many of these fears, they do not simply represent objective conditions (Monahan, 2010). Crime and criminalisation are considered to be social control strategies, and the police patrol the border between social classes. That is why social control strategies “render underprivileged and powerless people to be arrested, convicted, and sentenced to prison. They create the illusion that the “dangerous” class is primarily located at the bottom of various hierarchies. They render invisible the vast amount of avoidable harm, injury and deprivation imposed on the ordinary population by the state, transitional and other corporations” (Box, 2002). Cook assures us that “the processes of law enforcement serve the interests of dominant groups in the society and either ignore or oppose the interests of those in lower social strata” (Cook, 1967).

Kipling's fable about the blind men and the elephant offers a different interpretation: disputes among scholars arise not so much from errors of fact and argument as from differences of perspective – incomplete perceptions, each from a different angle of view, of a more complex reality. The gap between science and common sense also appears in the research literature on policing and public attitudes towards police, as well as between police and researchers. Police and researchers each define the whole in terms of the part accessible to them, but the endeavor is larger than the sum of those parts.

According to Atran (1990: 3) common sense is an “indubitable source of truth for knowledge of the readily experienced local world, but fallible as a means of insight into the scientific universe”. In summary this is what I suggest to everyone dealing with policing issues: keep on questioning and pointing out weaknesses of the views of common sense. To err is a human thing. Common sense may be a mistake, but we know that if politics uses this concept, then common sense leads to a deadlock within surveillance society. In order to gain a complete understanding of surveillance society and its consequences, it is necessary to put for a much more open debate on policing and the relationships among the actors of policing than has hitherto been heard. It needs a greater degree of openness by the police to the discovery and discussion of some of the central principles that underpin the activities of the service, as well as conducting research that continuously examine all aspects of police activity.

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REFLECTIONS ON POLICING AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

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ABSTRACT

The *2030 Agenda for Sustainable Development* is the most comprehensive global developmental platform of substantive political, policy and analytical content yet assembled. Its 17 goals and 169 targets range from poverty through health, biodiversity, climate change to peace, security and justice. While policing is not explicitly mentioned, the contribution of policing to the achievement of many targets is unquestionable. This paper discusses several targets and indicators delineated within the goal of *peace, security and justice for all*, and their relationship with policing. The ever-changing forms of crime coupled with the ever-dynamic modes of criminal activities in traditional global markets -- and now in cyberspace -- pose serious challenges to modern policing. The *2030 Agenda for Sustainable Development* calls for policing featuring service-orientation, respect for human rights, crime prevention, and institutional effectiveness, transparency and accountability. Police constitute an integral component, contributor and beneficiary of the 2030 agenda without question.

Keywords: United Nations, sustainable development goals, policing, human rights

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BACKGROUND

The United Nations General Assembly adopted “Transforming our world: the 2030 Agenda for Sustainable Development” (referred to as the Sustainable Development Goals: the SDGs) following a special summit of the heads of state in New York in September 2015. The SDGs are the developmental and political platform of strategic importance in continuation of the preceding developmental platform, the Millennium Developmental Goals (MDGs). The political and methodological process of the development of the SDGs – especially at the level of developing concrete targets and indicators – was much more comprehensive and detailed as that of the MDGs (Jandl, 2017).

Agenda 2030 is the result of the political consensus of the United Nations member states with the full impact and input of the whole United Nations Secretariat, specialized agencies, programmes and funds. Never before within the United Nations ambit such a wide scale operation of consultations was carried out. In certain sense, the Agenda 2030, by its depth and breadth, is a unique international strategic commitment to the future and the operationalization of the implementation strategy of the Preamble of the United Nations Charter: “We the peoples...” to the “We the peoples...” (United Nations, 1945).

The SDGs Agenda 2030 is both a political strategy, a commitment to the global community, as it is an elaborated methodological instrument to measure, monitor and evaluate results about the level of the achievement of the goals both at the national as well as at the international levels. The agreed upon goals and the ensuing targets represent the highest level political consensus on the global community’s fundamental values for the wellbeing of the “peoples of the United Nations”. There are 17 goals and 169 targets, each of which is accompanied by an agreed upon set of global indicators. It is worth mentioning all seventeen goals in order to appreciate the breadth and depth of the Agenda (United Nations, 2015):

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- Goal 1: End poverty in all its forms everywhere;
- Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture;
- Goal 3: Ensure healthy lives and promote well-being for all at all ages;
- Goal 4: Ensure inclusive and equitable quality education and promote life-long learning opportunities for all;
- Goal 5: Achieve gender equality and empower all women and girls;
- Goal 6: Ensure availability and sustainable management of water and sanitation for all;
- Goal 7: Ensure access to affordable, reliable, sustainable, and modern energy for all;
- Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all;
- Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation;
- Goal 10: Reduce inequality within and among countries;
- Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable;
- Goal 12: Ensure sustainable consumption and production patterns;
- Goal 13: Take urgent action to combat climate change and its impacts;
- Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development;
- Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss;
- Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; and
- Goal 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development

It is of utmost importance to highlight that for the first time in a global political and developmental platform adopted by the United Nations, a Goal 16, calling for justice and security for all, has been acknowledged as one of the most fundamental global principles and values. Crime prevention, criminal justice, rule of law and policing by *de fault*, occupy a central position in the global scale of values and ideals to be achieved by “we the peoples of the United Nations”.

Such a commitment was further strengthened by proclaiming the SDGs and crime prevention, criminal justice and the rule of law as the main theme of the forthcoming fourteenth United Nations Commission on Crime Prevention and Criminal Justice to be held in Kyoto, Japan in 2020: “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda”. Moreover, the United Nations Commission on Crime Prevention and Criminal Justice (2018b), a policy-making body for the United Nations crime programme, at its 27th session held in Vienna in May 2018 adopted a resolution “ The rule of law, crime prevention and criminal justice in the context of the 2030 Sustainable Development Goals“ (United Nations Commission on Crime Prevention and Criminal Justice, 2018a), which highlights the SDGs as the policy and operational framework for the United Nations crime prevention and criminal justice programme and initiatives.

POSITIONING POLICING WITHIN THE SDGS

A cursory reading of the 2030 Agenda document leads to a conclusion of disappointment owing to the lack of specific mention of police or law enforcement. However, upon a more thorough reading it is clear that police and policing are in fact an integral part of the document's goals and targets framework. In particular, Paragraph 8 of The SDGs (United Nations, 2015) reads:

We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. A world which invests in its children and in which every child grows up free from violence and exploitation. A world in which every woman and girl enjoys full gender equality and a just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.

And then paragraph 35 (United Nations, 2015):

Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development. The new Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions.

There are a number of fundamental concepts in the above two narratives of great relevance for the policing. These include: (a) respect for human rights and diversity, (b) ensuring rule of law, (c) prevention of violence, (d) access to justice, (e) gender equality, (f) protection of the vulnerable, and (g) transparent, effective and accountable institutions.

To summarize, the “world we want” as depicted in Agenda 2030 clearly underlines and requests *service-and human rights oriented policing protecting the vulnerable, committed to and practiced within the rule of law requirements and a transparent, effective and accountable institution.*

These values and expectations for policing, and in particular those related to upholding the human rights and dignity, are well represented in Article 2. of the Code of Conduct for Law Enforcement Officials of 1979 (United Nations Human Rights Office of the High Commissioner, 1979).

The 2030 Agenda is very much human rights oriented in all its goals but in particular in Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, whereby almost 30% of all recommendations (some 25,000) ensuing from the two cycles of the Human Rights Universal Periodic Review, are concentrated in this goal (The Danish Institute for Human Rights, 2018). This is of particular significance for policing as for the first time a commitment made by all countries within developmental platform included issues of justice and security.

However, policing agenda related to 2030 SDGs is wider than the Goal 16. A number of Goals are of great relevance in terms of police cooperation with private sector and civil society as well as its focus on specific crime threats, in particular those related to organized crime (Global Initiative against Transnational Organized Crime, 2015) such as:

- Goal 3: Health –Narcotics drugs: prevention and treatment of substance abuse;
- Goal 9: Innovation – innovative technology for crime prevention and investigation, as well as for police oversight (e.g. Lovrich, n. d.);
- Goal 11: Cities – crime and security issues increasing complexity with increasing migration and urbanization;
- Goal 14: Marine – illicit fishing; and
- Goal 15: Ecosystems – preventing and policing organized crime exploration of illicit trade in timber, deforestation; poaching and trafficking in endangered species.

POLICING AND GOAL 16: PEACE, SECURITY AND JUSTICE FOR ALL

Target 16.3 of The SDGs aims to “Promote the rule of law at the national and international levels and ensure equal access to justice for all.” Ensuring equal access to justice for all is one of the elementary principles of the rule of law, a core concept, under which all governmental institutions and all public officials are accountable to law. While, citizens may seek justice in relation to diverse issues (e.g., criminal offences, administrative issues or litigation on work-related matters) any progress on this target will be measured by two global indicators closely related to police work and performance (United Nations, 2015).

First, target 16.3.1 provides the metric -- *Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms*. This measure relates to the capacity of the police to receive reports of victimization, but also to the question of trust in the police to manage this reporting with proper concern for the rights of victims of crime. The indicator is survey-based and capable of capturing the complementary proportion of victims who did not report, thus highlighting issues both of capacity and citizen confidence (United Nations, 2015).

As highlighted in the World crime trends and emergency issues and responses in the field of crime prevention and criminal justice (United Nations Commission on Crime Prevention and Criminal Justice, 2018b): “Access to justice may be denied at an early stage if victims of crime do not report the experience to authorities. The crime reporting rate - that is, the share of victims who report a crime to the police or other law enforcement authorities - has been identified as an indicator for access to justice. Available data based on victimization surveys conducted in a number of countries indicate that the reporting rates for certain crimes (e.g., robbery) are typically lower in countries with higher prevalence rates of such crimes. Access to justice for citizens of such countries is therefore not functioning properly. There could be many reasons for not reporting the crime to the criminal justice authorities, including lack of trust, suspected corruption, fear of stigma or issues related to accessibility” (United Nations, 2015).

The second indicator for this target is set forth as 16.3.2, and reads as follows - *Unsentenced detainees as a proportion of overall prison population*. While this can be seen as an indicator of the capacity of the judiciary to deliver on sentencing, it is also an indicator of the functioning of the whole criminal justice system, including the police (United Nations, 2015).

Another target of direct relevance to policing regards the presence of corruption and potential for bribery. In this regard, Target 16.5 specifically calls for the objective – “Substantially reduce corruption and bribery in all their forms.” This is of great relevance for police and indeed the abovementioned Code of Conduct for Law Enforcement Officials of 1979 (United Nations Human Rights Office of the High Commissioner, 1979) contains a very clear anti-corruption clause: Article 2. *Law Enforcement officials shall not commit any action of corruption. They shall also rigorously oppose and combat all such acts.*

Progress toward the achievement of Target 16.5 will be measured against two global indicators which have quite a lot to do with policing, namely:

16.5.1 - *Proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months*

16.5.2 - *Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months*(United Nations, 2015).

This is an implicit plea made by Agenda 2030 for better and more transparent policing. As it is well known from the many victimization surveys and/or other public opinion surveys

conducted in numerous countries one of the public institutions perceived to be the most vulnerable to corruption has been the police. It follows that there is not only a need for the enhancement of an anti-corruption culture within police, but there is also a need to build up the trustworthiness image of the police.

Target 16.a singles out the specific too often serious problem of terrorism, noting the importance of “strong institutions” related to security, intelligence and the military in addition to the police. Other institutions with preventive roles such as the financial system, faith-based institutions, educational systems, mass media and civil society are also noted as part of effective anti-terrorism planning and preparedness. As terrorism in its modern forms and diverse manifestations is of a decidedly international configuration and scope of operations, enhancing the capacity for international cooperation among police agencies is of utmost importance.

The role of law enforcement in preventing violence and crime in general is at the core of preventive policing. Citizens’ concerns with crime and violence are often displayed in terms of their appreciation of the work police do to maintain public order and safety. Indeed, much of the work of police reform in recent decades has been directed towards building strong preventive capacity in the form of ongoing cooperation with elements of the communities being served by police agencies. *Community policing* is just one such manifestation of police commitment to this core function target, well-known long before it was specifically articulated in the 2030 Agenda (United Nations, 2015).

Similarly, target 16.6 is likewise of direct relevance to the police. As the service-orientation of police increases, they need to invest even more in their accountability and transparency as well as their overall effectiveness. Some forms of policing are less amenable to transparency and accountability than others, however, and it follows that very likely the most direct measure of progress on this target would be a survey-based assessment of public confidence in the police. Within Target 16.2 a consensus was reached among The 2030 SDA process deliberators to measure progress through a specific survey-based indicator: *Proportion of population satisfied with their last experience of public services*. The recommended indicator has the potential to capture real change resulting from work on building effective, accountable and transparent public institutions. The indicator, which directly measures people’s experiences with actual existing public institutions, is an illustrative example of a perception-based measure typical of the outcomes (“evidence”) relied upon for many of the targets (United Nations, 2015).

In the case of Target 16.4, which posits the objective “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime” the outcome measures are directed to official records and archival data comparisons rather than survey-based findings. For example, Indicator 16.4.1 specifies *Total value of inward and outward illicit financial flows (in current United States dollars)* as the metric of choice. Likewise, Indicator 16.4.2 identifies *Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments* as the measure to be monitored for progress toward this target (United Nations, 2015).

The everchanging forms and activities of organized crime (from drug trafficking through arms trafficking and human trafficking to money laundering and corruption and various cybercrime activities) are great challenging for policing both at the national as well as at the international levels. Such developments in the criminal governance ways and modes of modern organized crime require, in turn, the development of clear anti-organized crime

strategies, analytical and operational capacities and tactics and investigative techniques. New forms of organized crime configuration and criminal governance styles and modes indicate a clear need for innovative organized crime policing to match the innovations and changes in the organized crime ambit itself. With further internationalization of organized crime networks in illicit and licit markets and in cyberspace, organized crime policing should devote part of its efforts on disrupting the illicit flows and favouring the strategy of focusing on kingpins and controllers. “Too often, efforts to counter organized crime are targeted at the foot soldiers and couriers of criminal goods. Indictments of controllers of criminal syndicates, and those who are often reaping the greatest profits, have gained little momentum even when their identities are apparent. Global strategies and international cooperation to target these controllers would serve as a more potent disincentive and disrupter of criminal economy chains than the relentless efforts to stem the tide of front-line agents. Effective asset seizure and recovery is a powerful deterrent tool in combatting criminal groups, given their motivations towards profits. Where the links between organized crime, violence and homicide are most clear is in the illicit trade in small arms and light weapons. The illicit trade in small arms and light weapons occurs in all parts of the globe, but is concentrated in areas most affected by armed conflict, violence and organized crime, where the demand for illicit weapons is often highest. Arms trafficking fuels civil wars and regional conflicts; stocks the arsenals of terrorists, drug cartels, and other armed groups; and contributes to violent crime and the unregulated proliferation of sensitive and potentially harmful technology. Black market trafficking usually takes place on a regional or local level.” (Global Initiative against Transnational Organized Crime, 2015: 9).

SOME CONCLUDING OBSERVATIONS

The 2030 Agenda has an unprecedented potential to achieve the key objectives which the UN has been pursuing since its establishment. It is the most comprehensive developmental platform of political, policy and methodological nature calls for integration of diverse efforts and institutions on the national, regional and international levels to achieve the global goals of “we the peoples of the United Nations.” These goals and their derivative targets represent a fundamental manifestation of consensual values and ideals of the global community in the 21st century; the “world we want” clearly will require an effective, service-oriented, and human rights sensitive policing to the fullest extent possible. While the police and policing are not specifically mentioned in the 2030 Agenda for Sustainable Development, the contribution of police and the style and mode of policing to the achievement of the goals and targets is unquestionable.

The ever-changing forms of crime, violence, terrorism, vulnerability of women and children, coupled with the ever-changing modes of criminal governance in the markets and in the cyberspace pose serious challenges to modern policing. The SDG Agenda places police commitment and practice to service-orientation, human rights, prevention, effectiveness, transparency and accountability and ability and capacity to respond to the emerging challenges in the forefront of modern police paradigm. The police constitute an integral component, major contributor to, and certain beneficiary of The UN 2030 Agenda for Sustainable Development.

Coming from the Western Balkans, I cannot resist the desire to offer the observation that postponing entry into the European Union on the part of some nations in the Balkan region will have negative effects on the gaining of benefits police reform efforts that have taken place over the past two decades. Delayed entry will permit the persistence of “safe

heavens” for the illicit national, regional and international operators and the continuation of a culture of unlawfulness. This lack of action will further divorce the Western Balkans from best practices and evidence-based policing, and delay the ultimate achievement of many of the 2030 Sustainable Development goals and derivative targets.

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EVIDENCE-BASED PRACTICE IN POLICING: WHY THE POTENTIAL FOR IMPROVEMENT IS OFTEN UNREALIZED

Nicholas P. Lovrich, Jr.¹

ABSTRACT

Advances in police education and the development of evidence-based practices in policing have been widely celebrated; some are described here. They are a key aspect of a maturing global epistemic community of criminal justice scholars. However, many promising approaches to police practice, training and education have faded away over time. Likewise, promising ideas derived from evidence-based practices have often proven short-lived in the real world. The author draws insight from 40+ years of work implementing community policing in the US to raise a cautionary note regarding realistic expectations for police adoption of evidence-based programs and policies. He illustrates how police culture, the theory of isomorphic organizational change, the deep difference between fast and slow thinking processes pose serious limits on how existing deeply entrenched practices in policing at both the national and international levels can be overcome to advance policing practice.

Keywords: epistemic community, police culture, isomorphic change, warriors to guardians

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ADVANCES IN EVIDENCE-BASED PRACTICES IN POLICING

The advances accomplished in policing attributable to systematic study and the adoption of evidence-based practices has been noteworthy. At the same time, however, the rate of advancement of police practice has been much slower than the rate of discovery of evidence-based practices by the global community of police scholars. This paper seeks to recognize both some of the research-based advancements in policing that have taken place, and some of the barriers to the implementation of these commendable practices.

The advent of the social sciences, and their eventual adoption of quantitative methods, advanced statistical analyses, and powerful mixed-method approaches to the understanding of social phenomena in time elevated their status within leading academic institutions (Mahoney, 2010). The importation of these methods and approaches to enhance understanding in the field of criminal justice took place as the newly created discipline gained footing in universities. The academic institutionalization of criminal justice first occurred in the U.S., and later around the world. In due course, the early-day “cop shops” on college campuses gave way to the rigorous research and teaching enterprises of today.

This process was accelerated in the U.S. by the *Omnibus Crime Control and Safe Streets Act of 1968*. This law provided for a consistent stream of funding from the federal government to state and local governments and colleges to bolster the capacity of local law enforcement to meet the challenges of the civil rights movement and the civil unrest occasioned by protests against the War in Vietnam. Together, the *Law Enforcement Education Program (LEEP)* and the *Law Enforcement Assistance Administration (LEAA)* programs provided assistance to over 100,000 students at over 1,000 U.S. colleges. Once the National Institute of Justice (NIJ) was created – with the motto *Strengthen Science, Advance Justice* – the U.S. federal government

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began to use a peer review process to award prestigious grants to leading scholars to advance justice through science in true earnest. Today 40 PhD programs exist in the U.S., and 100+ programs are in operation worldwide (Cooper, 2015).

With the advent of the Internet, the widespread sharing of the fruits of scientific research into policing became increasingly common practice. Scholars in the Americas, Western Europe, Central Europe, Eastern Europe, Asia, the Middle East and Africa could contribute to theory development and testing, and perhaps most importantly to the advancement of policing practice through systematic evaluation research (Bennett, 2004). Quite evident in this growing literature is the emergence of an epistemic community of scholars making use of “shared belief systems, operational codes, and cognitive maps” arising from common epistemological assumptions about criminal justice (Haas, 1992: 28). Whether one reads an article on policing in *Justice Quarterly*, the *Turkish Journal of Police Studies*, the *Asian Journal of Criminology*, *The Indian Police Journal*, the *European Journal on Criminal Policy and Research*, the *International Journal of Comparative and Applied Criminal Justice*, the *Africa Police Journal of the Africa Police Institute*, the *Police Studies International Review of Police Development*, *Global Issues in Contemporary Policing*, *Policing: A Journal of Policy and Practice*, *Policing: An International Journal*, or the *Revija za Kriminalistiko in kriminologijo* -- the core concepts and basic epistemological assumptions are familiar to all and broadly shared among criminal justice scholars globally. The criminal justice discipline enjoys a worldwide epistemic community, and this community is growing in its scope and sophistication with each passing decade.

THE SCIENTIFIC METHOD IN CONTEMPORARY CRIMINAL JUSTICE

Increasingly highlighted as *state of the art* in criminal justice are the WHAT WORKS publications leading to “evidence-based practices” which *ought* to guide policing to a considerable extent. Some are identified in meta-analyses based on multiple studies done on a single topic, most featuring quasi-experimental or true experimental designs of varying sophistication (Pratt, Turanovic, Fox, & Wright, 2013; Sherman, 2013). Others are identified on the basis of “gold standard” studies employing genuine experimental designs, the rigorous measurement of conditions, interventions and outcomes, featuring the use of either controlled randomized assignment of subjects/agencies or use of propensity score matching or regression discontinuity analysis to approximate randomized assignment in the comparison of treatment and control group outcomes. These studies permit the publication of definitive results (e.g. Braga, Pupachristos, & Hureau, 2014) and the issuance of bold and authoritative statements by respected sources such as the following by the U.S. National Research Council:

“Studies that focused police resources on crime hot spots provide the strongest collective evidence of police effectiveness that is now available. On the basis of a series of randomized experimental studies, we conclude that the practice described as hot-spots policing is effective in reducing crime and disorder” (National Research Council, 2004: 250).

In this case, the importance of place and concentrated disadvantage to crime incidence and its effective management could be studied in depth by “inexpensive and easy-to-use geographic information systems coupled with crime mapping” (Eck, 2018). These same research tools have been used to establish the key role of collective efficacy in social disorganization-based crime and victimization (Sampson, 2014), and the exploration of ways the police can lead the local community/urban neighborhood to reduce crime incidence and diminish victimization (Weisburd, Davis, & Gill, 2015). This line of research pre-dated

the development of community oriented policing (COP) and provided a good deal of the conceptual underpinnings of the foundational concept of ongoing police-community partnerships and the co-production of public order (Brudney & England, 1983). The “what works” line of research in criminal justice has come to rest center-stage in the contemporary discipline and its epistemic global community (Weisburd, Farrington & Gill, 2017; Zhao, Schneider, & Thurman, 2002).

The rise of the evidence-based practice element of the criminal justice epistemic community has not been without its critics, however, with some scholars fearing that the dominance of criminal justice by “what works” research done with so-called gold standard research designs would not be wise. Noted evaluation researcher John Creswell is a highly-regarded practitioner of gold standard studies whenever possible. However, he is likewise an advocate for collaborative research joining practitioners and university-based evaluation researchers to work together on research benefiting the organizations involved and the researchers and their students (Creswell & Creswell, 2017). Many publications in criminal justice arise from such studies, and often lead to more rigorous studies done in follow-up work. It is good to be able to report that while the criminal justice discipline is increasingly devoted to generating the meta-analysis-worthy smaller scale studies and the large scale gold standard studies noted above, it continues to include scholars pursuing exploratory and critical work needed to round out its numbers (Davis, Jensen, & Kitchens, 2011).

SOCIAL MEDIA AND CAMERAS: BEST PRACTICES RESEARCH TO-DATE

The 21st century has ushered in ubiquitous Internet-connected cell phone presence and a new type of need for best practices with respect to police use of social media and camera image capture. In reviewing criminal justice research being done to try to provide a set of recommended best practices related to advances in communication technology it can be seen at this point that (Lovrich, Popp, & Mather, 2017):

- Mixed results have been reported to date in preliminary studies;
- Large scale gold standard studies employing randomized, controlled experiments are being undertaken;
- The adoption of cameras (body-worn, dash-mounted, and surveillance directed) has been far more rapid than the expansion of our knowledge of most appropriate uses;
- The phenomenon of *police culture* is in strong evidence as a constraint on positive impacts from and sustainability of these important assets for better policing;
- The phenomenon of *isomorphism* is in strong evidence as a constraint on positive impacts from and sustainability of these important assets for better policing; and
- The phenomenon of *fast vs. slow thinking* (intuitive reaction vs. rational-deliberative thought) is in especially strong evidence as a constraint on positive impacts and sustainability of these important assets for better police training and education.

SOCIAL MEDIA USE AND BODY-WORN CAMERAS: MIXED FINDINGS TO DATE

With regard to social media, police agencies across the globe have adopted its use. A 2015 survey conducted by the International Association of Chiefs of Police (IACP) found that about 96% of police agencies taking part in the survey had adopted some social media. Among agencies using social media, 94% reported using *Facebook* as their main platform

(IACP Center for Social Media, 2015). The association had set up the *LACP Center for Social Media* website (<http://www.iacpsocialmedia.org/>) in 2010. This website provides basic resources intended to assist police agencies in adopting and maintaining various forms of social media use (Hu, Rodgers, & Lovrich, 2017). Although social media use has become commonplace among contemporary police departments worldwide, academic researchers as of yet have paid rather little attention to this important new media form. Some studies explore what police do on social media (Lieberman, Koetzle, & Sakiyama, 2013), and some has focused on the impact of police use of social media upon the police and police agencies (e.g. Grimmelikhuijsen & Meijer, 2015).

In one of the best studies to date Procter, Crump, Karstedt, Voss and Cantijoch (2013) conducted research on police use of *Twitter* after a public disorder crisis. They cite a senior police officer's open admission that "we're still not wholly up to speed in using social media as an intelligence tool, an investigative tool and most importantly as an engagement tool" (Procter et al., 2013: 433). It is most certainly the case that use of a proactive social media strategy cannot be fully avoided, and this major potential tool for the police should be studied for promising and best practices identification and testing (Schneider, 2016).

In the area of body-worn cameras there has been much more active research and funding available to formulate evidence-based practice guidelines for police. In recognition of long-standing enmities between the police and persons of color in American society, President's Task Force on 21st Century Policing (2015) recommended the widespread use of body-worn cameras, anticipating that such use would markedly reduce the frequency of use of force and the number of complaints of police brutality from minority community members. In open active support of this recommendation, the NIJ began a program of supporting research into the outcomes being witnessed by the many local police agencies, which took advantage of federal government grants promoting adoption. Enhanced quality and lower costs of camera systems, better lens resolution quality, capacity for digital storage and retrieval of massive numbers of images, and advancements in data mining, biometrics, artificial intelligence and associated computer science breakthroughs have all contributed to the widespread use of cameras to monitor public places and record police/citizen interactions.

In an effort to help police and academic partners study the impacts of body-worn cameras the *Laura and John Arnold Foundation* [LJAF] provided a \$1.6 million grant to the Arizona State University Center for Violence Prevention and Community Safety (LJAF, 2015). Michael White heads up the body-worn cameras research project at ASU. He is also the Co-Director, Training and Technical Assistance, Bureau of Justice Assistance and the Body-worn Cameras Policy and Implementation Program in the U.S. Department of Justice. The multiple studies White and his associates have done reflect the commitment to quasi-experimental and experimental research designs and mixed methods approaches to understanding noted above. Studies have taken place in Texas, California, Washington, Florida, and Arizona involving 12 law enforcement agencies and over 2,000 officers. Some studies have focused on officers (Kyle & White, 2016; Makin, 2016), others on citizen/officer interactions (Hedberg, Katz, & Choate, 2016), and yet others on patterns of organizational adoption (Nowacki & Willits, 2016).

Two important studies characterizing findings from multiple evaluation research studies are also available – a summary of outcomes documented in Office of Justice Programs-funded projects (White, 2014), and a gold standard type of study published in the *Journal of Experimental Criminology* by Ariel et al. (2016). While White's (2014) "assessing the evidence" report strikes a distinctly positive tone and recommends expanding the scope of use of body-worn cameras, the Ariel et al. (2016) raises this very important cautionary note:

“The background for the trial described above was to assess whether the audio and visual recording of police-citizen interactions could act to deter police from using force and/or deter suspects from instigating forceful encounters. The results demonstrate that BWCs are able to achieve this objective, but only in situations where police relinquish some discretion on activating these devices. In fact, when police used discretion during treatment shifts, reported use of force *increased* (emphasis in the original)... we think that there is a clear route for...the implementation of BWCs around the world: cameras should *remain on* through the entire shift...” (Ariel et al., 2016: 461)

This is precisely where the deep-seated barriers to adoption and maintenance come clearly into major play – that is, the limitation of police discretion will likely engage the effects of the police culture, the dynamics of isomorphism, and the barrier of moving from automaticity to rational-deliberative thought in dealing with stressful situations requiring decisive timely action.

OBSTACLES TO ADOPTION: THE CASE OF BWCs

The Ariel et al. study (2016) indicates how the police culture comes into central play in the area of BWCs. The police culture concept has generated a great deal of literature over the years, particularly in the context of periodic “police reform” initiatives. It constitutes a longstanding code of occupational conduct which obtains among officers based on unwritten rules and norms that dictate the way an officer must function so that a strong sense of solidarity is maintained among an agency’s officers, each of whom “has the back” of his/her fellow officers. There is a strong sense of duty to one’s peers, an assignment of high commitment to fighting crime, a celebration of masculine traits, and a willingness to use force to take command of situations where the threat of harm to self or others is judged to be eminent (Crank, 2014). It has been argued by many scholars that attempting to change this culture is akin to “bending granite” (Palmer & Cherney, 2001). While some noteworthy success stories can be cited of poorly functioning departments experiencing a fundamental change in their culture (Roth & Kennedy, 2012), the more common outcome of changing police culture is that of seeking to bend granite to no avail. The Ariel et al. study (2016) demonstrated that the BWCs were indeed effective *when being used*, but officers often used their discretion to decide under what circumstances to disable the recording of audio and visual information.

In a recent doctoral dissertation Marthinus Koen (2016) notes how the understanding developed by officers and agency leadership over time lead to the use of BWCs in a way found non-threatening to police culture. Based on in-depth interviews, ride-along observations, and patrol officer and administrative officer surveys in one agency, which had adopted BWCs the officers came to comply nearly universally with an agency BWC dictum *only after* they were convinced as a group that BWC records would only be used to exonerate officers if falsely accused. BWC records would NOT be used to monitor, review, or evaluate police officer conduct and quality of performance. It is likely that police unions and guilds will work to reach such *bold harmless* frames to BWCs wherever they are able to do so, and most particularly in agencies where mistrust of agency leadership and/or external oversight authorities is present.

This finding also demonstrates how isomorphism – the adoption of change in line with perceived addition to legitimacy attendant to adoption of best practices used by successful agencies -- is at play in agency decisions to adopt BWCs (Cooper, 2015; DiMaggio & Powell, 1983). In the case of *normative isomorphism* the motivation for change comes from the desire

of agency leadership to internalize the norms underling the change adopted; in the case of BWCs these would be the norms of accountability and transparency. In the case of *coercive isomorphism*, in sharp contrast, the motivation is to “appear to be compliant with best practices” but actually use the act of adoption to conceal a continuation of the *status quo ante*. Such coercive isomorphism was in great evidence in the case of community oriented policing in the early days of the program when many law enforcement agencies secured COP federal grants to create “special units” dedicated to police/community relations while leaving the organizations unchanged in virtually all ways (Greene & Mastrofski, 1988). The COP program was part of the *Violent Crime Control and Law Enforcement Act of 1994*, which had the goal of adding 100,000 additional police officers to local law enforcement ranks in the U.S. Over the course of two decades the U.S. federal government issued grants in excess of \$14 billion to local police agencies to promote the COP “paradigm shift in policing.” In many cases, normative isomorphism did occur, but too often coercive isomorphism was the outcome where police culture resistance proved unbendable (Moraff, 2015).

The case of BWCs also serves to highlight the very deep-seated problem of fast and slow forms of thinking complicate the training and education of law enforcement officers. Ranking high among the candidates for evidence-based practice is the concept of *procedural justice* ably propounded by Tom R. Tyler (1988; 2001; 2003) and empirically verified by a veritable multitude of confirming studies conducted in multiple settings (National Research Council, 2004; Reisig, Tankebe, & Meško, 2014). The extent to which respect and recognition of human dignity is accorded to persons with whom the police come into contact has been shown to be more important than the ultimate outcome of such contacts vis-à-vis citizen satisfaction and ultimate compliance with the law. Such commendable conduct on the part of officers could be reinforced effectively with BWCs, and the extent to which police officers rely upon intuitive reactions vs. rational-deliberative thought [slow thinking vs. fast thinking in the parlance of Kahneman, 2011] when appropriate could be determined on a systematic and ongoing basis.

The President’s Task Force on 21st Century Policing made a major point of urging police academies and mid-level and executive training programs in the U.S. to promote procedural justice themes in the recruitment, selection, training and in-service education of police – recommendations based upon a long-standing position advocated by respected scholars in the field (Cordner & Shain, 2011). Specifically recommended was the *From Warriors to Guardians* type of training developed by a member of the 14-person Task Force, the former Sheriff of King Co. (Seattle) Sue Rahr who heads up the Washington Criminal Justice Training Commission and Basic Law Enforcement Academy (Rahr & Rice, 2015). The use of de-escalation training, CIT (Critical Incident Team) training, and problem based learning in the basic academy and in training for middle- and executive-level police (Makin, 2015) are viewed as “cutting edge” police training practices in the U.S.; these approaches to police education have attracted considerable interest from abroad as well (Lovrich, Popp, & Mather, 2017). A thorough process and outcome evaluation study was conducted by an experienced research team from the Department of Criminal Justice at Seattle University led by Prof. Jacqueline Helfgott. That team reported positive outcomes vis-à-vis acquisition of procedural justice norms in the overall Warriors to Guardians training program (Helfgott, 2015). As in the case of the private foundation grants to promote the adoption and study of effects of body-worn cameras, the *Microsoft Foundation* and the State of Washington combined to fund a 5-year 21st Century Policing (“21CPL”) police training and education

initiative to train over 1,000 police leaders (sergeants and above) in the guardian conception of police professionalism. A commitment of \$2 million from Microsoft and Washington is underwriting this ambitious training program.

While early results of this type of emphasis on rational-deliberate thinking superseding intuitive reaction under stress are promising, the resistance to reform of police training and education of this progressive type has been strong by the proponents of conventional quasi-military police training practices (Mather, 2017). Underlying this resistance is a strongly held belief in the value of instinctual and intuitive action by police, action, which plays a key role in the longstanding debate within policing over “racial profiling.” The experience of police is to rely upon quick judgments in the presence of eminent perceived threat, judgments, which all too often result in actions improperly reflecting racial and ethnic biases (Correll, Park, Judd, & Wittenbrink, 2002). The muted debate is whether to teach officers how to stay safe in part by heeding their instincts in this area – but doing so in a way that does not bring attention to them or to teach that such instincts are to be suppressed and replaced by a rational-deliberative thinking process reflecting procedural justice (Stamper, 2009). Many police educators remain strongly wedded to their traditions, and to making the primary goal of training and education *officer safety*. The field training officers, in concert with this central mandate, are inclined to celebrate the need for swift action in situations where excessive deliberation can lead to delayed use of moderate force -- sometimes resulting in officer and/or citizen injury from the delayed use of even greater force than should have been used early on (Dunphy, 2016; Sparrow, 2016).

CONCLUSION: HOPEFUL OPTIMISM TEMPERED BY REALISTIC EXPECTATIONS

The paper reflects support for the hopes and aspirations of the global criminal justice epistemic community with respect to the expansion of the fund of evidence-based practices and public policies based on science. The *Strengthen Science, Advance Justice* motto at NIJ is one with which little fault is to be found. At the same time, it is necessary to call to the attention of this important community some of the obstacles to adoption of evidence-based practices and policies in the form of the police culture, the dynamics of coercive isomorphic change, and the deeply-seated human inclination to rely upon fast thinking, intuitive reactions under stress as opposed to rational-deliberative thought. The case of the next candidate for an established evidence-based practice – body-worn cameras – serves as a convenient example of how these barriers to the timely adoption and genuine implementation of evidence-based practices and polices face obstacles to the improvement of policing practice.

While the benefits of evidence-based practices in policing are many, and have the clear promise of advancing police practice on a global scale, these particular barriers to change – and others which pertain to often unique national settings inimical to given model policies and practices – dictate that we view prospects for widespread adoption and implementation of evidence-based practices with *realistic expectations*.

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MEDIA REPRESENTATIONS AND CONSTRUCTIONS OF CRIME, OFFENDERS AND VICTIMS: SERBIAN CASE

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ABSTRACT

By using a content analysis, the author attempts to explore the extent to which the prevailing media portrayals of crime, offenders and victims distract from factuality of crime in Serbia. It is argued that crime news is often distorted with the aim to acquire greater “news value”, or to induce moral panic over specific categories of offenders. The news is commonly distorted in tabloid press through rather simple albeit well approved means: by exaggerating the prevalence and dangers of specific forms of crime, portraying extensively certain uncommon criminal events, causal oversimplification, as well as by over/under/miss-representing specific categories of perpetrators and victims. Particular consideration is given to the problems of selective and culturally sensitive attributions of responsibility for crime and victim blaming, as well as to media portraying of youth violence aiming to induce moral panic over youth crime and to call forth the harsher response toward juvenile offenders.

Keywords: media coverage of crime, representations of offenders, representations of crime victims, Serbia

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INTRODUCTION

Citizens are informed on crime, as well as other risks of modern life, dominantly through the media. Media, on the one hand, have a very important role and their task is to inform citizens in a truthful manner, but at the same time they also have a task that is largely in conflict with the first (Christenson, 2014): to create profit in other words to achieve great print run and ratings, which leads to different market values for different news. The consequence is universal and well-known – the reporting of media in relation to the crime rates, certain types and categories of perpetrators and victims is disproportionate, selective and unrepresentative, whereby in their reports on criminal events and victimization, the media dominantly focus on more serious violent crimes and individual cases of the most severe and relatively rare crimes.

The attention of media paid to the white collar crimes and the corporate crimes, which produce the greatest social and financial damage, or the non-violent property crimes, which usually dominate the structure of crime rates, is not even close to the attention paid by the media to crimes of interpersonal violence (Greer, 2007: 21). Selectivity is noticed even in the reporting on violent crimes, bearing in mind that the media prefer to focus on violent victimisations whose actors were not familiar to each other, rather than on domestic violence, which is far more frequent (Stanko & Lee, 2003).

Media representations of victimisation are dominated by persons who can be labelled as “ideal victims” (Christie, 1986), that is, individuals who are generally perceived as vulnerable, helpless, innocent and worthy of compassion, or persons from those social groups whose members enjoy the legitimate and unquestionable status of the victim (e.g. small children, old women, etc.). On the other hand, victims who are perceived as “undeserving” - such as,

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for example, homeless people, drug users and other people from social margins - get very little media attention and their victimisation can go unnoticed in a social sense. Thus, the media contribute to the maintenance of a phenomenon called 'hierarchy of victimisation' (Carrabine, Iganski, Lee, Plummer, & South, 2004: 116) and the different treatment of victims of crime in public and official discourses (Greer, 2007: 22).

Although the crime itself is a valuable topic for media, news about crime does not have the same weight, and does not have the same chance of finding themselves in the field of vision of the media (Greer, 2007: 26). Jewkes (2004) once indicated that the degree to which the criminal story is newsworthy and the probability that it will be published varies depending on several 'news values' including the degree of predictability (regularity) of the crime, the degree of risk of similar victimisation of the auditorium, whether the crime has sexual aspects, whether the actors are celebrities or high-status persons, the intensity of violence, the presence of spectacle or graphic imagery, and whether young people are actors in crime (Jewkes, 2004: 40).

In general, media representations of crime, as indicated in the literature, largely follow the 'law of opposites', so media usually give the most space to those types and forms of crime, and those categories of perpetrators and victims who are the least represented in reality (Pollak & Kubrin, 2007; Reiner, Livingston, & Allen, 2003). Bearing in mind the tendency of the media to profit from the "sale of human pain" (Jugović, 2014) and the intimidation of people, media attention is especially focused on severe violent crimes, as well as on the criminal acts that involve children and young people as actors. Youth violence is a phenomenon that attracts special attention of general and professional public, while the media significantly mediate in creating a dramatized picture of the violence and delinquency of young people, which sometimes results in their "satanisation" and creating a moral panic against juvenile crimes (Kovčo-Vukadin, 2012).

On the other hand, white collar crimes and corporate crimes attract far less media attention, not only because in their case it is not always obvious and doubtless who is their victim and who is responsible for them, because the cases are administered slowly, the crimes are hard to prove and often do not have a clear outcome (Cavender & Mulcahy, 1998: 699), but also because such events in the auditorium do not arouse such a level of fear and moral scandal as is the case with criminal events involving interpersonal violence (Greer, 2007: 36-37).

The manner of presentation of news and the language used in the reporting greatly influence the perception of crime among consumers (Pollak & Kubrin, 2007: 61). The frequency of reporting on various forms of crime and victimisation also contributes to the disproportionate representation of different categories of victims, which results in the fact that many victims (usually members of various marginalised social groups) are underrepresented in the media, while some other groups, like police officers and other criminal justice system personnel, are overrepresented (Greer, 2007: 37-38). Media reporting also constructs explanations or justifications of perpetrators of certain types of crimes, such as, for example, perpetrators of violence against women in a love relationship. Studies conducted in several countries have shown that the media very often romanticise the cases of male partner violence against women by devoting much space to considering the potential mitigating circumstances under which violence has occurred, including in particular emotional stress and 'love' toward the rejecting partner, whereby all, including the perpetrators themselves, are ultimately portrayed as 'victims' of unusual and unfortunate circumstances (Alat 2006; Exner & Thurston, 2009; Sampert, 2010; Saroca, 2013; Sutherland, McCormack, Pirkis, Eastel, Holland, & Vaughan, 2015).

The subject of attention in this paper is the media coverage of crime in the Republic of Serbia, that is, the way in which the news about criminality, perpetrators and victims of crime are presented in the media. Specific research questions include: (a) Does media reports substantially distort the facts on crime problem?; and (b) How crime victims are represented in media / is there victim blaming and risk of secondary victimisation caused by media reporting? It has been generally supposed that media in Serbia, particularly tabloid newspapers, regularly present criminal events selectively and sensationalistically, and thus distort images of crime, offenders and victims. It has been also presumed that victims are often at least partially blamed for crimes suffered in tabloid media reports and also exposed to a high risk of stigmatisation through media reporting.

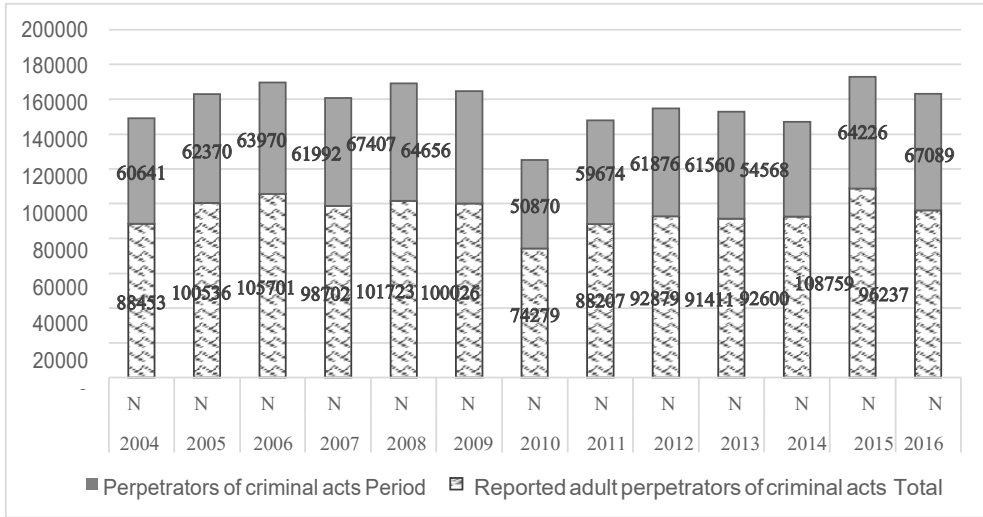
METHODS

In an effort to respond to the above asked research questions concerning media coverage of crime in the Republic of Serbia, a quantitative-qualitative content analysis of media reports was carried out. The sample compiled from the online edition of three widely read daily newspapers with national coverage: Blic, Kurir and Politika, published in the period from March 1st to March 15th 2018. Blic and Kurir are long print run tabloid newspapers with online editions whose web portals, according to measurements carried out by the Gemius, research agency, belong to the most visited portals of Serbian daily newspapers, while Politika is traditional, the oldest daily newspaper of bigger format, which also has its own (moderately visited) web edition.

Since the basic research question in this paper refers to the extent to which the real state of crime, or, more precisely, the official data on crimes in Serbia corresponds to the media representation of this problem, below we will firstly provide basic information from the official crime statistics on crime.

A FEW FACTS ABOUT THE CRIME IN SERBIA

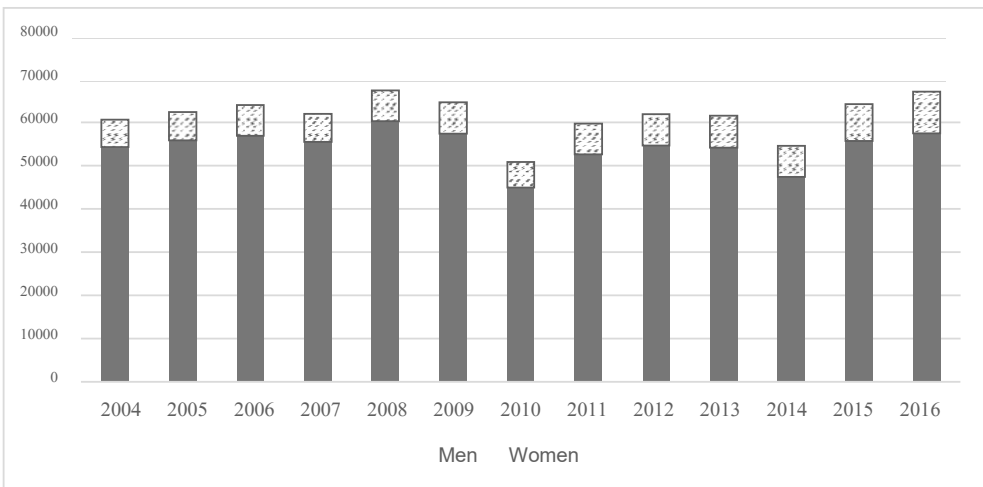
Bearing in mind that in Serbia, unfortunately, there are not recent reliable studies of the dark numbers of crime rates, in this part we will inevitably have to rely on official data on the crime rates provided by the Statistical Office of the Republic of Serbia. Based on the data from this source we can conclude that in the period from 2004 to 2016, we do not notice any striking dynamics of the number of persons who were reported as perpetrators of the crime. This number, within this time window, ranged from 74279 in 2010 to 108759 in 2015, or, on average, 95347 (known + unknown) persons per year (Graph 1).



Graph 1: *Adult perpetrators, crime reports*

Source: Statistical Office of the Republic of Serbia, 2017

The share of known perpetrators in the total number of reported persons ranged from 58.9% in 2014 to 69.7% in 2016, that is, on average, 64.8% per year. The representation of women in the total number of reported perpetrators of crimes in the period 2004-2016, ranged from 7% (in 2008) to 14.3% (in 2016), or, on average, 11.4% per year (Graph 2).

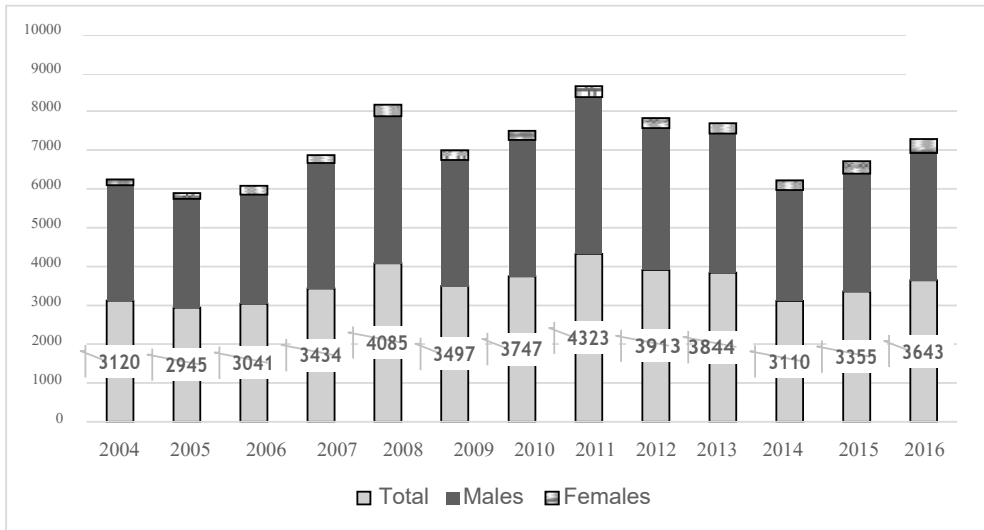


Graph 2: *Adult perpetrators, crime reports*

Source: Statistical Office of the Republic of Serbia, 2017

The number of juveniles (persons over 14 and under 18 years of age) reported as the perpetrators of the criminal offence, did not significantly fluctuate during the period from 2004 to 2016 and ranged from 2945 in 2005 to 4323 in 2011 (Graph 3). The share of girls in the total number of reported juveniles ranged from 4.5% in 2006 to 7.5% in 2016, and it

can be noted that the number of reported minor girls during the observed period has grown in both absolute and relative terms. While in the first six years of the observed period, the number of girls in the total number of reported juveniles did not exceed 4.9%, in the last three years it was not lower than 7.1%.



Graph 3: *Juvenile perpetrators, crime reports*

Source: Statistical Office of the Republic of Serbia, 2017

The structure of criminal offences registered by the Ministry of Interior of the Republic of Serbia, is dominated by the property crimes (52.7%), while the total participation of violent and sexual crimes is below 4% (Table 1).

Table 1: *Criminal offences recorded by the police on the territory of the Republic of Serbia, 2016*

Group of criminal offences	N	%
<i>Against life and limb</i>	3056	3.2
<i>Against civil freedoms and rights</i>	2874	3.1
<i>Against sexual freedom</i>	381	0.4
<i>Against labour law</i>	222	0.2
<i>Against family and marriage</i>	6473	6.9
<i>Against property</i>	49518	52.7
<i>Against economy</i>	3046	3.2
<i>Against human's health</i>	7043	7.5
<i>Against environment</i>	1010	1.1
<i>Against public safety of persons and property</i>	747	0.8
<i>Against safety of public traffic</i>	8902	9.5
<i>Against public administration</i>	580	0.6
<i>Against jurisdiction</i>	256	0.3
<i>Against public peace and order</i>	3395	3.6
<i>Against legal transactions</i>	3458	3.7
<i>Against official duty</i>	1178	1.2
<i>Other criminal offences</i>	1907	2.0
Total	93876	100.0

Source: Statistical Office of the Republic of Serbia, 2017

In recent years, crime rate in Serbia has not suffered significant structural changes. In the period from 2012 to 2016, the share of property crimes in total number of crimes ranged from 45.7% to 54.3%, while the share of violent crimes varied between 3.5% and 4.2% (Table 2).

Table 2: *Adult perpetrators, crime reports*

Criminal offences	2012		2013		2014		2015		2016	
	N	%	N	%	N	%	N	%	N	%
<i>Life and limb</i>	3923	4.2	3734	4.1	3268	3.5	3818	3.5	3451	3.6
<i>Sexual freedom</i>	53	0.4	39	0.4	47	0.3	53	0.3	41	0.4
<i>Family and marriage</i>	6182	6.7	6268	6.9	5914	6.4	7891	7.3	10190	10.6
<i>Property</i>	45291	48.8	45899	50.2	50303	54.3	58741	54.0	44000	45.7
<i>Safety of public traffic</i>	7186	7.7	7773	8.5	7439	8.0	7856	7.2	7805	8.1
<i>Public peace and order</i>	4022	4.3	3396	3.7	2897	3.1	3671	3.4	3201	3.3
Total	92879	100.0	91411	100.0	92600	100.0	108759	100.0	96237	100.0

Source: Statistical Office of the Republic of Serbia, 2017

A noticeable increase in absolute and relative share in the structure of reported adults is recorded only in the case of those registered for a criminal offence against marriage and family - in the last four observed years, the number of persons reported for these crimes increased from 5914 to 10190, and the participation of this group of perpetrators in the total number of reported persons increased from 6.4% to 10.6%.

So, with the exception of a moderate increase in absolute and relative representation of minors in the structure of persons reported for criminal acts, as well as an increase in absolute and relative representation of persons reported for criminal offence against marriage and family in the total number of adult persons reported for criminal act, it could be noted that during the past decade, the crime rates in Serbia did not show remarkable dynamic and structural changes. This observation should be taken with caution, bearing in mind that in recent years systematic research on the dark numbers of crime rates has not been carried out in Serbia.

While the observed increase in the share of minor girls in crime rates requires a more careful analysis and cautious conclusions, especially having in mind the low absolute frequencies of juvenile crimes, the absolute and relative increase in the number of adults reported for the offence against family and marriage is a direct consequence of more stringent formal crime control in this area and the introduction of a *zero-tolerance policy* for the criminal act of domestic violence that was widely reported in recent years.

MEDIA COVERAGE OF CRIME AND JUVENILE DELINQUENCY

The study, which on this occasion was conducted on a sample of media reports published in the online editions of selected daily newspapers in Serbia showed that during the observed two-week period the selected newspapers published a total of 330 crime-related articles, namely: 179 in Blic, 98 in Kurir and 53 in Politika, that is, on average, 12 articles in Blic, 6.5 in Kurir and 3.5 in Politika, daily.

The front page of nearly half of the tabloids during the observed two-week period (7 out of 15 covers of Blic and the same with Kurir) is dominated by the topic of crime, especially the topic of violent crimes, sexual violence against children, violence against women and victimisation of famous people. When it comes to Politika, the crime topic has found its place on the cover in only 2 out of 15 cases. The articles from the sample are absolutely dominated by those which deal with particular criminal events only superficially, while analytical texts on the problem of crime rates are extremely rare. The results of this research confirm the observations of Pollak and Kubrin (2007): in order for a criminal event to be covered by media, it must, by its very nature, be violent. The vast majority of the criminal cases reported by the selected media during the observed period were violent crimes.

As can be seen in Table 3, the strikingly dominant topic in articles from the sample, especially those published in tabloids, is the murder. It is the topic of almost one-third of articles in Kurir and one-fifth of articles in Blic from the total number of published articles dedicated to the topic of crimes. In the bunch of articles dominated by criminal topics, the share of those thematically devoted to conventional property crime such as robbery and theft is 15% in Politika, 14% in Blic and only 6% in Kurir. A similar number of articles in the observed newspapers (13% in Politika, 12.3% in Blic and 7% in the Kurir) is dedicated to the topic of drug-related crimes.

Table 3: *Share of certain topics from wider criminal issues in the sampled daily newspapers (March 1-15, 2018)*

Theme	Newspaper		
	Blic	Kurir	Politika
Murder	37	30	7
Robberies and thefts	25	6	8
Narco-crime / Organized narco-crime	22	7	7
Violence against women / Family violence	15	10	1
White-collar crime	12	5	10
Organised robberies/ frauds/ abductions	12	6	3
Juvenile delinquency	9	2	2
Political crime	7	3	2
Criminal offences committed by police officers	6	1	3
Victimisation of police officers	5	2	3
Sexual violence against children	5	2	2
Victimisation of show business persons	4	4	/
Unauthorized possession of weapons	3	2	/
Terrorism	2	1	/
Prisoners	2	1	2
Cyber crime	2	2	/
Confessions of victims' families	2	2	/
Murders linked to organised crime	1	2	/
Immigrants' violent crime	2	1	/
Juvenile gangs	2	1	/
Child neglect	/	1	1
Other	4	7	2
Total	179	98	53

Politika publishes articles dedicated to the white collar crimes much more often than the observed tabloids (Table 3) - each fifth article with a criminal topic is dedicated to this topic, while this is the case with less than 7% of crime-related articles in Blic and Kurir.

As it was expected, it turned out that the tabloids are more prone to devote their space to reports on crimes in which children, police officers and show-business persons appear as (potential) victims or (potential) perpetrators. In spite of its growing spread in contemporary circumstances, cybercrime does not seem to be a newsworthy topic for high print run daily newspapers - a total of four articles have been published in the observed newspapers in this two-week period.

In the absence of news on criminal events in the country, the observed daily newspapers, especially tabloids, as a rule, reach out for such news in neighbouring and other countries. As many as 35 articles published during the observed two-week period in Blic reported on crime or crime rates in neighbouring countries, while 18 articles in Blic, 6 articles in Kurir and 4 articles in Politika were dedicated to reporting on criminal events from various countries worldwide.

When it comes to reporting on cases of murder, it is characterised by insisting on the unpredictability of events, as well as the fascinating strangeness of its actors. Thus, for example, one of the numerous texts dedicated to the event in which a 31-year-old programmer allegedly killed his boss after getting fired and injured another colleague in his former company in the wider centre of Belgrade, is titled as follows: "The programmer-killer's roommate: 'He never even took part in a fight, I cannot believe he's responsible for such bloody horror'" (Blic, 2018a). The whole series of articles about this event bring confessions of cousins and acquaintances of the young man who perpetrated this crime, and, among other things, bring to attention that he was "genius at school", an excellent student who "only knew for the highest grades on faculty", "quiet and modest" young man for whom no one could ever have assumed that he could commit such a crime. As Reiner and his associates have pointed out once, a certain kind of 'disrupted expectations' and 'deviant occurrences' are striking features of news stories about crimes (Reiner et al., 2003: 13). Thus, the particular newsworthiness is obviously in criminal events whose actors are members of traditionally respected social and professional groups and institutions, so reports on crimes whose potential perpetrators are members of the church, police or certain political parties are usually followed by sensationalist, sometimes cynical titles such as: "The priest was dealing dope from Albania? This is how the priest from Požega and the transvestite bell-ringer were dealing dope!" (Kurir, 2018b); "Did the gendarme's prank killed Ranko Panić?" (Derikonjić, 2018); "I want to take my babe to Thailand' - These are the messages used by a politician to blackmail the former Red Star footballer" (Blic, 2018b).

By the way, the analysis of the media reports carried out on this occasion affirms what Jugović once pointed out: the verb "kill" in tabloid journalism is easily transformed into the "sadism of language", along with the verbs such as "cutting up", "cutting down", "slaughtering", "executing", "massacred" (Jugović, 1997, 2014: 231).

A number of articles on the property crime and the perpetrators of criminal acts are written in a highly sensational manner, presenting the perpetrators as very capable and skilful young men who overstep the police and other criminal justice personnel, and sometimes are even characterised by a gentle heart: "The serial burglar elusive for the police: Neat thief robbing houses in Banja Luka" (Morača, 2018b); "After the bank robbery, he attracted attention by film escape from the prison: 'I fell in love and that was a trigger'" (Blic, 2018c); "He was comparing his muscles with the guards, and then escaped from the prison" (Blic, 2018e).

The articles on the topic of juvenile delinquency and youth violence are not as numerous as they are bombastic, dramatic and aimed at intensifying fear and moral panic from juvenile delinquency. The titles of these articles include the following: “From school detention to the criminal and killer: The number of juvenile offenders in the RS is growing” (Blic, 2018b); “Clever, gun and pink backpack - This is how a gang of teenagers looted throughout Belgrade” (Adžić, 2018); “Horror in Petrovac na Mlavi - Juveniles blackmailed a girl with her sex video forcing her to sleep with them and another ten” (Blic, 2018d); “The kids with clever ravened Belgrade” (Kurir, 2018a). Regarding the relations between youth and crime, a sample of media reports from this study confirms what has already been observed in the literature (Greer, 2007) - the media are more inclined to view young people as typical perpetrators of crime, and considerably less represent them as vulnerable persons who are at high risk of victimisation.

When it comes to sensationalisation, stereotyping, the spread of fear and moral panic related to juvenile crime, the media may count on the support of certain “experts”. Thus, articles thematically devoted to juvenile crimes who pretend to be analytical, usually contain an expert perspective, but those texts are exactly the ones roughly simplifying and exaggerating the problem. For example, in the above-mentioned article “From school detention to the criminal and killer: The number of juvenile offenders in the RS is growing”, which was published in Blic on March 12th 2018 (Morača, 2018a), the police officer from the Banja Luka Police Department, who provided data from the police records, spoke on the problem of juvenile crimes, and stated, among other things: “During the past year, we registered 77 minors who committed 90 criminal offences, and in 2016, there were 52 minors who committed 78 criminal offences... The most common juvenile crimes are theft, serious theft, damaging and stealing other’s property, causing serious and slight physical injuries, as well as criminal offences against public transport safety”. The statement ended with a warning: “In January and February this year, we already registered 11 minors who have committed 20 criminal offences, and this number is today even bigger because the arrests are happening all the time.”

Nevertheless, articles which, from time to time, and on the occasion of criminal events with juvenile actors, point to an “increase”, “explosion” or “brutalisation” of a juvenile delinquency, which is suggested, without any argumentation, by certain “experts”, are titled as follows: “The minors are more brutal than the adults!” (Večernje novosti, 2013); “The plunder, deal, abuse - dozens of juveniles in Serbia arrested for the gravest crimes” (Blic, 2017); “Young criminals are increasingly brutal” (Novi magazin, 2013); “Juvenile crime: Beardless and cruel” (Nedeljković, 2013); “They steal, rob, kill - This is a profile of a Serbian juvenile delinquent” (Bogosav, 2018b); “Instead of a pencil, brings knife to school, the biggest increase in crime rates among young people in Novi Sad - Criminal acts perpetrated by minors are more and more violent and cruel, with the increasing use of narcotics” (Crnjanski Spasojević, 2015) and the like. The support of experts, more precisely, a smaller group of rotating, overrepresented in media, psychologists, pedagogues and criminologists, in the distortion of media images of juvenile crime in Serbia, is very striking.

VICTIMS, MEDIA AND VICTIMISATION

According to the articles from the sample, the group of “newsworthy” victims for media includes direct and indirect victims of murder, women victims of violence in a partner relationship and children who are victims of sexual violence. How precious and savagely exploited by media are the victims of the murder is proven by the case of Jelena Marjanović,

the singer relatively unknown to public, whose body was found on an embankment in a Belgrade suburb on April 3rd 2016, which is more than two years almost everyday topic of a whole series of Serbian tabloids, which in their reports speculate about possible perpetrators, victim partners and family relations, not bypassing numerous members of the victim's closer and wider family, while articles often mention even the victim's daughter (with accompanying photographs of the child with barely blurred part of the face at the height of the eyes), which at the time of the mother's murder was five years old.²

However, although reporting on violence against women in a partner relationship and domestic violence in Serbia generally is improving in the sense that it becomes somewhat less directly blaming in relation to the victim, reports on this type of violence, as shown by previous surveys in other countries (Sutherland et al., 2015; Bučar Ručman, 2013), generally do not report the social context in which violence occurs, but the presence of various myths and misinterpretations of the background and the drivers of violence against women is still obvious in some media reports. This is the case, for example, with the article titled: "The tragic end of the love drama: "Saša S., who killed his girlfriend last night and then shot himself in the head in a flower shop in Zemun, has passed away" (Kurir, 2018c). Hence, as many previous surveys in other countries have shown, media attention directed to violence against women and partner violence in Serbia, predominantly involves media focusing on cases of murder of woman in an intimate partner relationship.

When it comes to direct victimisation of children as a subject of newspaper articles, the most frequent are poor reports on sexual violence against children, and much less frequent the articles devoted to other forms of abuse or neglect of children. The articles on the most difficult forms of victimisation, followed by very severe consequences, presented by bombastic titles: "Friends noticed that the pupil from Jagodina has changed, and he only told the psychologist the horrible secret he was hiding for months" (Bogosav, 2018a).

The visualisation of news reporting on violence against children and violence against women, as well as the news reports on murder, is unavoidable in tabloid newspapers. Reports of serious crimes in Serbian tabloids, as Jugović recently pointed out, often look like photographs from a police investigation and forensic medical examinations, or as scenes from horror movies, with striking bloody traces (Jugović, 2014: 231). In cases of criminal events involving the deprivation of a person's life, newspaper reports regularly bring interviews with victim's closest persons, often taken immediately after a tragic event. From the case of the Serbian tabloid press, it is quite evident what Greer once observed, that today it is almost expected that the victim's closest persons should share their pain and suffering with the media auditorium, intimidated and fascinated by tragic spectacle that takes place before their eyes (Greer, 2007: 30). Photographs of victims and their loved ones, which have the power to immediately familiarise media consumers, as no words could do (Doyle, 2003), are regularly contained in the articles dedicated to crimes in Serbian tabloids. The desire to achieve this irreplaceable propaganda effect in the sale of human pain and suffering, seems to completely erase every human scruple, professional ethics standards, and the obligation of the media to protect the privacy and dignity of the victim and her loved ones in their reporting of crimes.

2 The spectacle developed around this crime was brought to a climax when the victim's spouse, Zoran Marjanović (who was treated in the media as a "suspect" from the very beginning) took part in the reality show on one of the most viewed commercial televisions in the country. He left the show after only one week, as the media speculated, at the request of the competent centre for social security, because the temporary guardians of his minor daughter should have been appointed. The fact that Marjanović was deprived of liberty and detained in connection with the investigation of the murder of his wife, after leaving the reality show, was largely used by the tabloid media.

The numerous bad examples of treating victims in tabloid media are a good confirmation of what Valić Nedeljković once pointed out, saying that “market-centric media” based their editorial policy on the tabloid model, imposing their journalists several rules that ensure financial success, contrary to the professional code of ethics: “Make the editorial to like you; reach the cover and stay there at all costs; imitate the prejudice of the auditorium; take side of the currently desirable option; give your best to provide as many naked celebrities as possible for your media; fight for the rule of scandal with as little legal consequences as possible; never involve emotionally; without any scruples attack the privacy, with the explanation that the public has the right to know” (Valić Nedeljković, 2009: 16).

CONCLUDING DISCUSSION

Based on the conducted analysis of media content, it can be concluded that the media in Serbia, especially the tabloids, significantly contribute to the distortion of the reality of crime problem - both in terms of its volume and in terms of its structure and weight. Tabloid newspapers remarkably overrepresent violent crimes by individuals, particularly the topics of murder, and sexual violence against children.

It should be particularly noted that Serbian media show a remarkable tendency to raise the level of attention and spread the fear from juvenile crime, relying heavily on creating negative stereotypes on juveniles and the unsupported expert narratives. These processes are aimed at aggravating the formal social response to juvenile crime, as well as the reversal of traditional and obsolete methods and practices of upbringing the children and youth. Kovčo-Vukadin pointed out that in this context experts and scientists are systematically ignored and silenced because they do not provide recipes for ‘quick’ solutions, but they warn about the complexity of the problem and the importance of a thoughtful and comprehensive coping strategy (Kovčo-Vukadin, 2012: 113). However, it can be added that there are more efficient ways of media exploitation of crime topics than ignoring and silencing the scientists, that are carried out with the support of media-exposed experts who often do not hesitate to find the arguments for their claims not only in the wrongly presented state of things and inaccurate interpreted results of domestic and foreign studies, but also sometimes in fictitious findings of non-existent research.

Victim blaming in tabloid newspapers’ reports persists, although it is usually not direct, but indirect - through causal oversimplification and the development of discourses on mitigating circumstances that have affected the perpetrator. This is especially the case in media coverage on violence against women in an intimate relationship and femicide. Regardless the fact that the media auditorium could not be characterised as the passive recipient of information, it should be kept in mind that the choice of news and the way in which the actors of the events are presented has certain cultural effect, and impact on attitudes, beliefs and behaviour of people (Flood & Pease, 2009).

The risk of secondary victimisation is particularly pronounced in the case of minor victims of sexual violence, which are often media targeted, but also in the case of indirect victims of the murder, since the murder is absolutely the most common topic in the media reports dedicated to the topic of crime.

Overrepresentation of extreme violent events, sensationalistic approach, dramatisation and trivialisation of crime problem clearly indicate that Serbian tabloid media are predominantly market-oriented and focused on profit achievements. It is worth to notice that similar results concerning media attention towards serious violent crime was recently reported by Bučar Ručman (2013) who conducted analogous research in Slovenia, another

former Yugoslav republic which went through political and economic transition after gaining independence, and concluded that her findings on crime news were alike to those found in other western developed countries where the activities of the media are primarily aimed toward financial profit (Bučar Ručman, 2013: 34). It seems to be a universal reality that violent crime news hold a high value (i.e. media corporations' interests) within a growing neoliberal media market. It should be noted, anyway, that the exploitation of violent crime events and violent victimisation by the Serbian tabloid media – through the practice of detailed description of violent scenes, insufficient effort to protect sensitive data on victims, basing newspaper articles on speculations, trivialisation of crime causes, and misuse of victims' ignorance – is quite usual. It not only exceeds the boundaries of moral concerns and human tolerance, but assumes the proportions of an infinite “leeching”, which in some cases lasts for years – most often with the full support of media-exposed “experts” and without the appropriate reaction of national media regulatory and supervisory bodies.

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POLICE AND JUDICIAL RESPONSE TO CRIME IN THE RUSSIAN FEDERATION

Ivan M. Kleimenov¹

ABSTRACT

The paper studies the tendencies in police and judicial response to crime in the context of the new Russian capitalism. The results show that the police evade the objective analysis of crime, evaluating only its current situation (within a year) and resorting to misrepresentation of statistical data to insinuate that they are more effective in solving cases than they are. Judicial practice, in turn, vividly demonstrates the selective (class) approach to prosecuting “blue-collar” criminals, on the one hand, and “white-collar” criminals, on the other. Based on the findings this research provides a scientific toolkit to research the mechanism of judicial response to crime.

Keywords: unsolved crime, clearance rates, criminal law response, judicial practice

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INTRODUCTION

Crime, as a rule, is evaluated based on the results of response to it. The response can be of two general types: police or judicial. In terms of police response, it is noteworthy that normally the analysis focuses on the statistical set of crimes recorded in the current period (usually within a year). As a result, the conclusion about decrease in crime is based solely on the dynamics of the number of crimes recorded for each year. Meanwhile, crime is heterogeneous and includes three blocks: (a) recorded solved crime; (b) recorded unsolved crime; and (c) unrecorded (latent) crime.

Russian researchers (Inshakov, 2011; Karpets, 1969; Kondratyuk & Ovchinsky, 2008; Konev, 1993; Kuznetsova, 1969) have most studied the first and the third blocks, although in recent years interest in the problem of latent crime has significantly decreased. Up to the present moment police practice has been stubbornly ignoring the recorded unsolved crime as an independent phenomenon. The possibility of such disregard is due to improperly organized work on crime clearance and distorted evaluation criteria of the police work effectiveness. Consequently, the scientific task is to propose measures to eliminate these shortcomings.

As for judicial response to crime, the Russian legal science most often speaks about the criminal law impact (Bavsun, 2013; Chuchaev & Firsova, 2010; Duyunov, 2003; Lopashenko, 2004; Veklenko, 2008; Yesakov, Ponyatoyskaya, Rarog, & Chuchaev, 2014). Judicial response to crime expresses the explicit public side of the criminal law impact. This side is open for analysis as the rates of law enforcement practice settle the types and penalties for committed crimes. In this context, the scientific task is to define the types of judicial response to certain types of crime in order to adjust the judicial practice. The types are as follows: (a) no response; (b) a very weak response; (c) a weak response; (d) an adequate response; (e) an intensive response; (f) a punitive response; (g) a reflexive response; and (h) a protest response. We will consider these types more thoroughly further in the paper.

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METHODS

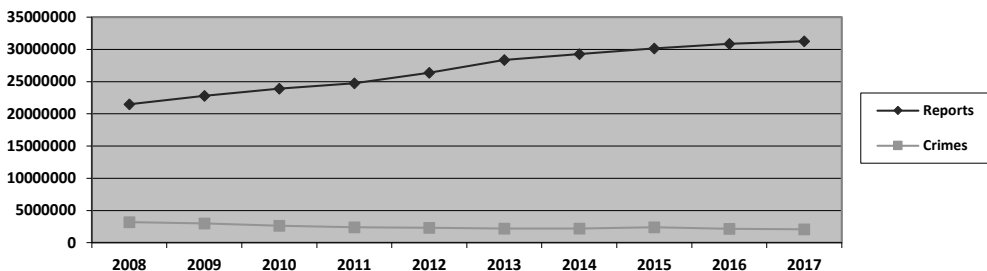
In the research, we used the statistical data of the Ministry of Internal Affairs of the Russian Federation (2018) on the crime situation published annually on the official website of the agency (<https://www.mvd.ru/>) as well as the judicial statistics data available on the website of the Judicial Department at the Supreme Court of the Russian Federation (2018) (<http://www.cdep.ru/>). In order to analyse the police response to crime, we have transformed the obtained data into diagrams and analytical tables that show the dynamics of the studied rates in absolute and relative values. To analyse the judicial response to crime we have drawn up the analytical tables based on the median values of rates for 2011-2016. We have also defined the quantitative and qualitative parameters of the criminal law response. Moreover, we have analysed in depth the materials of 186 specific criminal cases.

RESULTS

POLICE RESPONSE TO CRIME

The particularity of a criminal procedure in the Russian Federation lies in the fact that law enforcement organizations, after considering a crime report, must deliver a procedural decision: either to initiate or refuse to initiate a criminal case. Accordingly, criminal investigation, as well as any procedural actions, is executed within the initiated criminal case, which is further also considered by the court.

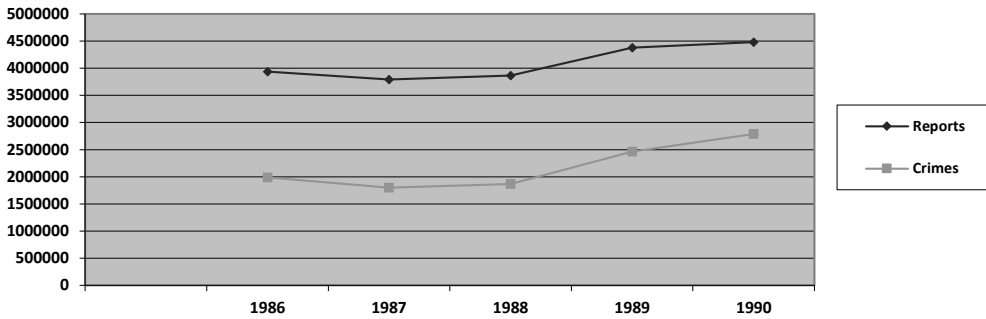
Since 2008, official crime statistics have recorded a steady decrease in the relative number of initiated criminal cases against the backdrop of a steady increase in reported crime. The ratio of the number of decisions to initiate a criminal case and to refuse to initiate a criminal case is 1:3 (Graph 1). Besides, official crime statistics show a “scissors effect” whereby there is an increase in the number of law violation reports but there is a decrease in the number of recorded crimes. The proportion of recorded crimes against the total number of law violation reports is only 7% (Ministry of Interior of the Russian Federation, 2018).



Graph 1: *Dynamics of incident reports and recorded crimes in Russia for 2008-2017*

Source: Ministry of Interior of the Russian Federation, 2018

The natural question arises on the propriety (from the point of view of the adherence to the legality principle) of such low records. Especially since annually (in the recent years) the prosecutors, who supervise police activities, by declaring the orders to refuse to initiate a criminal case unlawful, reinstate about 200 thousand of such reports. In our opinion, in order to answer this question objectively, it is important to take into account the analogous data of the Soviet period (when the prosecutor’s office had much more power than today) (Judicial Department at the Supreme Court of the Russian Federation, 2018).



Graph 2: *Dynamics of incidents and recorded crime reports in the USSR for 1986-1990*

Source: Statistical Book, 1991

According to the performed analysis, in the last five years of the Soviet period, almost half of the crime reports were recorded as crimes (six times more than at present). It is quite illustrative that in the USSR there were seven times less recorded law violations than in modern Russia (Graph 2). In addition, it is noteworthy that the increase in the number of law violation reports was accompanied by an increase in the number of reported crimes. Such correlation indicates the criminal law adequacy in response to criminal situations within the criminal law system (Kleimenov & Kleimenov, 2015).

The degree to which the facts of crime do not appear in official records is striking, which shows the significant disorganisation in the sphere of law enforcement. In 2015, over 165,000 criminal offences were reported but for various reasons not recorded, which is 6.5% more than in 2014. Prosecutors still reveal many shortcomings in the activity of operational units. In 2015, the number of violations of operational investigative activities legislation increased up to 580,000 (by 2%) (Chaika, 2016).

PROBLEM OF UNSOLVED CRIME

There is an acute problem of unsolved crime that remains poorly studied in the world of criminology. The total amount of unsolved crimes represents a separate criminological phenomenon. The first to pay attention to this was Adolphe Quetelet. He divided the whole mass of crimes into three categories: attributable crimes with detected criminals; unattributable crimes with unknown criminals; and, crimes and criminals that remained unknown, which he called “the dark figure of crime.” In the modern criminological terminology, the first category represents a phenomenon of solved crime, the second - of unsolved crime, the third - of latent crime (Penney, 2014). From the statistical point of view, the rate of solved crime is periodic, that is it consists of the number of crimes recorded and solved within the reporting period. Unsolved and latent crime rates bear a cumulative character. In other words, they are composed of crimes within their limitation period. In the informational context, there is also an evident peculiarity of the connections and causality between the criminal event and response to it (Bafia, 1983).

Within law enforcement circles, clearance rates are calculated in relation to a fixed reporting period that resets annually. This calculation is misleading. In other words, the statistics of the next reporting period no longer takes into account the crimes not solved in a fixed reporting period. This means that every year the number of unsolved crimes resets to zero. Accordingly, despite the fact that these crimes remain unsolved, no one cares about them in the new year.

The right way to calculate the clearance rate is in relation to the cumulative number of unsolved crimes (within the limitation periods), the cases of which have been suspended due to the failure to identify the criminals and have not been terminated. Thus, it is necessary to distinguish between the official and the actual clearance rate.

Table 1: *Actual and Official Clearance Rate by Certain Types of Crime in 2005, 2008, 2011, 2013 and 2016*

Crime	Year									
	2005	2005	2008	2008	2011	2011	2013	2013	2016	2016
serious and very serious	7.2	49.8	6.3	59.8	4.5	56.6	4.0	55.3	2.3	52.3
murder	29.0	85.4	17.8	88.0	13.1	84.8	11.8	88.1	9.8	90.4
intentional infliction of serious harm to health	20.8	73.4	16.2	81.2	16.4	84.1	15.5	87.8	17.1	91.0
rape	27.9	86.5	19.3	90.0	18.1	91.5	19.4	96.3	21.83	100.0
theft	4.9	31.5	4.0	35.9	3.6	37.6	3.2	39.7	5.1	39.1
fraud	46.0	66.3	28.6	63.0	16.6	59.2	12.9	46.3	7.2	26.2
robbery	8.7	29.7	5.2	36.7	3.5	46.5	3.1	53.4	3.4	59.6
banditry	14.3	50.4	7.9	61.6	5.2	67.2	4.2	74.7	4.9	83.9
Total	9.7	47.8	8.2	53.4	6.5	54.5	6.1	56.1	9.7	55.1

Source: Ministry of Interior of the Russian Federation, 2018

Note: Actual rates are marked bold

As one can see, the actual clearance rate data are fundamentally different from the officially published numbers: they are by far (sometimes by dozens of times) less (Table 1). However, the official narrative of clearance rate is overall optimistic: there has been a steady increase in the rates of crimes being solved, which in all likelihood should be indicative of performance improvement of the law enforcement organisations and suggest an idea that the Russian citizens are under their reliable protection. The real situation is completely opposite: law enforcement organisations are unable to effectively solve the crime prevention problems; actual clearance rates are dismally low and tend to decrease.

PROBLEM OF WHITE-COLLAR CRIME

The development of capitalism and penetration of criminality into social relations in modern Russia boosted the development of organised economic (“white-collar”) crime. Unlike the “classical” organised crime, which to a large extent deals with both prohibited practices and criminal control over the legal economy, the modern organised economic crime primarily turns its focus toward creation, maintenance and development of such legal and economic relations and sociopolitical situations in the country which enable certain groups of society to enrich themselves dodging responsibility (Ovchinsky, 2007).

In this regard, it is noteworthy that, in Russia, exemption from criminal liability in cases of economic activity crimes is widely practiced. Thus, Article 76.1 “Exemption from Criminal Liability in Cases of Economic Crimes” was introduced into the Criminal Code of the Russian Federation (henceforth Criminal Code) (Ugolovnyj kodeks Rossijskoj Federacii, 1996). In particular, Article 76.1 has ensured the possibility to exempt a person from criminal liability who first committed an economic crime in cases whereby the damages caused to the

budgetary system of the Russian Federation as a result of the crime were fully paid. This approach is based on the false paradigm whereby policymakers think that there is a low social cost resulting from economic crimes as compared to conventional crimes, and contradicts the general legal principle of equality of all before the law. We must agree with the opinion of the social scientists who believe that a lobbied project has been implemented here in line with the notorious liberalization of criminal legislation in the sphere of economic activity. Regulation of this special type of exemption in the General Part of the Criminal Code is a sign of an exclusive privileged attitude to the subjects who commit economic crimes as specified in Chapter 22 of the Criminal Code (Ugolovnyj kodeks Rossijskoj Federacii, 1996). This type of exemption draws attention of a law enforcer to Article 76.1 of the Criminal Code, “Exemption from Criminal Liability in Cases of Economic Crimes”, promotes the idea of a certain exclusivity of economic crime parties in the public consciousness and suggests that the very fact of entrepreneurial activity is a mitigating circumstance (Solovyev & Knyazkov, 2012).

It is specific that an approach allowing exemption of economic criminals from liability drastically weakens the white-collar crime prevention. For the period from 2001 to 2016, the number of recorded economic crimes (Chapter 22 of the Criminal Code) decreased by five times, and the number of crimes against the interests of service in commercial organisations (Chapter 24 of the Criminal Code; for ex. Abuse of Authority) decreased by 2.7 times (Judicial Department at the Supreme Court of the Russian Federation, 2018). The privileged position of white-collar criminals appears in the penal code. In particular, it is visible in the sentencing of corrupt officials.

PUNISHMENT OF CORRUPTION

In 2008, the President of the Russian Federation Dmitry Medvedev declared a “crusade” against corruption, which was recognised as a systemic threat to national security. The government adopted a number of federal laws, developed an anti-corruption national strategy, and started to implement national plans. It was reasonable to expect that this crusade would contribute to penalty enhancement of corrupt officials. However, the materials of judicial practice (Table 2) have not supported these expectations.

Table 2: *Imprisonment of officials convicted for corruption*

	Convicted	Total	Imprisonment	Years						
				< 1	1-2	2-3	3-5	5-8	8-20	10-15
Total	10,975	1,620		336	372	390	324	173	21	4
	100%	14.7%		3.1%	3.4%	3.5%	3.0%	1.6%	0.2%	0.04%

Source: Judicial Department at the Supreme Court of the Russian Federation, 2018

As we see, real imprisonment is applied only to one seventh of corrupt officials while 88% of all corrupt officials are sentenced to imprisonment for a term of not more than 5 years. For comparison: 60,734 people were sentenced to imprisonment under Article 158 “Theft” in 2016. The remarkable fact is that in the Russian Federation, marginalised segments of the population, for example, drug addicts, commit most thefts. This pattern of criminality leads us to understand two points. First, such a proportion indicates underestimation of the public danger of corruption crimes and in fact disavows the proclaimed thesis that corruption is a systematic threat to national security. Second, such a situation points to the fact that crimes committed by “excluded” groups of society are perceived to be more socially dangerous

than crimes of corruption. With that, Aristotle's age-old adage is ignored: "The greatest crimes are committed due to the desire for excess, and not for essentials" (Aristotle, 2018).

Table 3: *General types of punishment for corrupt officials in 2016*

Total	Suspended imprisonment	Suspended sentence	Arrest	Imprisonment	Coercive labour	Compulsory community service	Fine
10,975	2,642	43	0	61	161	50	5,520
100%	24,1%	0,4%	0%	0,5%	1,5%	0,5%	50,3%

Source: Judicial Department at the Supreme Court of the Russian Federation, 2018

Data on the general types of punishment for corrupt officials in Table 3 show that the most popular punishment for corrupt officials is a fine; suspended imprisonment is second most popular. These punishments constitute 75% of the penal practice in relation to the persons convicted of corruption crimes. Experience has proven that corrupt officials do not always execute the fine punishment. However, in order to prevent this type of punishment from substitution into imprisonment (as a consequence of fine evasion) they resort to the bankruptcy procedure. Unfortunately, the bankruptcy legislation in Russia allows taking into account the fine amount imposed by the court upon making a decision to recognise a person bankrupt and unable to fulfill their obligations.

Table 4: *Penalties for corrupt official in 2016*

Total	Deprivation of rank or right to hold specific	Punishment below the lowest limit	Property confiscation	Fine (additional punishment)	Imprisonment (additional punishment)	Mandatory additional punishment
10,975	57	1,800	543	1,263	16	707
100%	0,52%	16,4%	4,9%	11,5%	0,14%	6,4%

Source: Judicial Department at the Supreme Court of the Russian Federation, 2018

The data in Table 4 indicate that punitive practices in relation to the persons convicted of corruption crimes generally possess exceptionally humane characteristics. Punishment mitigating measures (not too severe already) are actively applied. Even a fine in 6.1% of cases is assigned below the lower limit. As for the property confiscation, in 2016 it was applied only in relation to 5% of convicts.

Besides, unlike conventional offenders, criminals who engage in corruption are people who are "positively characterised" and employed. These characteristics are accordingly taken into account by the court while sentencing them. Thus, Vasilyeva E.N. was accused of a very high-profile corruption case within the Ministry of Defense of the Russian Federation and found guilty of committing a number of crimes stipulated in Part 4 of Article 159 "Fraud" of the Criminal Code as well as Part 3 of Article 174.1 "Legalisation (Laundering) of Money or Other Assets Acquired by a Person as a Result of Committing a Crime" and Part 1 of Article 201 "Abuse of Authority" of the Criminal Code. When sentencing her, the court, in accordance with Art. 60 of the Criminal Code, took into account the nature and level of public danger of the offence and identity of the convicts.

"Vasilyeva, E.N. [...] is characterised positively [...] has held posts of the Advisor to the Minister of Defence of the Russian Federation, Head of the Property Relations Department of the Ministry of Defense of the Russian Federation, Head of the Office of the Secretary of Defense of the Russian Federation. In the course of work as the Head of the Office of

the Secretary of Defense of the Russian Federation, the President of the Russian Federation Dmitry Medvedev awarded Vasilyeva the Order of Honour for the achieved professional success, long-term dedicated work and active social activity... In accordance with Article 61 of the Criminal Code, the court recognises these circumstances as mitigating the punishment of Vasilyeva. In accordance with Article 63 of the Criminal Code of the Russian Federation, circumstances aggravating the punishment of the defendant Vasilyeva are not available.” (Presnensky District Court of Moscow, 2015).

It seems that the high official position used to commit corruption crimes as a mitigating circumstance is, mildly speaking, questionable. However, the court has no obstacles for such an interpretation of the criminal law since the list of mitigating circumstances is not limited, while the list of aggravating circumstances, in which a person’s high official position is not included, on the contrary, is clearly defined. In this regard, it seems to be right to introduce an appropriate aggravating circumstance into Article 63 of the Criminal Code of the Russian Federation (Ugolovnyj kodeks Rossijskoj Federacii, 1996).

CONCEPT OF CRIMINAL LAW RESPONSE

In order to look deeper into the “black box” of the trial process and, if possible, to investigate the judicial decision-making mechanism, an appropriate scientific toolkit is needed. The search for such a toolkit leads to the concept of a criminal law response (Kleimenov, 2016). A criminal law response is understood as the application of criminal law norms in relation to offenders, as “a special activity of the state responding to violations of its established criminal prohibitions by means of opportunities inherent in the criminal law” (Duyunov, 2003). In other words, a criminal law response is the government’s reaction to committed crimes in the form of criminal prosecution and conviction. The mechanism of the criminal law response represents a sequence of stages: initiation of a criminal case, exemption from criminal liability, criminal sentencing, exemption from punishment, execution of punishment, and bringing the sentence in line with a new criminal law that improves the convicted person’s position. To understand the mechanism of the criminal law response, it is important to quantify it as:

- no response;
- a very weak response (the number of convicts does not exceed ten per year);
- a weak response (the number of convicts is small, numbered in dozens);
- an adequate response (the number of convicts and punitive measures correspond to the criminological characteristics of the crime);
- an intensive response (the norm is effected within the possibility of inevitability of punishment);
- a punitive response (the norm is applied based on the “letter, not the spirit” of the law);
- a reflexive response (sentencing of the “insiders” under increased public attention and “high profile” of the case); and
- a protest response (when judicial practice comes into conflict with ill-conceived legislative innovations) (Kleimenov, 2016).

It seems that research activities can specify these types, but in any case, their definition allows us to establish the basis for a more balanced and differentiated assessment of the sentencing practices. In Russia, there is no criminal law response to crimes such as Article 141.1 “Funding Violation of a Candidate’s Election Campaign, an Electoral Association, a Referendum Initiative Group Activity or Any Other Group of Referendum Participants,”

Article 170 “Illegal Trade Registration of Immovable Property,” Article 184 “Unlawful Influence on the Result of an Official Sports Competition or an Entertaining Commercial Competition,” or Article 285.2 “Misappropriation of State Non-Budgetary Funds.” These are different types of crime but the same thing – corruption character – combines them. As one can see, there are spheres where the hand of the law enforcer does not reach (Ugolovnyj kodeks Rossijskoj Federacii., 1996).

There is no criminal law response to the crime stipulated in Article 304 “Provocation of Bribery or Corrupt Payment” of the Criminal Code of the Russian Federation, which in no way corresponds to the objective to stop provocative and inciting actions of law enforcement officers (Ugolovnyj kodeks Rossijskoj Federacii., 1996).

A very weak criminal law response follows while identifying crimes stipulated in Article 285.1 “Misappropriation of Budgetary Funds,” Article 285.3 “Deliberate Introduction of Inaccurate Information into Unified State Registers,” and Article 289 “Illegal Participation in Business Activities” of the Criminal Code (Ugolovnyj kodeks Rossijskoj Federacii., 1996). These anti-corruption guidelines are not applied. In our opinion, the main reason for such idleness is the settled practice of selective law enforcement: these articles concern those entities that possess sufficiently high official powers. The selectivity of law enforcement in the sphere of corruption crimes of officials is worthy of note - the main burden of the criminal law response falls on the rank-and-file officials.

A weak criminal law response characterises judicial practice in terms of regulation of legalisation of money or other property obtained by criminal means (Article 174 “Legalisation (laundering) of money or other property acquired by other persons by criminal means,” 174.1 “Legalisation (Laundering) of Money or Other Assets Acquired by a Person as a Result of a Crime Commission” of the Criminal Code), as well as smuggling (Articles 194, 200.1, 200.2, 226.1 and 229.1 of the Criminal Code regulating various types of smuggling) (Ugolovnyj kodeks Rossijskoj Federacii, 1996). Anti-money laundering is more likely to be imitated - despite international legal obligations like ratification of the United Nations Convention against transnational organised crime by the Russian Federation (Federal Law On the Ratification of the United Nations Convention against Transnational Organised Crime and its Additional Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent and Suppress Human Trafficking, Especially of Women and Children, and Punishment for it, 2004) and existence of the powerful organisational structure – Rosfinmonitoring (Decree of the President of the Russian Federation, 2012). Thus, according to Articles 174 and 174.1 of the Criminal Code of the Russian Federation, there were only 31 convicts in 2017 (Judicial Department at the Supreme Court of the Russian Federation, 2018).

Money laundering, smuggling and customs payment evasion are the spheres of organised crime activities and their low rates are the evidence of a weak criminal law policy in this direction. We can describe such a criminal law policy as “deviationist”. In other words, the state on behalf of the law enforcement and judicial organizations deviates from a proper (active and effective) struggle against the money laundering, smuggling and customs payment evasion. Such a self-defeating policy cannot last long as it does not meet modern challenges and threatens national security.

An adequate criminal law response can be recognised in such cases as insult of participants of judicial proceedings and justice (Article 297 of the Criminal Code), refusal of a witness or victim to testify (Article 308 of the Criminal Code), and concealment of crime (Article 316 of the Criminal Code). Besides, an adequate criminal law response finds itself in cases

of crimes stipulated in Articles 312 “Illegal Actions Against Property Subject to Inventory, Seizure, or Confiscation,” 313 “Escape from a Place of Confinement, Arrest, or Custody,” 314 “Evasion of Restriction or Deprivation of Liberty, as well as of Compulsory Medical Measures,” 314.1 “Evasion of Administrative Supervision or Repeated Failure to Comply with the Restriction or Restrictions Imposed by the Court in accordance with the Federal Law,” 315 “Non-execution of the Court’s Verdict, Decision, or any Other Juridical Act,” and 321 “Disorganisation of Activity of Institutions Providing Social Isolation” of the Criminal Code (Table 5) (Ugolovnyj kodeks Rossijskoj Federacii, 1996).

Table 5: *Sentencing practice for crimes interfering with execution of judgment*

Article	Detected persons	Convicted	Imprisonment	Suspended imprisonment	Custodial restraint	Corrective labour	Compulsory community service	Fine	Other measures	Terminated
312	1,095	811	15	61	-	7	299	349	3	77
313	240	189	179	6	-	-	-	-	2	2
314	363	300	191	97	1	4	7	-	-	-
314.1	2,239	1,554	808	549	-	92	93	1	-	11
315	462	258	1	10	-	-	-	160	7	80
321	229	207	201	6	-	-	-	-	-	-

Source: Judicial Department at the Supreme Court of the Russian Federation, 2018

Note: Median values for the period 2011-2016 are shown in the table

An intensive criminal law response is observed in cases of such crimes as illegal production, sale or transfer of narcotic drugs, psychotropic substances or analogues thereof, as well as illegal sale or transfer of plants containing narcotic drugs or psychotropic substances, or parts thereof containing narcotic drugs or psychotropic substances (Article 228.1 of the Criminal Code), including its aggravation - Part 4. Among other cases there is smuggling of narcotic drugs, psychotropic substances, precursors or analogues thereof, plants containing narcotic drugs, psychotropic substances or precursors thereof, or parts thereof containing narcotic drugs, psychotropic substances or precursors thereof, instruments or equipment subject to special control and used for production of narcotic drugs or psychotropic substances (Article 229.1), including Part 2. Under these articles, the majority of persons are sentenced to real imprisonment: under Article 228.1 – 89.5% (94.9%), under Article 229.1 – 59.4% (67.0%). This is the toughest punitive practice for corruption crimes.

The practice of response to the actions stipulated in Article 318 of the Criminal Code “Use of Violence against a Representative of Authority” and Article 319 of the Criminal Code “Insult of a Representative of Authority” (Table 6) should be recognised punitive.

Table 6: *Sentencing practice for crime indirectly interfering with a reasonable delivery of judgement*

Article	Detected persons	Convicted	Imprisonment	Suspended imprisonment	Corrective labour	Suspended sentence, other measures	Compulsory community service	Fine	Other measures	Terminated
318	8,087	6,809	1,446	3,090	3	1	9	1,721	9	530
319	10,737	7,872	1	-	1,570	374	1,312	3,705	32	878

Source: Judicial Department at the Supreme Court of the Russian Federation, 2018

Note: median values for the period 2011-2016 are shown in the table

As a rule, people commit such crimes against police officers performing peacekeeping duties. Examination of 92 criminal cases stipulated in Article 318 of the Criminal Code of the Russian Federation, considered by the regional courts of Moscow, Voronezh, Yekaterinburg, Lipetsk, Kaliningrad, Krasnodar, Krasnoyarsk, Nizhny Novgorod, Omsk, Magadan, Ufa,

and Saint-Petersburg, shows that the situations of committing such crimes are ambiguous and may present themselves in several variants:

- violence occurs spontaneously, without cause, due to police-related hatred – 3 sentences (4.8%);
- violence occurs in the course of a conflict between a police officer performing their peacekeeping duties and a person disturbing public order – 42 sentences (67.7%);
- violence occurs as a result of unprofessional actions of police officers sparking the conflict – 17 sentences (27.5%). Let us cite one of them:

“S. G. Yermilova, being in the premises of the police station front office No. 5 of the Nizhny Novgorod Regional Office of the Ministry of Internal Affairs, having left the premises of the investigative room, began to express in a rude form discontent with her detention. The police officer demanded to stop the illegal actions and leave the office premises but she refused to do so. Then the police officer, taking Yermilova by the hands, led the latter out of the office premises into the corridor. At this time, Yermilova had a criminal intent aimed at use of violence that does not endanger human life or health against the police officer, the representative of authority. Executing her criminal intent, acting intentionally and purposefully, realising the unlawful nature of her actions, at around 06:30 on December 17, 2013, being in the front office premises, Yermilova delivered at least one blow to the policeman in the face area, having inflicted the latter a bodily injury in the form of intradermal hemorrhage of the frontal right part that did not cause harm to health. Therefore, Yermilova committed a crime stipulated in Part 1. Art. 318 – Use of Violence that Does Not Endanger Human Life or Health against a Representative of Authority in Connection with the Performance of his Official Duties... As a mitigating circumstance, in accordance with Art. 61 of the Criminal Code of the Russian Federation, the court recognises the active assistance in the crime clearance, the confession of guilt, and the existence of two young dependent children... Yermilova is to be convicted and sentenced under Part 1, Art. 62 of the Criminal Code of the Russian Federation to a fine in the amount of 5,000 (five) thousand rubles.” (Nizhny Novgorod District Court, 2013).

The cited verdict clearly shows how easy it is to suffer conviction by coming into conflict with a police officer who grabs you by the hands. The position of the court executing justice “according to the letter of the law” is also surprising as one can see from the abundance of bulky compound sentences in the verdict.

Criminal law impact in relation to insult of a representative of authority is also punitive (Article 319 of the Criminal Code). Moreover, we may even call such an impact unreasonably punitive. Against the background of full or partial decriminalisation of insult (Article 130 of the Criminal Code), and bodily blows (Article 116 of the Criminal Code), criminal responsibility for insulting a representative of authority looks like an anachronism. Many judges understand this: therefore, cases under Article 319 of the Criminal Code often terminate, and in a number of sentences, a fine prevails. Analysis of the criminal cases under Article 319 shows that, as a rule, “criminals” insult police officers in the form of abusive language. Given the modern tolerant attitude to obscene abuse (police officers themselves actively use obscenities), it makes sense to propose decriminalisation of Article 319 of the Criminal Code of the Russian Federation (Ugolovnyj kodeks Rossijskoj Federacii, 1996).

Judicial practice features punitive severity in relation to conventional crime, and humanity in relation to corruption and economic crime. In Russia, the selective approach of judicial response has developed and is strengthening, singling out a privileged group – white-

collar criminals. Since 2010, “business associations” (that have access to the highest level) consistently spread disinformation about the arbitrary outrage with regard to business. This disinformation links to an active counteraction to the struggle against organised economic crime. Its organisational and ideological basis has become the Concept of the Criminal Legislation modernisation in the Economic Sphere.

In this respect, a reflexive response arises, based on the idea of an exclusion/inclusion mechanism. Post-modernism revealed such a mechanism. Thus, Michel Foucault describes the approach when the power transfers handling of the leprosy- or plague-stricken to other objects:

“Constant division into the normal and the abnormal, which affects every individual, brings us back to our time when the binary stigmatisation and expulsion of the leper are applied to absolutely other objects. The existence of a number of methods and institutions (designed to identify and correct the abnormal, to control them) introduces into the game the disciplinary mechanisms born of fear of the plague. All the mechanisms of power that even today are set up around an abnormal individual to mark and change them consist of these two forms, which are their distant predecessors.” (Foucault, 1991).

Here Foucault describes the mechanism of exclusion. This mechanism is certainly applied at various levels (rich/included – poor/excluded, “democratic” states/included – states-outcasts/excluded). It is worthy of note that modern researchers have repeatedly raised the topic of this mechanism application at the present day. Thus, Slavoj Žižek (2012), speaking about subjects excluded by capitalism, reckons among them the so-called “failed states” (Congo, Somalia), victims of famine or environmental disasters, people captured by pseudo-archaic “ethnic enmity”, those who became the object of philanthropy on the part of non-governmental organizations or (often the same people) suffered from the “war on terror.” The category of the unemployed should be expanded to cover a broad range of population: starting with the temporarily unemployed, unemployed and constantly unemployed (whom Karl Marx himself rejected as the “lumpen proletariat”), and ending with entire regions, nations or states excluded from the global capitalist process and resembling empty spaces on old maps (Žižek, 2012).

In Russia, Yakov Gilinsky (2011) repeatedly wrote about the exclusion/inclusion. On the other hand, there are the “included” – persons who hold a privileged position in the state; in fact, all is allowed to these persons. However, there are cases when the high profile of the crimes committed by these people forces the government to bring them to responsibility. Although the state does it quite reluctantly. The abovementioned example of Vasilyeva engaged in corruption activities within the Ministry of Defence of the Russian Federation demonstrates this well.

At the same time, the judges themselves sometimes protest against the impunity of white-collar criminals. Thus, after introduction of Article 154.4 into the Criminal Code “Fraud in entrepreneurial activity”, which carried a less severe punishment than ordinary fraud, judges actively opposed (we have studied 30 criminal cases) to qualification of the corresponding crimes under this article but tried to apply the norm of ordinary fraud to the convicted. Moreover, it was the recourse of the judge, who considered such a case, to the Constitutional Court of the Russian Federation (2014) that afforded recognition of the said article as non-complying with the Constitution of the Russian Federation. (Decree of the Constitutional Court of the Russian Federation No. 32-P dd. 11 December 2014 “On the case involving examination of the constitutional provisions of Article 159.4 of the Criminal Code in connection with the request of the Salekhard city court of the Yamal-Nejets Autonomous District”).

DISCUSSION AND CONCLUSION

In recent years, Russian scholarship has attempted to legitimise the practice of concealing crimes from official records (by eliminating the institution of initiation of criminal cases in the criminal process). It has also tried to justify the inequality of citizens before the law and the court depending on their social status. We strongly disagree with such attempts and propose to:

- Establish criminal liability for an unlawful refusal to initiate a criminal case with a disposition in the following wording: “A repeated refusal to initiate a criminal case, which the prosecutor declares unlawful, is punished...”;
- Introduce a normative standard into the practice of criminal statistics: the clearance rate is calculated in relation to the cumulative number of unsolved crimes (within the limitation periods), cases on which have been suspended due to the failure to detect criminals and have not terminated;
- Develop a lobbying legislation. Introduce criminal liability for criminal lobbying (related to corruption or administrative pressure); and
- Include the model of the criminal law response including the following qualitative and quantitative parameters in the analysis of the sentencing practice: (a) no response; (b) a very weak response (the number of convicts does not exceed ten per year); (c) a weak response (the number of convicts is small, numbered in dozens); (d) an adequate response (the number of convicts and punitive measures correspond to the criminological characteristics of the crime); (e) an intensive response (the norm is effected within the possibility of inevitability of punishment); (f) a punitive response (the norm is applied based on the “letter, not the spirit” of the law); (g) a reflexive response (sentencing of the “insiders” under increased public attention and “high profile” of the case); and (h) a protest response (when judicial practice comes into conflict with ill-conceived legislative innovations).

Approbation of such a model on the mass of convicts of corruption crimes shows its effectiveness.

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PREVENT-REFER-ADDRESS CONCEPT AS A MULTI-STAKEHOLDER RESPONSE TO RADICALISATION IN THE WESTERN BALKANS

Rajko Kozmelj¹

ABSTRACT

In March 2018, the Integrative internal security governance board identified radicalisation leading to violent extremism as one of the top security threats. The Integrative internal security governance board suggested a concept that can be used as multi-stakeholder response to prevent, refer and address (P-R-A) radicalisation leading to violent extremism in a holistic way, using a whole-society and multi-stakeholder approach. There is no perfect national model to be 'exported' to the Western Balkan Countries and would fit and successfully operate in their countries, societies. Based on the expertise of Radicalisation Awareness Network Centre of Excellence, experience in many EU and other countries, Prevent-Refer-Address concept has been developed to be used in developing a tailor-made solution for a country or even a local community with its specificities, to efficiently prevent radicalisation that leads to violent extremism, to disengage individuals, to deradicalise them or to reintegrate them in the local community.

Keywords: radicalisation, violent extremism, prevent-refer-address, Western Balkan counter terrorism initiative, integrative internal security governance

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INTRODUCTION

There is no one unique national model which would fit all societies with different level of awareness on radicalisation process, different administrative arrangements and different sets of values, norms and priorities, however, some basic elements and steps can be taken from those societies where have started the multi-stakeholder approach in response to radicalisation that leads to violent extremism and have developed some good practices and have acquired a valuable new knowledge and understanding of the problem of radicalisation. Such a mechanism is the Channel, which was first piloted in 2007 and rolled out across England and Wales in April 2012 (Home Office publication, 2015a, 2015b). Channel is part of the Prevent strategy. The process is a multi-agency approach to identify and provide support to individuals who are at risk of being drawn into terrorism. It is a programme, which focuses on providing support at an early stage to people who are identified as being vulnerable to being drawn into terrorism (Channel duty guidance, 2015). The programme uses a multi-stakeholder approach to protect vulnerable people by: (a) identifying individuals at risk; (b) assessing the nature and extent of that risk; and (c) developing the most appropriate support plan for the individuals concerned (Home Office publication, 2015a, 2015b).

The Prevent-Refer-Address concept (hereinafter: P-R-A) follows a risk-based approach to the prevention of radicalisation that lead to violent extremism and terrorism. It suggests to define duties of partners at the local and also at the national level, which should be engaged as first liners or their supporters in the risk-based prevent, refer and address approach. In complying with the duty all specified authorities, as a starting point, should demonstrate an awareness and understanding of the risk of radicalisation in their area, institution or body.

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This risk will vary greatly and can change rapidly; but no area, institution or body is risk free. Whilst the type and scale of activity that will address the risk will vary, all specified authorities will need to give due consideration to it (Revised prevent duty guidance for England and Wales, 2015).

In Finland, local cooperation groups for preventing violent radicalisation and extremism were established in 2012, based on the National action plan for the prevention of violent radicalisation and extremism that was approved in 2012. In Oulu, Turku and Tampere, the network has been set up by the city authorities and its leader is an appointed city representative. In Helsinki, the network has been established by the Helsinki Police Department and it is led by the representative of the police (Ministry of the Interior of Finland, 2017).

In Somerset, UK, it is expected from all 'specified authorities' listed in the Prevent Duty that they incorporate the duty into existing policies and procedures, so it becomes part of the day-to-day work of the authority. It is likely to be relevant to fulfilling safeguarding responsibilities in that authorities should ensure that there are clear and robust safeguarding policies to identify those vulnerable persons at risk of radicalisation. The development of the following will ensure the duty is fulfilled: (a) action plan/self-assessment; (b) risk assessment; (c) staff training; (d) working in partnership – the prevent and Channel referral process; and (e) update and embed prevent into the children's and adult's safeguarding policies (Somerset county council, 2016).

In the absence of proved successful case model to be exported and implemented in the Western Balkan countries and in order to effectively and efficiently address the challenge of radicalisation that lead to violent extremism and terrorism as pointed out by Klemenc and Kozmelj (2014) in their gap analysis, a clear need has been arisen to develop a concept as a crucial policy solution to assist countries of the Western Balkans and to fit their requirements (Ministerial conclusions, 2014). The discussions on local approaches and inter-agency cooperation at the EU Radicalisation awareness network centre of excellence (RAN CoE) event "Common Prevent and Counter Violent Extremism challenges in the Western Balkans and European Union" (hereinafter: P/CVE) in Sofia, clearly confirmed the need (EU Radicalisation awareness network centre of excellence, 2018).

Additional factor, which contributes to the complexity of solution is a vague definition and various interpretations of the term radicalisation. Unfortunately, the situation is not much better with governmental and inter-governmental definitions. In 2006, the European Commission defined radicalisation as '[t]he phenomenon of people embracing opinions, views and ideas which could lead to acts of terrorism'. There are several problems with such a formulation. One lies in the word 'could'. It leaves open the question under what conditions such a process takes place. The second problem is that the emphasis on 'opinions, views and ideas' – apparently referring to the role of ideology – is too broad and vague. Thirdly, radicalisation can – because historically it has – lead to forms of conflict other than terrorism. Furthermore, the brevity of the European Commission's definition does little to address the complexity of the phenomenon (Schmid, 2013).

THREATS OF RADICALISATION IN THE WESTERN BALKAN REGION: DIAGNOSIS

From the time of the Bosnian war when as many as 900 members of the Mujahideen travelled to the region to fight, the Balkans have been regarded by Al-Qaeda and now Daesh as a breeding ground for Jihadist ideology and recruitment. A recent study estimates that there are presently over 300 Bosnians fighting in Iraq and Syria and in 2015, Abu

Muhammad of Al-Bosni declared the Balkans as the new front for the Caliphate, said Dr. Vlado Azinović in conversation with dr. Denisa Kostovicova on impact of the Balkans on Jihadist radicalisation (RUSI Whitehall, 2016).

According to the assessment of the European Policy Centre and the European Foundation for Democracy in 2017, from the end of 2012 until the beginning of 2016, there are up to 1,000 individuals from the countries in the Western Balkans travelled to Syria and Iraq. This figure includes people who are thought to have either remained there, returned home, or died, and also includes non-combatants such as women, children and the elderly. Kosovo², Bosnia and Herzegovina (BiH), Albania, and the Former Yugoslav Republic of Macedonia have provided the bulk of fighters in the Western Balkans contingents in Syria and Iraq (European policy centre and the European foundation for democracy, 2017).

Compared to contingents from other countries, the Western Balkans's detachment in Syria and Iraq's older (on average men were 31 and women were 30 years of age on the date of their entry into Syria) and includes more women. Among Kosovars and Bosnians, respectively, women make up 27% and 31% of each country's contingent – nearly double the European average. As a consequence, non-combatants make up far more (up to 55%) of the Western Balkans contingent than is true of other foreign contingents in Syria and Iraq. In response, entire families, sometimes three generations, are migrating from the Western Balkans, and many have no intention of ever returning (European policy centre and the European foundation for democracy, 2017).

Individual cases of radicalisation and recruitment are occurring by and large within closed circles that include only family and friends, during social gatherings that typically take place in the privacy of peoples' homes. These gatherings are for religious purposes and thus amount to "illegal" or "parallel" mosques, or "para-jamaats" as the official Islamic Communities (ICs) in the region have labelled them. They are now considered by many as hotbeds of radicalisation and recruitment in Bosnia and Herzegovina, Albania, Kosovo^{*}, and Former Yugoslav Republic of Macedonia. In addition to the establishment of parallel religious communities, these groups are gradually setting up parallel structures in other vital areas, such, as in education, social services and healthcare, thus filling the gaps left, in many instances, by fragile or dysfunctional states and by public services plagued by incompetence, corruption, and nepotism (Azinović, 2017).

The most critical stage in the radicalisation process, especially for the youngest recruits, is physical separation from their biological families and inclusion into a new ideological family. This new family provides them respect, care, support, and often money – things they may have previously felt deprived of. Once this process of separation is complete, the biological family, the last and potentially most powerful force capable of countering or disrupting the radicalisation cycle, is no longer an obstacle, and the radicalisation process can continue virtually unhindered. The radicalisation process typically begins through initiation with a "human touch," meaning through personal interaction with a figure of authority. It is then followed by peer-to-peer interaction, often with like-minded individuals, whereby a very specific worldview is reinforced through group dynamics (Azinović, 2017).

2 This designation is without prejudice to the position on status, and is in line with UNSCR 1244/99 and the ICJ opinion on the Kosovo declaration of independence.

APPROACHES USED SO FAR IN PREVENTING AND COUNTERING RADICALISATION

Public awareness of the problem remains somewhat limited, as well as any commitment at the society level to actively prevent and counter radicalisation. Efforts to educate and engage citizens to recognise and respond to radicalisation should be undertaken. Countries in the Western Balkans have not yet developed standardised risk assessment tools to help differentiate the relative threat of returning foreign fighters. A growing number of former foreign fighters, as well as their handlers and facilitators and those who aspired to join them, are being tried and sentenced to prison terms in the region. In spite of this, where and how these convicts should be placed within their respective prison systems remains uncertain, and clear policies standardising the treatment of this special population must urgently be put into practice so that prisons in the region do not become new hotbeds of radicalisation. Rehabilitation and reintegration programmes for foreign fighters and their families must also be standardised and implemented post-haste (Azinović, 2017).

As pointed out by Klemenc and Kozmelj (2014) and highlighted in the Final Report on the Western Balkan Counter Terrorism Integrative Plan of Action 2015-2017 but also interviews made clearly show that the actions taken by various international partners active on this policy in the Western Balkan Region, were not systematic, not coordinated but rather scattered without ensuring consistency and sustainability of efforts invested, often overlapping and duplicating each other and not addressing the right priorities (Integrative internal security governance (IISG) board, 2018b).

The P-R-A Concept was put forward by the IISG Support Group, hosted by the DCAF Ljubljana, in order to address this gap. All partners involved in the prevent and counter violent extremism efforts in the region were involved in further development of the P-R-A concept (Ministerial conclusions, 2018). The Integrative Internal Security Governance (hereinafter: IISG) Support Group has taken the lead to coordinate all international partners in the region and to support them with policy proposals within the Western Balkan Counter Terrorism (hereinafter: WBCTi) pillar of the IISG (Integrative internal security governance board, 2018a).

METHODS

For the purpose of the paper, we conducted some semi-structural interviews. The questions posed addressed the situation of cooperation and coordination between international partners, donors' coordination, identification of right needs and gaps, long term support of efforts, the added value of WBCTi (Council of the European Union, 2015a, 2015b) and IISG (Council of the European Union, 2016) coordination mechanisms. We have decided to use the semi-structured interview since it offers a guided conversation between the researcher and participant – it maintains some structure, but it also provides the researcher with the ability to probe the participant for additional details and offers flexibility for a researcher.

Selection of the target group of interviewees followed the limited number of people familiar with the political, strategic and operational dimension of the problem, actively involved in the national and regional response to the challenge of radicalisation that lead to violent extremism.

Moreover, selected interviewees are familiar with the IISG approach and its WBCTi pillar relevant to streamline P/CVE activities into effective and efficient response to radicalisation that lead to violent extremism.

RESULTS

INTERVIEW WITH MR MLADEN MARKOVIĆ, MINISTRY OF INTERNAL AFFAIRS – POLICE DIRECTORATE, MONTENEGRO, JANUARY 2018

Assistance of WBCTi in the process of reforming the work of the security and intelligence agencies in CT and P/CVE in accordance with EU and international standards, has been observable in both. It is a long-awaited instrument aligning numerous initiatives of international actors offering much-needed assistance to Montenegro and other countries, incl. in producing legislation and regulatory pieces, workshops, trainings, etc., where duplication had been occurring, causing implementation to be slower than expected. Despite formally reaching a series of indicators (e.g. number of trainings received), such measuring did not prove/disprove any real influence on policy. The WBCTi iPA 2015-2017 has successfully provided a common direction merging our efforts as we cooperate closely with the international donor community. It is measurable and concrete; it requires more joint planning and the objectives are set realistically. As for operational policy reform, the CTI network, now linked with the WBCTi objectives, produces concrete results, such as also the terrorism situation report (WB-TeSit), list of FTFs, risk indicators for early identification of FTFs. The CTI had brought together operatives in the Western Balkan region, and today their cooperation remains permanent, timely, and the regulatory impediments to cross-border communication are overcome. Our WB Te-Sit effort has adopted an EU-pre-approved model of cooperation, where we provide Europol with data and they help us deliver. To follow-up, the report was provided to the security and intelligence services and bears a high added value for our national threat assessment. Also, the List of FTFs for the Western Balkans is crucial in that it is not only made available to EU colleagues through Europol, but it also enables Europol's Partners (non-EU countries) as data owners to acquire from Europol new information on the established linkages with the FTFs in our region.

- Interviewee recognizes the added value of coordinated approach offered by the WBCTi pillar of IISG which considerably reduces duplication and overlapping and therefore increases efficiency and effectiveness.
- Interviewee highlights the important role of assistance of WBCTi (IISG) in the process of reforming the work of the security and intelligence agencies in the P/CVE activities in accordance with EU and international standards.
- Interviewee qualifies the WBCTi (IISG) approach as a long-awaited instrument aligning numerous initiatives of international actors offering much-needed assistance to Montenegro.

INTERVIEW WITH MR SAMIR RIZVO, ASSISTANT MINISTER FOR SECURITY, BOSNIA AND HERZEGOVINA, JANUARY 2018

Bosnia and Herzegovina highly appreciates all the assistance and support to the building of capacities it requires in order to execute its policies in this demanding field. We are convinced to have achieved significant progress in this direction, and that we will continue to do so in a comprehensive manner.

To be sure, we ascribe high importance to the role of the WBCTi, providing us the ability to steer projects and programmes in an aligned and coordinated manner. WBCTi holds an additional important meaning in that it creates the possibility for us and our international

partners to possess an insight into all activities in the field of preventing and countering violent extremism and terrorism – one that is thorough and up-to-date. This approach allows needs and priorities to be identified to serve all parties in the process, the enhancement of mutual trust as well as the overall relationship between Bosnia and Herzegovina and the International Community. WBCTi ensures the advancement of our participation in regional cooperation, which is irreplaceable when creating a joint approach to combatting shared security threats.

In addition to an enhanced exchange of ideas and information among all stake-holders of the process, a particular added value that the WBCTi has also held for us lays in offering us the possibility to engage in efficient coordination of various actions of policy reform. This has resulted in high complementarity of respective projects, and enabled us to avoid of duplication of activities and wasting limited resources – both on part of us as Beneficiary as well as on part of the International Community partners engaged in reform.

From the very beginning Bosnia and Herzegovina has been strongly supporting the IISG and its three pillars. Through WBCTi activities so far implemented, we can establish that our support has been devoted to the right cause. The cooperation with the WBCTi Lead Partners is based on highest mutual trust and understanding. We hope that this cooperation will provide significant results after the adoption of the next three-year work plan that will provide the framework for our joint actions in the WBCTi fields of activity and ensure an even better coordination among all actors.

- Interviewee believes that the WBCTi pillar of IISG brought a significant progress to the P/CVE activities in BiH, and that it will continue to do so in a comprehensive manner.
- Interviewee highlights the importance and the role of the WBCTi (IISG) due to its ability to steer projects and programmes in an aligned and coordinated manner and it creates the possibility for us and our international partners to possess an insight into all activities in the field of preventing and countering violent extremism and terrorism – one that is thorough and up-to-date.
- Interviewee believes the WBCTi (IISG) ensures the advancement of their participation in regional cooperation, which is irreplaceable when creating a joint approach to combatting shared security threats such as radicalisation and violent extremism.
- Interviewee identifies particular added value of the WBCTi (IISG) in its offering the possibility to engage in efficient coordination of various actions of policy reform, which has resulted in high complementarity of respective projects, and enabled us to avoid of duplication of activities and wasting limited resources – both on part of us as Beneficiary as well as on part of the International Community partners engaged in reform.

INTERVIEW WITH MR KUJTIM BYTYQI, KOSOVO* SECURITY COUNCIL SECRETARIAT, JANUARY 2018

The assistance of WBCTi and its representatives has proved to be most beneficial so far, including its contribution to the first national workshop executed via the First Line project supported by the EU in mid-2017 held in Pristina. The all-inclusive format of participation enabled an open and fruitful debate among relevant national partners, resulting in a welcome new approach and a comprehensive policy proposal for aligning the approaches of external assistance efforts to national institutional P/CVE solutions. In addition, according to my assessment, the annual joint meetings of the three regional platforms on CT and PVE held

with the support of the WBCTi and the EU, have contributed to a beneficial exchange of information and good EU practices, enhanced the awareness of our colleagues from the rest of the region and the EU on challenges dealt with in Kosovo*, and changed the perspective of our national experts and officials at different levels on their relevant roles in externally supported endeavours and processes. We have found the comprehensive overview offered by the WBCTi plans of action as beneficial and reliable, and our cooperation with the IISG has been based on mutual trust and transparency.

- Interviewee believes it is in Kosovo* interest as well as the interest of the EU and wider International Community to reach any objectives we set for our cooperation in an efficient manner, aligning the efforts of the external projects from the very start as this will also prevent wasting of donors' resources (human and financial), and that what the WBCTi (IISG) is offering.
- He highlights that the assistance of WBCTi and its representatives has proved to be most beneficial so far, including its contribution to the first national workshop executed via the First Line project supported by the EU in mid-2017 held in Pristina – There was the first idea on P-R-A Concept presented.
- He finds the comprehensive overview offered by the WBCTi plans of action as beneficial and reliable, and our cooperation with the IISG has been based on mutual trust and transparency.

INTERVIEWS WITH MR ELSON MALAJ AND ENRIK QENAMI, COUNTER TERRORISM DIRECTORATE, ALBANIAN STATE POLICE, FEBRUARY 2018

With the assistance provided by the WBCTi and the IISG approach, we have reached progress and increased our capacities in the field of legislation adoption; we have gained new knowledge on the area of prevention and on the approach to P/CVE, incl. on the development of closer cooperation between governmental agencies and the civil society; on relevant UN instruments that we had committed to implement, such as the UN Global Strategy on Terrorism. The WBCTi has helped to put into context our national efforts in dealing with violent extremism that lead to terrorism and for monitoring the (returning) Foreign Terrorism Fighters from Albania, incl. the initiation of procedures for setting up a NATO centre of excellence in Albania, which will deal with the phenomenon of foreign terrorist fighters. We support the future WBCTi Integrated Plan of Action to assist us in further efficient reform, including our participation in the concrete efforts against Violent Extremisms and the threat of Terrorism, which are no longer isolated or intended each for its own sake, but have been brought into line.

- The two interviewees believe that the assistance provided by the WBCTi and the IISG approach, supported them to reach progress and to increase their capacities in the field of legislation adoption but also offered them new knowledge on the area of prevention and on the approach to P/CVE, incl. on the development of closer cooperation between governmental agencies and the civil society.
- They highlighted that the WBCTi has helped to put into context our national efforts in dealing with radicalisation that lead to violent extremism or terrorism and for monitoring the (returning) Foreign Terrorism Fighters from Albania.

DISCUSSION: PREVENT-REFER-ADDRESS CONCEPT (P-R-A) TO BE APPLIED IN THE WESTERN BALKANS

The nature of the Prevent-Refer-Address concept is not to be interpreted as prescriptive or binding. However, it aims to provide direction as well as clear and sufficient guidance to all WBCTi partners and Beneficiaries' authorities, so that they are able proceed towards the same standard and strive for the achievement of equal performance of all Beneficiaries in this particular area of policy, while at the same time allowing for adjustments if/when required by a Beneficiary's specific circumstances. It is namely a document owned by all WBCTi partners who have a shared understanding of the grave need to ensure and work together to achieve an integrated approach in terms of further policy reform and capacity-building in the target region of the Western Balkans.

The initial draft concept of the P-R-A mechanism resulted as an output from the EU interactive inter-agency workshop held in Pristina, Kosovo* between 4–5 July 2017, held within the EU co-financed project "First Line" led by the Slovenian National Police, and was adjusted at the First Line interactive workshop in Sarajevo, December 2017 and finally in Skopje, March 2018 (EU First line, 2018).

The P-R-A concept is intended to enable the WBCTi beneficiary authorities to prevent, refer and address individuals vulnerable to radicalisation that lead to violent extremism or terrorism. It involves the setting-up of an efficient and sustainable multi-agency solution, involving multiple levels – at least the state level and the local community (municipality) level, both consisting of relevant governmental and non-governmental civil society partners and experts needed in specific cases. The purpose of multiple levels is indicated in the list of potential tasks at various levels. National level ensures sustainability.

First, those national bodies that are already appointed as responsible bodies for the implementation of national CT or P/CVE strategies (e.g. inter-agency working groups and/or an appointed national authority—depending on relevant national arrangements), supported by relevant special services and experts where needed, might represent the state-level of the P-R-A. Secondly, the scope and composition of these state-level P-R-A platforms will be "mirrored" at the local level in P-R-A panels. The local-level P-R-A panel will thus include first liners, which also includes all relevant civil society partners.

The local level P-R-A platform will involve/make use of relevant existing structures and mechanisms, and devotes its efforts to individual cases of on prevention, de-radicalisation, disengagement and re-integration. Local specificities, administrative arrangements and needs have to be taken into account.

The local-level P-R-A panels will receive 'top-down' guidance (when and how to act where the first liners' response is required - guidelines), political and financial support from the state-level P-R-A platform. Vice versa, the P-R-A concept will also enable 'bottom-up' feedback from the local level to policy-makers at the state level. The support of academia is of vital importance.

An additional international dimension to the P-R-A cooperation is foreseen. Namely, once the P-R-A mechanisms in the Western Balkan Countries are set up and operational, they are supposed to be connected into a 'Western Balkans P-R-A Network, intended to strengthen cooperation, share expertise and good practice acquired by local-level P-R-A platforms in the Western Balkan Region, and also with the RAN CoE or other relevant knowledge institutions and partners.

CAPABILITIES OF P-R-A MECHANISM USING MULTI-STAKEHOLDER APPROACH

To prevent vulnerable individuals of being driven to violent extremism or terrorism, following a risk-based approach and coordinated prevention measures executed primarily at local/municipality level, supported by the national level, in order to disengage them from the radicalisation process.

To refer individual cases which exhibit signs of increasing radicalization towards violent extremism or terrorism or those who are confirmed to be in need to be de-radicalised or re-integrated into the society, to P-R-A panel at local level in order to develop risk assessment and corresponding action plan.

To address the referred cases, their roots, triggers and instrumental factors in order to de-radicalise or to re-integrate such individuals back to the society.

Is there a difference or duplication between “P-R-A” and “Referral” solutions, both currently under discussion and development in the Western Balkans? The first fact that needs to be emphasised is that the P-R-A is not a mechanism driven by police. The “R” standing for the concept of ‘referral’ (‘Referral Mechanism’) is inherent in the “P-R-A” solution as an integral part of it. The P-R-A therefore covers a wider span of the optimal policy approach – it namely strives to cover the ‘prevent’ and the ‘address’ components.

Secondly, the P-R-A aims towards full synergy between all WBCTi partners (incl. those engaged in the IPA 2016 WB P/CVE regional action) and the optimal development of any existing efforts that had already started in respective WB countries. Any efforts on the part of WBCTi will fully consider the valuable contributions on part of the Referral Mechanism pilot projects in the WB region.

Some developments with referral mechanism in the WB Region are heading towards police driven systems following the models set in Austria and Finland. The dilemma is whether the societies in the WB are comparable with societies in those two countries and whether mutual trust will not be jeopardized, moreover, referral mechanism in Finland is pretty sovereign at a local level without support from the national level which might affect sustainability in a long term.

In Finland, Turku, the cooperation group has arranged training for different actors, and this has been considered both necessary and successful. The operation of the network is felt to be useful and the network has promoted cooperation between different actors and increased trust. The Southwest Finland Police Department has established an internal cooperation group that coordinates and develops the actions of the police in preventing violent radicalisation and extremism (Ministry of the Interior of Finland, 2017).

Staff in all specified authorities should have sufficient training to be able to recognise vulnerability of a colleague, patient, student or peer being drawn/radicalised into extremism/terrorism, and be aware of where to get additional advice and support and ultimately what action to take in response. Partnership with local Police Prevent Leads can inform Prevent Leads / SPOC in establishments with information from Counter Terrorism Local Profiles (CTLP’s) so that all establishments are up to date in their area. (Somerset county council, 2016)

When implementing a P-R-A concept all P/CVE-relevant existing authorities at all levels have to be included and adequate training provided to be able to recognise vulnerability of individuals and to take an action of prevention, disengagement, de-radicalization or an action of referral to the P-R-A panel at the local level. Inclusion of all relevant partners at local level as well as use of bottom-up approach in developing specific model coming from within, not be imposed from without, is crucial for success (Kühle & Lindekilde, 2010: 129).

Particular importance should be dedicated to the education system where guidelines are needed for representatives of education system at local level. The French Ministry of Education, Higher Education and Research, issued a booklet for directors of educational institutions and educational staff that explains the referral mechanism that is currently in place in France to report cases of radicalisation that lead to violent extremism and to support youth at risk. It also provides background information on the process of radicalisation and its warning signs, instructions to report cases, contact details of relevant public services for personnel seeking guidance and information on the legal frameworks that govern the referral system (United Nations educational, scientific and cultural organization, 2017).

There is also a need to enable lower secondary school teachers to tackle the complex subjects of terrorism and radicalisation with confidence. Secondary school teachers need to be able to present political violence within a broad context of perceived injustice, using familiar emotions of anger and disappointment to introduce the notion of grievance, a precursor of all forms of terrorism. These subjects together with the causes and consequences of terrorism will help teachers to explain to children what terrorists do and why they do it; how to differentiate between the reasons, goals and methods of terrorists; why the media and terrorism are inextricably linked; what makes terrorism start and, crucially, what factors bring a cycle of terrorism to an end. Pupils should be invited to reflect on the destructiveness of terrorism for both victims and aggressors (Jamieson & Flint, 2015).

Multisectoral approach is not enough, the tolerance education should be approached holistically. This means that research and practices in this area should be directed to looking at the whole school, not just particular parts of the teaching and learning in a school. What is meant by a whole-school approach includes the school's policies and vision, the quality of the curriculum and teaching, leadership and management, culture, student activities, and collaboration with the wider community, which all together contribute to the promotion and nurturance of tolerance within the school community (Raihani, 2011).

Setting-up and management of the sustainable P-R-A mechanism requires full integration of a national CT or P/CVE coordination authority and corresponding objective(s), partners and references in the national P/CVE strategy. Without political and financial support sustainability is put on risk. International community can invest and develop pilot projects at local level, which presents a transitional period until governments of the Western Balkan countries are ready to take over autonomously running of this mechanism.

Recommended partners of the P-R-A mechanism at National Level are: Ministry of education, Ministry of local government administration, Ministry of internal affairs/police, Ministry of culture, youth and sports, Ministry of health, Ministry of labour, family and social well fare, prison and probation authorities, academia, association of municipalities, selected representatives of local communities, association of NGOs and other civil society partners, religious communities representatives, governmental office responsible for strategic communication (establishment of effective communication mechanism to communicate with public).

Recommended partners of the P-R-A mechanism at local level are: local government representative (supposed to chair P-R-A panel meetings at local level and convene meetings of the P-R-A panel, format in accordance with agenda items, existing structure and formats (i.e. safety council) could be used to meet in the P-R-A format), representative of education at local level (teachers), centres for social affairs (social workers), psychologists, representative of culture, youth and sports at local level, representatives of health sector (general practitioners), representatives of police (community policing representatives),

representatives of prison and probation authorities, academia, religious communities, NGOs, other CSO and municipality actors invited in individual cases when/where relevant i.e. trainers from sport clubs, parents, organisations of teachers, etc.

The following tasks are recommended for the P-R-A mechanism at national Level: political, financial and strategic support to the work of P-R-A mechanism at local level (municipalities); development of P-R-A mechanism in line with CT or P/CVE national strategy objectives; coordination and communication; standard procedures for local level by sectors (ministries for their authorities at local level); drafting new and amending legislative proposals/initiatives, when needed; development of guidelines for specific sector of the P-R-A mechanism at local level; Supporting research at local levels to identify root causes, triggers, instrumental causes, vulnerable groups (define), etc. – an input for local P-R-A mechanisms; regular communication between national and local level, including crisis communication; to analyse feedback from local level; providing local level with new “*modi operandi*” on radicalisation that lead to violent extremism; to exchange good practices with regional partners - equivalent mechanism in other countries; and monitoring and evaluation.

Recommended tasks for the P-R-A mechanism at local level are, to: screen information received directly to the P-R-A panel, through a local P-R-A partner or others including via dedicated website on individual vulnerable to radicalisation that lead to violent extremism or terrorism; assess the nature and extent of the risk (or to agree on the way of acquisition of additional information needed); develop an action plan in individual case and assign tasks to the most competent local partners (format of partners: in accordance with specific needs and MoU/agreement between P-R-A partners); reach an agreement on the monitoring of the action plan on a vulnerable individual; and to evaluate progress achieved (the level of disengagement, de-radicalisation and re-integration of radicalised individuals, etc.).

P-R-A panel at local level can also meet to address to develop action plan for referred individual on de-radicalisation or re-integration of radicalised individual into society or to exchange good practices with P-R-A partners from other municipalities, from the WB Region or other countries. P-R-A panel can also meet to discuss a need for research at local level to identify and better understand root causes, triggers, instrumental causes, vulnerable groups or to report to the national level the new “*modi operandi*” of radicalisation, the scope and level of risk in the community, etc. When developing de-radicalisation actions at local level, it would be recommendable to avoid special targeting of e.g. Muslim free schools, youth centres with high ratios of Muslim youths, or certain mosques (Kühle & Lindekilde, 2010: 131).

The Channel was first piloted in 2007 and rolled out across England and Wales in April 2012. Channel is a programme which focuses on providing support at an early stage to people who are identified as being vulnerable to being drawn into terrorism. The programme uses a multi-agency approach to protect vulnerable people by: (a) identifying individuals at risk; (b) assessing the nature and extent of that risk; and (c) developing the most appropriate support plan for the individuals concerned. (Channel duty guidance, 2015).

The “prevent” component entails sensitive steps which have to be conducted in order to offer a comprehensive and qualitative preventive support at the local level. The Somerset County Council utilize the following steps of the process: (a) assess the risk of radicalisation; (b) give confidence; (c) offer support and guidance; (d) develop an action plan to reduce the risk; (e) have trained staff to recognise radicalisation and extremism; (f) work in partnership with other partners; (g) be aware of referral mechanisms and refer people to channel; and (h) maintain records and reports to show compliance (Somerset county council, 2016).

Information received (referred to) should be first screened and pre-evaluated by the P-R-A panel, if malicious or not relevant the process is closed but recorded, in not, the case is forwarded to the next stage of the process for assessment of risk and vulnerability, followed by an action plan developed with tasks assigned to P-R-A partners in the panel. Key areas to be highlighted within the establishment of a risk and vulnerability assessment: (a) awareness of how individuals within your establishment may be vulnerable to becoming radicalised; (b) ensure measures are in place to minimise the potential for radicalisation or extremism in the establishment; (c) understand the external influences upon staff / members of the establishment and how this can affect their risk of vulnerability; (d) identify the risk associated with this proportionally to your establishment; (e) ensure that all staff are trained in the area of “prevent”; (f) ensure that all relevant policies and procedures (referral plans) are in place to respond appropriately to a threat or incident within the establishment and to safeguard a vulnerable individual according to “prevent”; (g) to ensure that online safety and external speakers and events are included in the risk assessment if relevant to your establishment; (h) the risk assessment to be a dynamic/‘live’ document; (i) to regularly review these risks and update risk assessment to ensure that all procedures and policies are going to the action plan/self-assessment; (j) respond and adjust the risk assessment according to current local, national or international intelligence received from prevent partner agencies. (Channel duty guidance, 2015)

An action plan in individual referred case follows a risk assessment in an individual case referred to the multi-agency P-R-A panel, if local partners in the P-R-A Panel assess and agree that an action plan on individual should be developed. With the support of co-ordinators and others as necessary, any local authority that assesses, through the multi-agency group, that there is a risk should develop a Prevent action plan. This will enable the local authority to comply with the duty and address whatever risks have been identified. These local action plans will identify, prioritise and facilitate delivery of projects, activities or specific interventions to reduce the risk of people being drawn into terrorism in each local authority. Local authority staff will be expected to make appropriate referrals to the P-R-A panel. If the P-R-A panel reaches a consensus on the monitoring and enforcement of an action plan all designated authorities should comply with this duty and would be expected to maintain appropriate records to show compliance with their responsibilities and provide reports when requested. A clear time frame should be determined.

In England and Wales, during the monitoring process they draw together data about implementation of Prevent from local and regional Prevent co-ordinators (including those in health, further and higher education), the police, intelligence agencies and other departments and inspection bodies where appropriate and they monitor and assess Prevent delivery in up to 50 Prevent priority areas. They also maintain contact with relevant departments and escalate issues to them and inspectorates where appropriate (Revised prevent duty guidance for England and Wales, 2015).

Each action plan should be evaluated from the point of the level of disengagement, de-radicalisation or re-integration of radicalised individual or other reason, which triggered the development of action plan by the P-R-A panel. Effective information sharing is key to the delivery of P-R-A Mechanism, so that partners of P-R-A panel are able to identify vulnerable individual, to assess the risk, develop an action plan and to take appropriate action as well as to monitor and evaluate the progress. This will sometimes require a sharing of personal data between partners.

As concerns the sharing of personal data, the following key principle should be respected: Partners may consider sharing personal information with each other for Prevent purposes, subject to a case-by-case basis assessment which considers whether the informed consent of the individual can be obtained and the proposed sharing being necessary, proportionate and lawful (Channel duty guidance, 2015).

The trust between local partners is of vital importance, therefore sensitive area of cooperation such as sharing of personal data or sensitive personal data should be considered very carefully and in full compliance with the legal framework. When developing multi-stakeholder agreements, MoU or other forms of formalisation of their cooperation an information sharing chapter is recommended to be included to highlight provisions which allows exchange of information and personal data but also highlight the limits stipulated often in a very complex legal framework.

CONCLUSION

On 8th September 2017, the Ministers of Interior/Security convened at the Kick-Off Meeting of the IISG (Integrative Internal Security Governance) Board hosted by the Brdo Process chaired by Slovenia, together with other IISG Partners – United Nations representatives, interested EU Member States, EU agencies and institutions, other international actors, donors and representatives of the International Community, reiterated that regional cooperation in the area of internal security remains a priority for the Western Balkan Countries (Ministerial conclusions, 2017). They also expressed preparedness to devote their efforts toward the achievement of greater long-term sustainability of the solutions in this area of policy brought by the contributions of the International Community as a whole; of a higher level of regional ownership, and of an efficient and holistic approach to the challenges in the area of internal security faced by the region and the EU. The Ministers referred to their earlier conclusions (Ministerial conclusions 2015, 2016) and expressed their support to the implementation of the IISG concept, which will, in their view, contribute to a more efficient contribution of the regional cooperation policy toward the fulfilment of EU standards and the requirements relating to their efforts toward acceding to the EU and the Schengen area. The Ministers also requested the European Commission to continue supporting the implementation of the IISG as a good practice of cooperation between the International Community and the European Union, as a holistic endeavour in the area of home affairs in relation to the regions outside the EU, especially in view of the need for unitary support of the EU to the Western Balkan countries' EU perspective and the need for a renewed effort in the area of reform in the Western Balkans affirmed by the conclusions of the European Council in March 2017. The role of the IISG Board was accepted by the ministers who agreed to continue to convene at least once a year and/or when necessary and so initiated by the IISG Chair (Ministerial conclusions, 2017).

Furthermore, the Ministers endorsed the assigned leading roles in the respective IISG pillars in line with the provisions of the IISG Terms of Reference, granting them to DCAF Ljubljana, Austria and Slovenia for Pillar I, the Secretariat of the Police Cooperation Convention for Southeast Europe and UNODC for Pillar II, and DCAF Ljubljana and Austria for Pillar III (Ministerial conclusions, 2017).

The IISG is not interpreted as merely a project/initiative – it is rather a policy process integrating all forms of external assistance (incl. projects and initiatives) to the WB beneficiaries Albania, Bosnia and Herzegovina, Kosovo*, Former Yugoslav Republic of Macedonia, Montenegro and Serbia. The IISG is EU-initiated, but this does not limit

ownership to the EU. It is namely primarily owned by its beneficiaries, who are in charge of monitoring and participate their needs in all crucial phases of planning. It is also a process owned by all international and regional state and non-state actors/donors (incl. the United Nations agencies, Organization for Security and Cooperation in Europe, Council of Europe and all country donors) who support the process in order to maximize the sustainability of their efforts (Ministerial conclusions, 2017).

During September 2017–February 2018, the IISG Lead Partners prepared finalized drafts of Integrative Plans of Action (iPAs) for 2018-2020 in consultation with Beneficiaries' services, EU institutions and international partners (Ministerial conclusions, 2018). The process proceeded from identifying a list of regional priority needs to incorporate all relevant actions, objectives as well as expected outputs of IISG partners. Any revealed cross-cutting threats, horizontal needs and priorities are duly submitted to inter-pillar coordination, a core task of the IISG Support Group. It is important to note that the iPAs will remain "living" documents throughout the implementation period; are to be updated regularly and will remain accessible at the IISG website (www.wb-iisg.com). The iPA tool is at the same time complemented by the online database of activities and is supported with the core tasks of the IISG Support Group.

The WBCTi iPA 2018-2020, coordinated by Slovenia, Austria and DCAF Ljubljana, is working on the achievements of the first WBCTi iPA (2015-2017), focusing on both prevention and countering of radicalisation that lead to violent extremism or terrorism, while leading the way for future actions based on commonly developed policy solutions, including the Prevent-Refer-Address concept.

At the Second IISG Board Meeting in March 2018, the IISG Board endorsed the three Integrative Plans of Action for the period 2018-2020, where addressing radicalisation that lead to violent extremism or terrorism was highlighted as one of the top priorities (Ministerial conclusions, 2018).

Much work is already under way at EU level to help build capacities in the Western Balkans and facilitate international police and judicial cooperation to counter threats originating from organised crime and terrorism, including radicalisation that lead to violent extremism, the challenge of foreign terrorist fighters and the trafficking of firearms and explosives. This engagement should be further reinforced, based on successful initiatives in the field of security and counterterrorism and be underpinned by the ongoing security policy dialogue between the Union and the Western Balkans (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018).

The Integrative Internal Security Governance process in the Western Balkan Region has contributed considerably to the streamlining and consolidation of efforts of international partners in filling the internal security gaps in the region. The IISG as a policy cycle in the Western Balkan Region has aligned regional policies and capacity-building efforts with regional needs and priorities in the area of internal security based on widely received support and commitment. Policy process of integration of donor assistance efforts and activities, preventing duplication and creating synergies, aided by joint multi-annual Integrated Plans of Action for each respective IISG pillar, including for the WBCTi, sets the implementation of the Prevent-Refer-Address (P-R-A) concept as high priority.

Number of international partners have seized the opportunity and engaged themselves into the development of P-R-A or referral mechanism or at least grounds for their development. In the first stage, their endeavours are mainly focused on the development of

self-standing pilot project at local level or raising awareness among future local partners in the mechanism. Many of ongoing projects do not foresee engagement of relevant national level in the P-R-A mechanism, which will hinder sustainability of the mechanism. Some of the actions are focused too much on a law enforcement, not as a driving force of the development process in the first stage but designs a mechanism led and built on the law enforcement structure. Too much of P-R-A ownership given to the law enforcement as a partner might affect the trust in the P-R-A mechanism by non-government partners at the local level, such as NGOs and religious communities. This problem hinders cooperation between governmental and non-governmental side even in societies with developed trust between governmental structure and civil society organisations.

The IISG process, with its organs such as the IISG Board and the IISG Support Group with Lead Partners, has already taken a successful action to prevent overlapping and to reach consolidation of efforts between international partners.

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**POLICING
AND
CRIMINAL
INVESTIGATION**

LEADERSHIP DEVELOPMENT IN SLOVENIAN POLICE: REVIEW AND WAY FORWARD

Džemal Durić¹, Robert Šumi²

ABSTRACT

The paper presents a review of evidence-based leadership development efforts in Slovenian Police since 2008 to 2018 and development agenda from 2018 to 2023. First, leadership studies, leadership development, and talent management theoretical frameworks are introduced. Second, contextual institutional and policy-making framework is presented. Third, key leadership development activities and mechanisms developed in last ten years and development agenda for next five years are examined. Results indicate a cycle pattern, which includes: (a) scientific research and professional analysis of phenomena, (b) evidence-based policy development and decisions, and (c) practical development and implementation of leadership development mechanisms and activities. Systematic evaluation of leadership development activities will be incorporated in the future development agenda.

Keywords: leadership, leadership development, talent management, Police, Slovenia

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INTRODUCTION

Leadership is one of the most important predictors of whether organizations are able to effectively function in dynamic environments and as such the need for effective police leadership is greater than ever (Herrington & Colvin, 2015; Pearson-Goff & Herrington, 2013a). But what do we know about police leadership and police leadership development? General trend in police organizations worldwide is that Police remains relatively unique as a profession with only one entry point for those aspiring to the top leadership positions: as recruit starting at the bottom and working one's way up. Police officers start their career as recruit, working on the front line, and developing expertise in policing tradecraft. Most of the current senior police leaders will not have been exposed to leadership concepts and development until the early-mid management ranks. Police organizations are generally led by those, who, over extended careers, have been rewarded by promotions processes that values police tradecraft, tradition, and experience, rather than formal education in leadership (Roberts, Herrington, Jones, White, & Day, 2016; Durić, 2016a). There would be a much more proactive approach a (police) leadership talent management – that is, getting the right leader in the right position at the right time – based on relevant scientific findings in the fields of leadership studies, leadership development studies, and particularly in the police leadership talent management (Cappelli & Keller, 2014; Smith, 2015). To this end, in this paper we review evidence-based leadership development in Slovenian police since 2008 to 2018 and present development agenda from 2018 to 2023.

THEORETICAL FRAMEWORK

Theoretical framework for this paper consists of selected leadership theories and models, leadership development theories and models, and talent management models, which informed: (a) different kinds of organizational analyses, (b) policymaking process, and (c) development and implementation of leadership activities and mechanisms.

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LEADERSHIP STUDIES

Leadership studies is currently an emerging discipline, on the verge of becoming recognized as a “stand-alone” discipline in the next several decades. Leadership studies is mostly composed of scholars who are primarily trained in multiple traditional disciplines, and much of the work that is done in studying leadership crosses disciplinary lines (Riggio, 2011). Scholarly research on the topic of leadership has witnessed a dramatic increase over the last decade, resulting in the development of diverse leadership theories (Dinh, Lord, Gardner, Meuser, Liden, & Hu, 2014). From the extensive review of leadership theories done by Dinh and colleagues the following established and emergent theories are relevant for our study: Neo-charismatic Theories, Contingency Theories, Ethical/Moral Leadership Theories, and Identity-Based Leadership Theories.

Neo-charismatic Theories emerged historically from charismatic leadership theory (Conger & Kanungo, 1988; Shamir, House, & Arthur, 1993) and transformational leadership theory (Bass & Riggio, 2006) and present the dominant forms of interest. *Contingency Theories* present another research interest including Path-goal theory (House, 1971), Situational leadership theory (Hersey, Blanchard, & Johnson, 2007), Normative decision model (Vroom & Jago, 1974) and others. *Ethical/Moral Leadership theories* increased concern with regard of the ethical/moral values-based content of a leader’s behaviour. There are four leadership theories, which together share common interest in positive, humanistic behaviours: Authentic leadership (Avolio & Gardner, 2005), Ethical leadership theory (Brown & Treviño, 2006; Šumi, Mesner-Andolšek, Pagon & Lobnikar, 2012), Servant leadership theory (Greenleaf, 1998; Liden, Wayne, Zhao & Henderson, 2008) and Spiritual leadership (Fry, 2003). *Identity-Based Leadership Theories*. This thematic category consists of the newly introduced Social identity theory of leadership (Haslam, Reicher & Platow, 2011; Hogg, 2001).

We also incorporated DAC ontology of leadership (Drath, McCauley, Pauls, Van Velsor, O’Connor, & McGuire, 2008) which replaces the tripod’s entities – leaders, followers, and their shared goals – and in which the essential entities are the three leadership outcomes: (a) *direction*: widespread agreement in a collective on overall goals, aims, and mission; (b) *alignment*: the organization and coordination of knowledge and work in a collective; and (c) *commitment*: the willingness of members of a collective to subsume their own interests and benefit within the collective interest and benefit.

This study was also informed by conceptual, review, and empirical literature about leadership in police organizations or police leadership (Schafer, 2009, 2010; Campbell & Kodz, 2011; Pearson-Goff & Herrington, 2013a; Herrington & Colvin, 2015; Flynn & Herrington, 2015).

LEADERSHIP DEVELOPMENT

Many scholars assert that leadership involves a social interaction among two or more individuals in pursuit of a mutual goal (Day & Thornton, 2018). For this reason, it has been proposed that what is termed leadership development is more appropriate to be termed leader development (Day, 2000). Leadership cannot be developed directly unless intact dyads, work groups, or the organization as a whole are the focus of development. Based on this distinction, the constructs can be described in these ways: *Leader development* is the expansion of an individual’s capacity to be effective in leadership roles and processes, whereas *leadership development* is the expansion of an organization’s capacity to enact basic leadership tasks needed to accomplish shared, collective work (McCauley, Van Velsor, & Ruderman,

2010). Day and Thornton (2018) use term *leader/ship development* to indicate both leader and leadership development. Instead of focusing mainly on organization position, hierarchy, or status to denote leadership, the notion of roles and processes refers to behaviours or other actions enacted by anyone regardless of formal role that facilitate setting direction, creating alignment, and building commitment (Day & Thornton, 2018). Research and theory of leader/ship development addresses the following questions (Day & Dragoni, 2015; Day & Thornton 2018; Day, Fleenor, Atwater, Sturm, & McKee, 2014): Are leaders born or made? Do leaders develop and/or change over time? What develops in leader development? How best to promote leader/ship development? How to improve leader/ship development science and practice?

Determining what develops as a function of leader development initiatives is integral to advancing research as well as practice. Leadership competencies could be considered as bundles of leadership-related knowledge, skills, and abilities. Some scholars argue that competency models are a best practice (Hollenbeck, McCall, & Silzer, 2006), and others have countered that competency models provide an overarching framework that helps focus individuals and organizations in developing leadership skills. Specifically, competency models help individuals by outlining a leadership framework that can be used to help select, develop, and understand leadership effectiveness, and also employed as a basis for leadership training and development initiatives within an organization (Day & Thornton, 2018). A generic model of leadership skill requirements across organizational levels which was used in this study is the so-called leadership *strataplex* (Mumford, Campion, & Morgeson, 2007). At its core, the model proposes that leadership skills requirements can be understood in terms of four general categories: (a) cognitive, (b) interpersonal, (c) business, and (d) strategic skills. The second model we used was the Competing values framework of management and leadership skills (Cameron & Quinn, 2006; Whetten & Cameron, 2007) assessing leadership skills in eight roles: mentor, facilitator, broker, innovator, monitor, coordinator, director and producer.

In relation to question how best to promote leader/ship development there are different approaches how to integrate theoretical and practical standpoints. Approaches to developmental practices could be categorized as follows (Day & Thornton 2018): (a) structured programs to develop leaders and leadership, (b) developing leadership through experiences, (c) deliberately developmental organizations (DDO). *Structured programs* are focused on individual skill development (assessment, feedback, coaching, action-oriented development plan etc.), on socializing with the vision and values of the organization, on active strategic change management, and on action learning initiatives. Although leader/ship development programs are popular within organizations, most senior leaders claim they developed through *on-the job experience*. The most proposed leader development model in which any experience can be made more developmentally powerful to the extent that it includes aspects of assessment, challenge, and support (McCauley & Van Velsor, 2004). The *DDO concept* is a relatively new addition to the literature on leadership development. It is innovative approach to simultaneously develop people and organizations (Kegan & Lahey, 2016) by embedding ongoing developmental practices in the culture of an organization (Day & Thornton 2018).

This study was also informed by review and empirical literature about leadership development in police organizations or development of police leadership (Kodz & Campbell, 2010; Schafer, 2009, 2010; Pearson-Goff & Herrington, 2013b; Roberts et al., 2016). Another topic relevant for this study is development of leadership potential which received more attention in the talent management literature.

TALENT MANAGEMENT

Talent management is defined as “an integrated set of processes, programs and cultural norms in an organization designed and implemented to attract, develop, deploy and retain talent to achieve strategic objectives and meet future business needs” (Silzer & Dowell, 2010:18). Collings and Mellahi (2009: 304) define strategic talent management as “activities and processes that involve the systematic identification of key positions which differentially contribute to the organization’s sustainable competitive advantage, the development of a talent pool of high potential and high performing incumbents to fill these roles, and the development of a differentiated human resource architecture to facilitate filling these positions with competent incumbents and to ensure their continued commitment to the organization.”

There are different theoretical and practical approaches to talent management (Dries, 2013; Gallardo-Gallardo, Dries, & Gonzales-Cruz, 2013; Meyers, Van Woerkom, & Dries, 2013; Tansley, 2011). *Talent* is distinguished from *high-potential* talent or *high potentials*, in that the term talent usually refers to current and demonstrated knowledge, skills, and abilities, while *potential* is the possibility of developing knowledge, skills, and abilities in the future (Silzer & Davis, 2010). *High-potential for leadership*, or *leadership potential*, can ultimately be measured by accelerated advancement and successful performance in higher level leadership positions. Leadership potential is ultimately confirmed as individuals who later become successful organizational leaders. Challenge is to distinguish these individuals earlier in their career based on those abilities, skills, characteristics and behaviours that are reliable predictors of later leadership success (Churc & Silzer, 2014).

For this study two models are relevant: BluePrint for Leadership Potential (Churc & Silzer, 2014) and Consensus Model (Dries & Pepermans, 2012). The Leadership Potential BluePrint outlines an overall framework of three types of dimensions (*fundamental*, *growth*, and *career*) and six building blocks that provide a framework of the skills and abilities that make up leadership potential in total. These building blocks are both additive and relatively independent from each other. They outline key characteristics and skills that an individual may naturally have or demonstrate (Church & Silzer, 2014). The Consensus model of leadership potential consists of four dimensions: *Analytical skills* (Intellectual curiosity, Strategic insight, Decision making, and Problem solving); *Learning agility* (Willingness to learn, Emotional intelligence, and Adaptability), *Drive* (Results orientation, Perseverance, and Dedication); and *Emergent leadership* (Motivation to lead, Self-promotion, and Stakeholder sensitivity) (Dries & Pepermans, 2012).

Examples of studies of talent management in police organizations are recent Smith’s (Smith, 2015, 2016) studies in British policing.

INSTITUTIONAL AND POLICYMAKING FRAMEWORK

Presented theoretical concepts were selectively tested in several analysis and research initiatives between 2008 and 2018. There was a cycle pattern which includes: (a) scientific research and professional analysis of phenomena, (b) evidence-based policy development and decisions, and (c) practical development and implementation of leadership development mechanisms and activities. In this section we introduce wider context of relationships among different organizational units which have different roles in each above-mentioned phase.

INSTITUTIONAL FRAMEWORK

Institutional framework consists of organizational units in Police, which could have different roles in systematic leadership development: decision-making role, consulting role,

development role, and implementation role. The main regular and temporary organizational units and forms involved are: Director General of the Police, Police academy, Program Board of Police Academy, Ethics and integrity Committee, Working Group 2008- 2009, and Project group 2018 – 2023.

Police performs its tasks at three levels: the state, the regional and the local levels. Organizationally, it is composed of General Police Directorate, Police Directorates and police stations. Police is headed by the Director General of the Police, who also conducts the work of the General Police Directorate. In relation to our study Director General for the Police has decision making role in regards to implementation of legislation, adopting strategic plans and policy documents, and approving development projects. Director general of the Police adopts strategic and operational decisions together with Management Board which consists of all directors of national and regional police directorates.

Police academy is part of General Police Directorate and is composed of Centre for Research and Social Skills, Police College, Training Centre, Security and Support Division, Service Dogs Training Section, and Top Athletes Section. In general Police academy is responsible for development and implementation of police education and training programs. For this study the most relevant are Training Centre which has implementing role and Centre for Research and Social skills which was established in 2014 and has development, consulting, and implementation roles in relation to systematic leadership development.

Program Board of Police Academy is a decision-making body for strategic issues in the field of education, training, and scientific research in Police. All decisions have to be approved by the Director General of the Police. Members of the Program Board of Police academy are representatives – mostly directors and/or heads – from organizational units at the state, the regional and the local levels.

Ethics and integrity Committee is consulting body to the Director General of the Police. Ethics and integrity committee deals with strategic proposals and recommendations, questions and dilemmas in relation to integrity and ethics.

Working Group 2008–2009 was a temporary established group composed by representatives from different organizational units with the task to conduct systematic analysis of leadership system and to develop and recommend leadership development program (see Leadership development section below).

Project group 2018 – 2023 is a temporary project group composed by representatives from different organizational units with the task to implement development activities envisioned from 2018 – 2023 (see Leadership development section below).

Following Selznick's conceptualization of "organization" as formal system of rules and objectives – rational instrument engineered to do a job and "institution" as a responsive, adaptive organism (Selznick, 1957, p. 5) it is evident that some organizational entities (Ethics and integrity Committee, Working Group 2008 – 2009 and Project group 2018 – 2023) evolved as responsive and adaptive organisms addressing leadership development challenges in Slovenian Police.

POLICYMAKING FRAMEWORK

Decision-making role of policymaking bodies (*the Director General of the Police* and *the Program Board of Police Academy*) didn't change during development period. What changed are the roles of ad hoc working groups after establishing *the Ethics and integrity Committee* in 2011 and *the Centre for Research and Social Skills* in 2014.

“Police practices should be based on scientific evidence about what works best” (Sherman, 1998: 2). In line with the conception of evidence-based policing whose broad focus is on the importance of using rigorous research to guide organizational practice and in line with the expanding scope of evidence-based policing of using scientific research to inform domains of policy, management and practice (Brown, Belur, Tompson, McDowall, Hunter, & May, 2018; Rousseau, 2006; Telep, 2016) there is evident evolution of evidence-based approach to leadership development in Slovenian Police.

In the beginning of development period (as it will be seen in the following section) research and analysis was conducted by working groups and results were used particularly for the purpose of particular projects. Since establishment of *the Ethics and integrity Committee* and *the Centre for Research and Social Skills* scientific research got important role providing input for policy-making, management and practice of leadership development. Evolved cycle pattern includes: (a) scientific research and professional analysis of phenomena, (b) evidence-based policy development and decisions, and (c) practical development and implementation of leadership development mechanisms and activities.

LEADERSHIP DEVELOPMENT IN SLOVENIAN POLICE

Table 1 summarizes development stages, milestones, research projects and publications in the period from 2008 to 2018.

Table 1: *Evidence-based leadership development in Slovenian Police*

Development stage	Milestones	Research/project	Publications
1. Development of Police Leadership Training Program	<ul style="list-style-type: none"> • 2008 – Working group (WG) established • 2010 – Training program implementation • 2011 – Ethics and integrity Committee (EIC) established 	<ul style="list-style-type: none"> • 2009 – Analysis of leadership system (WG) 	<ul style="list-style-type: none"> • Report of analysis (Policija, 2009) • Training curriculum (Policija, 2010) • (Durić, 2011) • (Šumi, 2011) • (Slokan & Šumi, 2011) • (Durić, 2012) • (Žagar & Durić, 2012) • (Durić & Žagar, 2012) • (Durić, 2015a)
2. Development of Deputy Commanders Selection and Recruitment System	<ul style="list-style-type: none"> • 2014 – Centre for research and social skills (CRSS) established • 2015 – Deputy commanders selection and recruitment system implementation 	<ul style="list-style-type: none"> • 2013 – Organizational climate (EIC) • 2015 – Organizational climate (EIC) • 2015/ 2018 – Leadership recruitment (CRSS) 	<ul style="list-style-type: none"> • (Bobnar & Šumi, 2014) • Guidelines (Policija, 2015) • Leadership recruitment – interim report (Durić, 2015b)
3. Project: Development of Police Leadership Talent Management Model	<ul style="list-style-type: none"> • 2018 – Project group (PG) for development of Police Leadership Talent Management Model established 	<ul style="list-style-type: none"> • 2017 – Organizational climate (EIC, CRSS) • 2018 – Evaluation of Police Leadership Training Program (PG, CRSS) 	<ul style="list-style-type: none"> • (Durić, 2016a) • (Durić, 2016b) • Leadership recruitment – final report (Durić, 2018)

The organizing principle for the review are three development stages related to three main mechanisms and activities of systematic leader/ship development in Slovenian Police: development and implementation of Police leadership Training program, development of Deputy Commanders Selection and Recruitment System, and Project Development of Police Leadership Talent Management Model.

REVIEW: 2008 – 2018

In the past, before 2008, there were some leader/ship development initiatives but not systematic for the whole Police. Impetuses for systematic leadership development were strategic documents in 2007 and 2008. *Midrange Police Development plan 2008 – 2012* (Policija, 2007) determined a Program – Training of police leaders in human resource management, which was concretized in *Police work plan 2008* (Policija, 2008) as a task – Development of Police Leadership Training Program. Working group 2008 – 2009 (WG) was established with mandate to: a) conduct analysis of leadership system – training needs analysis and b) develop proposal of training curriculum.

Analysis of leadership system was conducted in the form of survey among police leaders at all three organizational levels and focus groups related to ranks. It incorporated testing elements of transformational leadership (Bass & Riggio, 2006), leadership strataplex (Mumford et al., 2007), competing values framework of management and leadership skills (Cameron & Quinn, 2006), assessing training needs, prioritizing leadership competences, and collecting proposals from survey participants. Results were reported in comprehensive report with proposals (Policija, 2009) and partial results were reported in several research articles (Durić, 2011, 2012; Durić & Žagar, 2012; Žagar & Durić, 2012). Servant leadership (Šumi, 2011; Šumi & Lobnikar 2012; Šumi & Mesner-Andolšek, 2017) and Transformational leadership (Durić, 2015a, 2016b) were also tested among police officers.

Recommended *Training curriculum – Police Leadership Training Program* which was approved by the Program Board of Police Academy and the Director General of Police (Policija, 2010) consist of four common modules (Management and leadership, Human resource management, Business communication, and Team work) and of three specialized modules for different target groups (Police operational management I, Police operational management II, and Police strategic management). Implementation of Police Leadership Training Program started in 2010 and represents the crucial milestone in systematic police leader/ship development. Training program was regularly evaluated on the level of reaction and knowledge in line with Kirkpatrick's Training Evaluation Model (Kirkpatrick, 1998). Systematic evaluation on all levels (reaction, learning, behaviour change, and results) is envisioned for 2018 (see next section).

Other developments relevant for systematic police leader/ship development were establishment of the Ethics and Integrity Committee (EIC) in 2011 and the Centre for research and social skills (CRSS) in 2014. EIC (Slokan & Šumi, 2011) initiated longitudinal surveys of organizational climate in 2013, 2015, and 2017. One of the recommendations based on survey in 2013 was improvement of selection and recruitment system for deputy commanders and overall elaboration of leadership recruitment in Slovenian Police.

Development of Deputy Commanders Selection and Recruitment System on the recommendation of EIC was done based on the case of two regional Police Directorates (Ljubljana and Celje) and formalized in Guidelines signed by the Director General of Police (Policija, 2015). Guidelines provide instructions for leadership potential identification and assessment and provisions about decisions in relation to leadership potential development (participation in Police Leadership Training Program) and selection for deputy commander positions.

Elaboration of leadership recruitment was conducted as research project Leadership recruitment and consisted of evaluation of Deputy Commander Selection and Recruitment System and of evaluation of overall leadership recruitment system. Purpose was also to test Classic Personnel Selection Model (Ployhart & Schneider, 2014), BluePrint for Leadership Potential (Churc & Silzer, 2014) and Consensus Model (Dries & Pepermans, 2012). Interim report (Durić, 2015a, 2016a) elaborated theoretical frameworks from industrial and organizational psychology, (strategic) human resource management, talent management, leadership development, classic selection model, and models for identification, assessment, and development of leadership potential. Final report (Durić, 2018) provides specific recommendations for identification, assessment, and development of leadership potential and for overall recruitment system (see next section).

There are many other leadership development activities, developed and implemented by EIC, CRSS and other organizational units in the period from 2008 to 2018, which were not specifically mentioned and elaborated in this review. For example (Bobnar & Šumi, 2014) EIC and CRSS have the leading role in strengthening of organizational and personal integrity and as well professionalism. In relation to leadership development their role is raising awareness of importance of leading by example, taking care for mutual relations and organizational climate, employees' development, resolving conflict situations and mediation, psychological care and peer support, equal opportunities for both genders, and diversity management.

A WAY FORWARD: 2018 – 2023

Based on efforts of the Ethics and Integrity Committee (research and recommendations based on surveys on organizational climate 2013, 2015, and 2017), efforts of the Center for research and social skills (research and recommendations based on leadership recruitment research project 2015 – 2018), and in cooperation with other organizational units of General police directorate the Project group 2018 – 2023 (PG) was established with the aim to develop Police Leadership Talent Management Model. Mandate of PG incorporates most recommendations from the Leadership recruitment final report (Durić, 2018). PG has the following tasks and activities (Policija, 2018):

- *Survey of police leaders*: survey among leaders at three organizational levels including preparation of recommendations for leader/ship development.
- *Leadership identification and assessment*: development of police leadership potential model, development of measurement tools, training of trainers, proposal for new legal framework.
- *Leadership development*: systematic evaluation of Police Leadership Training Program, development of leadership competency standards, matching competency standards with modules of training programs, improvement of existing and development of new training programs and other leadership development activities, proposal for new legal framework.
- *Legal framework for recruitment system*: specification of job requirements, update of systemization of jobs, implementation of new legal framework.
- *Cooperation with partnership educational and research institutions*: cooperation in regards to completion of specific tasks and common research programs.

The main idea is to conceptually, practically, and with normative regulations divide processes of identification, assessment, and development of leadership potential from

processes of recruitment for specific leadership positions. Figure 1 presents envisioned integrated police leadership talent management model. In the ideal system before to be selected for leadership position all candidates have to pass two stages: (a) to be identified and assessed as leadership potential and (b) to be involved in several leader/ship development activities.

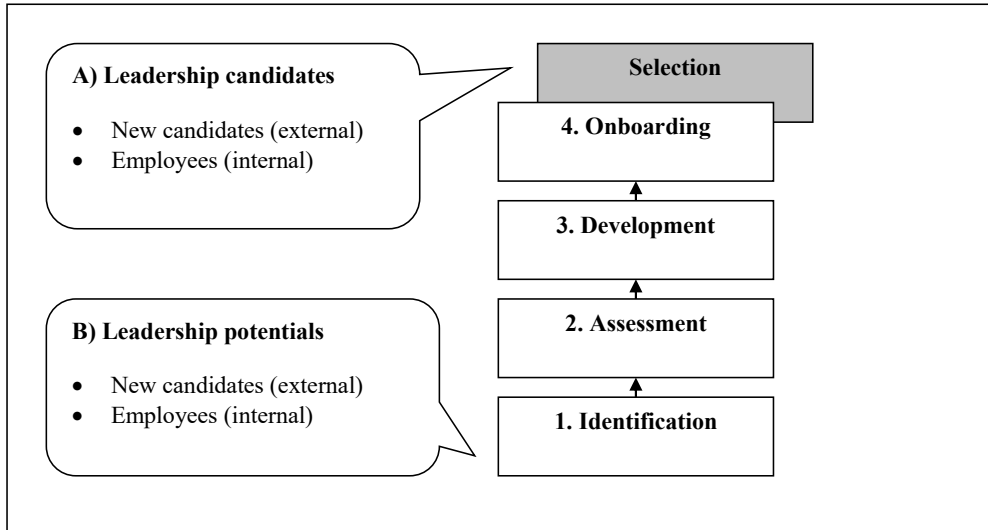


Figure 1: *Integrated police leadership talent management model*
Source: Durić, 2018

CONCLUSIONS

This paper presents a review of evidence-based leadership development in Slovenian Police since 2008 to 2018 and development agenda from 2018 to 2023. Review is organized around three development stages: development and implementation of Police leadership Training program, development of Deputy Commanders Selection and Recruitment System, and Project Development of Police Leadership Talent Management Model. There are clear evolution patterns of content approach, institutional approach, and evidence-based approach to leadership development in Slovenian Police.

Focus of first efforts was just training needs analysis and development of training program, while focus of agenda 2018 – 2023 is development of integrated police leadership talent management model incorporating contemporary approaches of leader/ship development and talent management. In the beginning of development period temporary working group was established to support first development efforts. Crucial role in systematic leadership development contributed Police Academy with Centre for research and social skills and Training centre, Service of the Director General of the Police, and also Ethics and Integrity Committee with fruitful recommendations for future development. But the most important is that during 2008 – 2018 and further the top management of the Police provides full support for all developmental activities. Evidence-based approach evolved from evidence from practice domain (development of training curricula) to policy (input for strategic decisions) and management (recommendations for management practices) domains.

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POLICE CONTACT IN RELATION TO CRIME PERCEPTION AND FEAR OF VICTIMISATION

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ABSTRACT

The paper⁵ explores the quality of police contacts and its relationship with citizens' perception of crime and personal fear of crime. Those constructs were evaluated on a sample of 2,749 Croatian citizens using the Community Policing Evaluation Survey Scale. The results reveal that the quality of contact between the police and citizens in Croatia is slightly above the average and partly influenced by citizens' sex and age. Differences between the bivariate and partial correlations show that age and sex slightly influence the relationships between the variables describing the quality of police contacts and the relationship between perception of crime and fear of victimisation. The correlation between quality of police contacts and perceived crime is higher in females and increases with age. The correlation between quality of police contacts and fear of victimization is also higher in females and increases with age. In the male population, it mostly stagnates with age.

Keywords: quality of police contacts, perception of crime and disorder, personal fear of victimisation.

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INTRODUCTION

Socio-psychological studies on insecurity usually make a distinction between two dimensions: fear of crime and perception of insecurity. Other authors differentiate concepts of objective (depends on changes in crime trends) and subjective (related to an emotional dimension) insecurity (Sessar, 2008). Rader (2004) suggests more inclusive concept of fear of victimisation including three aspects: an affective (fear of crime), a cognitive (perception of risk) and a behavioural (self-restraint behaviours). However, beyond these different approaches, researchers agree on the assumption that studies on insecurity could not be reduced to an analysis of official crime statistics, since citizens' personal feeling of insecurity have to be taken into account as well (Borovec, 2013; Fielding & Innes, 2006). Such concept is in accordance with community policing, which is an accepted contemporary concept of police work in Croatia.

Community policing is aimed not just at controlling, but also at reducing fear of crime and enhancing quality of life of all community members (Cajner Mraović, Faber, & Volarević 2003; Champion & Rush, 1997). Community policing also includes citizens' cooperation and even partnership with police in prevention of crime and disorder (Borovec, 2013; Stevens, 2003). In such a model of police work, police performance is primarily measured by citizens feeling of security, and fear of crime is a key feature of citizens' attitudes toward police (Cajner Mraović et al., 2003; Borovec, Vitez, & Cajner Mraović, 2014).

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To what extent citizens are ready to cooperate with police depends on their trust in the police (Borovec, 2013, Miller & Hess, 2002; Nalla & Meško, 2015), and one of the key determinants of this trust is quality of contacts between the police and citizens. Research to date was primarily focused on the relationship between citizens' trust in police and fear of crime (Borovec, 2013). This study, however, focuses on the relationship between the quality of police contacts with citizens on the one hand, and between perception of crime and fear of victimization on the other hand, whereby age and sex of respondents as important determinants of all three constructs are taken into account.

QUALITY OF POLICE CONTACTS WITH CITIZENS

Significant research has been conducted on examining the interactions that occur between police and citizens. Research has found that voluntary interactions, which are often informal, cause citizens to have a more positive opinion of the police than involuntary interactions (Reisig & Parks, 2000; Ren, Cao, Lovrich, & Gaffney, 2005). On the other hand, involuntary interactions, which are often more formal, cause citizens to have less positive opinions of the police (Borovec, 2013; Reisig & Parks, 2000, Ren et al., 2005). Another interesting finding among many studies is that citizens' opinions of the police increase only slightly when a positive interaction occurs but decreases dramatically when a negative experience occurs (Hinds, 2009; Skogan, 2006). In other words, negative experiences with the police have a profound negative association with public opinion, which causes them to view the police as less effective and more prone to misconduct, while positive experiences do not have such a profound effect (Schafer, Huebner, & Bynum, 2003; Skogan, 2006). The reason behind this is that people with negative interactions feel that they were treated badly and, in general, are more likely to remember and focus upon negative interactions than positive ones. On the other hand, those who had a positive experience had similar views as individuals who reported no interactions at all (Skogan, 2006).

PERCEPTION OF CRIME AND DISORDER

Citizens may perceive disorder and incivilities as an indication of the crime risk. There are also some studies indicating that public disorder may have a stronger association with fear of crime than the prevalence of crime (Perkins & Taylor, 1996). Perkins and Taylor (1996), in their study, found that citizens' perceptions and objective measures of incivilities and public disorder have the same effect on their feeling of insecurity and fear of crime. The same authors (Perkins & Taylor, 1996) also found that the effect of individual perceptions of disorder contributes to fear at both the individual and aggregate levels. According to some studies (Borovec, 2013; Scarborough, Like-Haislip, Novak, Lucas, & Alarid, 2010) positive aspects of the neighbourhood social context, such as social cohesion, shared expectations, and collective efficacy, may moderate the effect of incivilities, decreasing the level of fear of crime.

Many important aspects are present in the relationship between neighbourhood characteristics and public attitudes toward police. It has been found that citizens in disadvantaged neighbourhoods are less likely to have a positive perception of the police in comparison to citizens who live in neighbourhoods with higher levels of quality of life (Skogan, 2006). Some studies also indicate that citizens who perceive high crime rates in their neighbourhood, are more prone to negative attitudes toward police than citizens who do not view their neighbourhood as criminal (Reisig & Parks, 2000). Furthermore, there is

empirical evidence that reveals that citizens who dwell in deprived neighbourhoods view police more negatively because they hold police accountable for the incivilities in their neighbourhood (Cao, Frank, & Cullen, 1996; Ren et al., 2005). It also indicates that the opposite occurs for those in neighbourhoods with less disorder, meaning that there are less negative neighbourhood attitudes (Schuck, Rosenbaum, & Hawkins, 2008). Finally, some studies are focused upon police presence and visibility in the neighbourhood, but findings are quite inconsistent: some of the research has found that the level of patrol presence has no influence on citizens' attitudes toward police, while other studies suggest that there is an increase in citizens' satisfaction with police and reduction in fear of crime with a higher police presence in the streets (Borovec, 2013).

FEAR OF CRIME VICTIMISATION

Fear of crime victimisation is usually defined as a feeling of anxiety regarding the security of a person or of one's property (Amerio & Roccato, 2007), the interpretation of the intangible and tangible consequences of future victimisation (Dolan & Peasgood, 2007), and the emotional response to the risk of future victimisation (Adams & Serpe, 2000). It should be noted that fear of crime referring to the anticipation of personal victimisation is distinct concept from general concern about crime which primarily refers to the perception of crime as a social problem. Regardless of its definition, it is generally agreed upon in the research literature that fear of crime has an important effect on a person's mental health and quality of life. Fear of crime produces chronic stress that makes significant harm to mental health, but can also exhaust physical resources, such as energy and finances, in an attempt to protect against victimisation (Adams & Serpe, 2000). The fear of crime is measured as feelings of satisfaction towards one's own safety and anticipated fear of becoming a victim of crime (Gannon, 2004).

METHODS

The aim of the study was to identify the relationship between the quality of police contacts and citizens' perception of crime and personal fear of crime. In addition to these constructs, sex and age of respondents were included in the analysis.

SAMPLING AND DATA COLLECTION

The data were collected among the residents of different parts of Croatia in spring 2017. The survey comprised of a convenience sample of 2,749 respondents older than 16 years of age. The survey took place in public spaces where people were waiting for something (e.g. banks, schools, cinemas) or just relaxing (e.g. coffee bars), so as not to be disrupted by participating in the survey. The citizens were approached by the interviewer and asked to set aside 10 minutes of their time to participate in the community policing evaluation survey, on a voluntary and anonymous basis. The interviewers were Police College and University of Zagreb graduate students, who were prepared for conducting the survey and who had previously undergone appropriate training in scientific research ethics. All respondents gave their informed consent for participation in the survey. The majority of respondents were between 19 and 50 years old, finished secondary school and live in urban and suburban areas of Croatia.

QUESTIONNAIRE

The data in this study were collected by the questionnaire for community policing evaluation - Community Policing Evaluation Scale (McKee, 2001), adapted to suit the Croatian cultural environment. It consists of four sets of questions, each set including five questions, and space for collecting basic socio-demographic data. The first set, consisting of five questions, refers to the quality of contacts between the police and citizens. The second set of five questions deals with the perception of crime and disorder. The third set of questions focuses on the fear of victimisation. Lastly, the fourth set of questions addresses community cohesion. Respondents used a Likert scale from 1 to 5 to rate their satisfaction with community policing. It should be noted that a higher value in the first set of questions (referring to quality of contact between the police and citizens) is interpreted in the manner that the respondents believe the police have good quality contacts with citizens. A higher value in the second set of questions (perception of crime and disorder) is interpreted as the respondents not perceiving crime and disorder as a problem in their community. For the third set of questions (fear of victimisation), a higher value indicates that the respondents are not afraid of victimisation in their community. In the fourth set of questions (community cohesion), a higher value stands for a higher level of community cohesion.

Quality of police contacts (QPC) is a construct that, within the Community Policing Evaluation Scale (McKee, 2001), is measured with 5 statements which have proven valid in representing that construct in other populations as well as in the Croatian population (Butorac, Mraović Cajner (2017). The same is valid also for Perception of crime and disorder (PCD) and Personal fear of victimisation (PFV) scales. For Quality of police contacts scale the Cronbach α coefficient was calculated, whose amount, 0.835, surpassed expectations, given that the scale contains only 5 particles. The Cronbach α coefficient of reliability of Perception of crime and disorder and Personal fear of victimisation scales only confirms the high internal consistency of each of those scales since it is surprisingly high for scales consisting of only 5 statements: α (PCD) = 0.824, α (PFV) = 0.878.

RESULTS

By using the above described sample of respondents, it has been checked how well the listed statements reflect quality of police contacts in the Croatian population of predominantly adults (only 2.9% of respondents are under 18 years of age), in what manner appropriate contents have been assessed in that population (and whether these assessments differ) and to what extent they depend on age and sex of citizens in the Republic of Croatia.

ASSESSMENT OF QUALITY OF POLICE CONTACT (QPC) SCALE IN THE CROATIAN POPULATION

The mutual correlations of results of the 5 Quality of police contacts statements (Table 1) indicated that they are related positively and moderately high (correlation median amounts to 0.557) and that they are all statistically significant (**= $p < 0.01$).

Table 1: Pearson correlation coefficient for the 5 statements used to assess quality of police contacts

r	How good of a job do you think the police in this area are doing in helping people out after they have been victims of crime?	In general, how polite are the police in this area when dealing with people around here?	In general, how helpful are the police in this area when dealing with the people around here?	In general, how fair are the police when dealing with people around here?	How good a job are the police doing in keeping order on the streets and public places?
1		.625**	.638**	.364**	.551**
	In general, how polite are the police in this area when dealing with people around here?	1	.604**	.398**	.563**
	In general, how helpful are the police in this area when dealing with the people around here?		1	.383**	.564**
	In general, how fair are the police when dealing with people around here?			1	.341**

Note. ** $p < 0.01$

Also bearing witness to the validity of this Quality of police contacts measure is the interrelatedness of the sum of all 5 statements with other relevant variables, of which there are previous empirical findings or theoretical expectations. In that sense, representing valuable data are the correlations of the stated sum, or the composite $(V1+V2+V3+V4+V5) = QPC$ with the equivalent perception of crime and disorder (PCD), Personal fear of victimisation (PFV) and community cohesion (CC) composites. These correlations are expressed by Spearman's r_s coefficient because it has been systematically proven greater than Pearson's r due to the dominantly non-linear relations among the variables: $r_s(QPC, PCD) = 0.387$; $r_s(QPC, PFV) = 0.338$; $r_s(QPC, CC) = 0,357$.

Due to the stated high reliability of the Quality of police contacts scale and the moderately high correlations among the accompanying 5 statements, it is justified to use the composite Quality of police contacts score in further analyses.

DESCRIPTION OF INDIVIDUAL QUALITY OF POLICE CONTACT (QPC) COMPONENTS AND COMPOSITE IN THE CROATIAN POPULATION

The following table depicts to what extent individual Quality of police contacts components and the composite measure are represented in the examined population of Croatian citizens (Table 2).

Table 2: Descriptive statistics and normality tests and asymmetry for each component and Quality of police contacts composite score

Variable	M	C	SD	Q	CV	min	max	D (KS-test)	z (skew)
How good of a job do you think the police in this area are doing in helping people out after they have been victims of crime?	3.39	3	1.12	1	33.0	1	5	0.207**	-7.96**
In general, how polite are the police in this area when dealing with people around here?	3.59	4	1.02	1	28.4	1	5	0.220**	-10.35**
In general, how helpful are the police in this area when dealing with the people around here?	3.46	4	1.07	1	30.9	1	5	0.199**	-8.31**
In general, how fair are the police when dealing with people around here?	3.23	3	1.05	1	32.5	1	5	0.193**	-5.35**
How good a job are the police doing in keeping order on the streets and public places?	3.6	4	0.99	1	27.5	1	5	0.232**	-10.89**
QPC	17.27	17	4.08	5	23.6	5	25	0.070**	-7.10**

Note. ** $p < 0.01$

The measures of central tendency of the individual statements suggest that their scores are balanced and slightly above the theoretical average (3), meaning that citizens of the Republic of Croatia assess the quality of police contacts as being more positive than average. Nevertheless, the conducted ANOVA of repeated measurements has determined that differences among the arithmetical means of the individual statements do exist ($F=115.96$; $df_1=3.625$; $df_2= 9864.94$; $p<0,001$), particularly between V4 (*In general, how fair are the police when dealing with people around here?*) and V5 (*How good a job are the police doing in keeping order on the streets and public places?*) ($t=-16.52$; $df=2732$; $p<0.001$), however, those differences represent less than 5% of the total score variance (partial $\eta^2=4.1\%$). In addition, the average values of the Quality of police contacts composite point to a slightly above-average assessment of quality of police contacts, whereas all observed distributions of this construct point to deviations from normality (Kolmogorov-Smirnov D-statistic is significant at the level of $p<0.001$ for all Quality of police contacts variables) in the direction of negative asymmetry (z-statistic for testing asymmetry is also significant at the level of $p<0.001$). However, the dispersion of all observed variables is ideally high (CV ranges from 23 to 33%) and it is not expected that such distribution of Quality of police contacts variables can cause issues for future correlation analyses.

DEPENDENCE OF INDIVIDUAL QUALITY OF POLICE CONTACT COMPONENTS AND COMPOSITE ON AGE AND SEX

Given that the entire sample of participants was very balanced in terms of sex (49.4% women) and that it encompassed a range of individuals from 8 to 91 years of age, its noticeable size enabled the testing of hypotheses related to the Quality of police contacts sex-age dependence by dividing into 6 sex-age groups (Table 3) and by observing appropriate Quality of police contacts differences by applying a 2X3 quasi-experimental design accompanied by factorial ANOVA.

Table 3: Participants' distribution into 6 sex-age groups of the examined sample

		age (years)		
		younger than 31	31 to 50	older than 50
Sex	female	512	554	277
	male	565	528	280

Factorial ANOVA was conducted for each of the 5 Quality of police contacts statements, as well as for the accompanying composite score (sum of answers to all 5 statements). The summary of those 6 analyses is presented in Table 4.

Table 4: Results of two-way ANOVA with independent variables of sex and age, with dependent variables of answers to each of 5 statements of the Quality of police contacts (QPC) scale (V1, V2, V3, V4, V5) and their sum

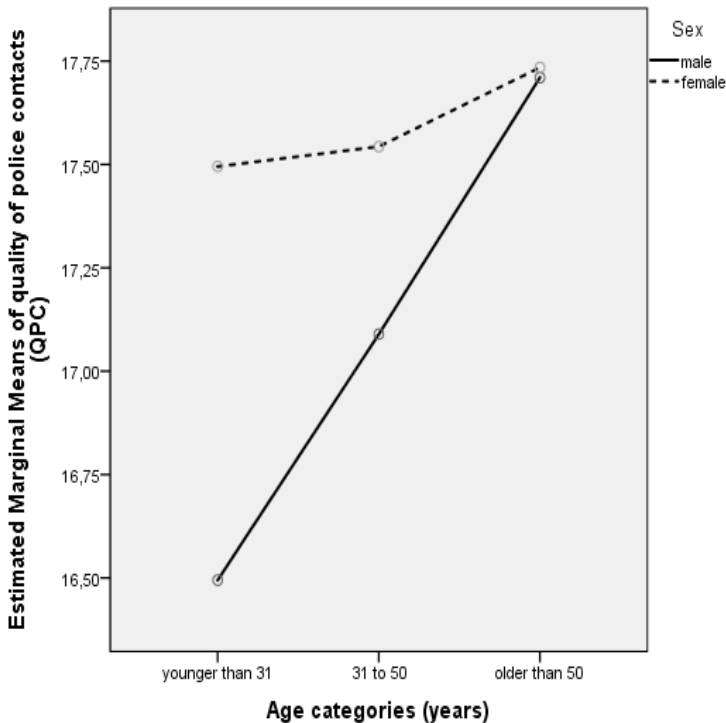
		Quality of police contacts variables					
		V1	V2	V3	V4	V5	ΣV_i
Age	F	2.277	5.277	9.024	1.189	2.717	5.985
	df1; df2	2; 2709	2; 2707	2; 2704	2; 2700	2; 2704	2; 2684
	p	0.103	0.005**	<0.001**	0.305	0.066	0.003**
	partial η^2	0.002	0.004	0.007	0.001	0.002	0.004
	1- β	0.465	0.837	0.975	0.262	0.539	0.882
Sex	F	6.098	5.846	7.728	7.008	1.780	9.056
	df1; df2	1; 2709	1; 2707	1; 2704	1; 2700	1; 2704	2; 2684
	p	0.014*	0.016*	0.005**	0.008**	0.182	0.003**
	partial η^2	0.002	0.002	0.003	0.003	0.001	0.003
	1- β	0.694	0.676	0.794	0.754	0.266	0.853
age x sex	F	1.405	4.122	1.359	1.686	0.804	2.871
	df1; df2	2; 2709	2; 2707	2; 2704	2; 2700	2; 2704	2; 2684
	p	0.246	0.016*	0.257	0.185	0.448	0.057
	partial η^2	0.001	0.003	0.001	0.001	0.001	0.002
	1- β	0.303	0.731	0.294	0.357	0.188	0.564

Note. * $p < 0.05$; ** $p < 0.01$

- V1 How good of a job do you think the police in this area are doing in helping people out after they have been victims of crime?
- V2 In general, how polite are the police in this area when dealing with people around here?
- V3 In general, how helpful are the police in this area when dealing with the people around here?
- V4 In general, how fair are the police when dealing with people around here?
- V5 How good a job are the police doing in keeping order on the streets and public places?

Most of the assumptions for ANOVA were met completely (measurement scale being pseudo-interval, or interval, sufficient number of participants in groups, independence

of results within sex-age groups), or mostly (similar numbers, distribution of dependent variable within all 6 groups deviated from the normal distribution, however, in the direction of negative asymmetry) so that heterogeneity of variances of all dependent variables, with the exception of V5 (homogeneous variances), did not represent a serious threat to the interpretation of the obtained scores (especially when taking into consideration the robustness of ANOVA). The findings in *Table R4* indicate clearly enough how sex affects the scores of the largest part of Quality of police contacts variables, regardless of age, yet, those sex-based differences account for a minimum quantity of variance (0.1 – 0.3 %) of Quality of police contacts variables. On the other hand, age affects 50% of the observed Quality of police contacts variables, regardless of sex, however, age differences do not account for a large amount of variance of those variables (0.1 – 0.7%). The interaction between age and sex has proven to be statistically significant only for V2. Although only some of the Quality of police contacts variables were significantly affected by sex and age, the trend was the same for all variables: women scored Quality of police contacts somewhat higher than men, and this score was stable in terms of age, whereas it increased systematically in men, from young to older age. Thereby, it is important to note that the Quality of police contacts score was not below 3 in any of the sex-age groups (moreover, in 90% of cases it was above 3.2), which indicates the good status of Quality of police contacts in Croatian society (from average to positive). The stated trends are best presented by a graph depicting the results of two-way ANOVA for Quality of police contacts composite score (Graph 1).



Graph 1: Dependence of average QPC composite values on sex and age

QUALITY OF POLICE CONTACT (QPC) INTERRELATION WITH PERCEPTIONS OF CRIME AND DISORDER (PCD) AND PERSONAL FEAR OF VICTIMISATION (PFV)

For the purpose of analysing the Quality of police contacts interrelation with Perception of crime and disorder and Personal fear of victimisation, the justification of the Perception of crime and disorder and Personal fear of victimisation composite calculations was checked.

The mutual correlations of scores for 5 Perception of crime and disorder statements indicate that they are related positively or moderately high (median correlation amounts to 0.489) and all are statistically significant (** = $p < 0.01$). The situation is even more favourable for Personal fear of victimisation statements because the mutual positive relation of those 5 statements is even higher (median correlation amounts to 0.591) and all are statistically significant (** = $p < 0.01$) (Table 5).

Table 5: Pearson coefficient of mutual relation among 5 statements for assessing the Perception of crime and disorder and Personal fear of victimisation

R	V6	V7	V8	V9	V10	r	V11	V12	V13	V14	V15
V6	1	.595**	.565**	.545**	.434**	V11	1	.677**	.596**	.555**	.617**
V7		1	.485**	.493**	.449**	V12		1	.594**	.546**	.588**
V8			1	.636**	.331**	V13			1	.603**	.540**
V9				1	.367**	V14				1	.575**

- V6 How big of a problem is people breaking windows out of buildings in the area?
- V7 How big of a problem is people drinking in public places in this area?
- V8 How big of a problem is people being attacked or beaten up by strangers in this area?
- V9 How big of a problem is people being robbed or having their money, purses or wallets taken?
- V10 How big of a problem is vacant lots filled with trash and junk in this area?
- V11 How worried are you that someone will try to rob you or steal something from you when you are outside in this area?
- V12 How worried are you that someone will try to break into your home while someone is there?
- V13 How worried are you that someone will attack you or beat you up when you are outside in this area?
- V14 How worried are you that someone will try to steal or damage your car in this area?
- V15 How worried are you that someone will try to break into your house while no one is there?

On the basis of the obtained results, the relations between Quality of police contacts and Perception of crime and disorder, as well as Quality of police contacts and Personal fear of victimisation, have been analysed with the help of appropriate composites.

This relation was calculated on the entire sample, whereby it was examined whether it is affected by age and sex, given the previously determined, quite weak influence of those variables on the Quality of police composite.

Given the calculated Pearson and Spearman indicators of relations, obtained was an interesting finding: The relations of Quality of police contacts with Perception of crime and disorder and Personal fear of victimisation are partly curved since Spearman's coefficient is higher in both cases. The process of determining the optimal mathematical function that describes the non-linear relation of Quality of police contacts with the remaining two variables has shown that the relation with Perception of crime and disorder is optimally described by a cubic function, and with Personal fear of victimisation by a square function (Table 6).

Table 6: Relation of *Quality of police contacts composite with Perception of crime and disorder and Personal fear of victimisation composites on the entire sample of participants, expressed by Pearson r and Spearman r_s, and by indicators of optimal non-linear relations R*

	Perception of crime and disorder		Personal fear of victimisation	
	Pearson r	Spearman r _s	Pearson r	Spearman r _s
Quality of police contacts	0.378**	0.387**	0.32**	0.338**
	y = 0.002·x ³ - 0.084·x ² + 1.49·x + 6.49		y = 0.014·x ² + 15.501	
	R = 0,385**; x=PCD, y= QPC		R = 0.331**; x=PFV, y= QPC	

Note. ** p < 0.01

Regardless of the obtained fine differences in the form of the Quality of police contacts relation with the other two determinants of community policing, it can be stated that, with the rise in Perception of crime and disorder and Personal fear of victimisation, there is a slight rise in the Quality of police contacts average, whereby only 10 – 15% of its variance can be explained by Personal fear of victimisation, i.e. Perception of crime and disorder. Therefore, in question are dominantly weak, positive relations, for which it is questionable whether they differ at all.

For that purpose, we tested the difference between the two correlations, $r(QPC, PCD) - r(QPC, PFV)$, by applying the Williams and Steiger test, and obtained that $r(QPC, PCD)$ is statistically significantly higher than $r(QPC, PFV)$ because $t = 3.54$, $df = 2686$, $p < 0.01$. Therefore, it can be stated that Quality of police contacts is more related to Perception of crime and disorder than to Personal fear of victimisation, although the interrelations are rather weak.

The obtained relations of Quality of police contacts with Perception of crime and disorder and Personal fear of victimisation obviously do not depend on age and sex because the values of partial correlations $r(QPC, PCD)$ and $r(QPC, PFV)$, with the extracted variance of age and sex, are identical with those without partialisation: $r(QPC, PCD /_{age\&sex}) = 0.378^{**}$, as well as $r(QPC, PFV /_{age\&sex}) = 0.332^{**}$.

However, since partial correlations represent averaged correlations on all categories defined by variables whose variance is attempted to be partialised, this does not exclude the possibility that, in certain age-sex categories, correlations might take on significantly different values. Therefore, it is justified to examine $r(QPC, PCD)$ and $r(QPC, PFV)$ in all 6 sex-age categories, by calculating Pearson and Spearman coefficients (due to the previously stated non-linear relation) (Table 7).

Table 7: Pearson (*r*) and Spearman (*rs*) coefficients of Quality of police contacts relations with Perception of crime and disorder and Personal fear of victimisation, calculated for all sex-age groups

	r(QPC, PCD)				r(QPC, PFV)			
	women		men		women		men	
	r	rs	r	rs	r	rs	r	rs
Younger than 31	0.398	0.389	0.268	0.269	0.341	0.363	0.276	0.295
From 31 to 50	0.45	0.467	0.326	0.35	0.409	0.467	0.245	0.256
Older than 50	0.452	0.467	0.414	0.432	0.44	0.467	0.277	0.285

Note. all correlations are significant ($p < 0.01$)

A comparison of Pearson's (r) and Spearman's (r_s) coefficients indicates that, for almost all age-sex groups, $r_s > r$, which confirms our previous findings on a slightly curved relation of Quality of police contacts with Perception of crime and disorder and Personal fear of victimisation. In addition, visible is a trend that, in women participants, correlations $r(\text{QPC}, \text{PCD})$ and $r(\text{QPC}, \text{PFV})$ are systematically higher than in men, and that, in women, both correlations increase with age (from weak to medium), whereas, in men, this increase is visible only in the correlation $r(\text{QPC}, \text{PCD})$.

We tested whether the stated increase is significant by comparing $r(\text{older than 50}) - r(\text{younger than 31})$, and we obtained the following results: in women, the obtained trend of increase is not statistically significant for both relations ($z_{\text{QPC-PCD}} = 0.877$; $z_{\text{QPC-PFV}} = 1.549$), whereby, in men, it is statistically significant only in the relation QPC-PCD ($z_{\text{QPC-PCD}} = 2.232$; $z_{\text{QPC-PFV}} = 0.015$).

DISCUSSION AND CONCLUSION

In general, there are not quite consistent findings for the most of demographic characteristics such as sex, age, or socioeconomic status (Nofziger & Williams, 2005). In studies dealing with the relationship between gender and satisfaction with police, although some empirical findings suggest that men in general are less satisfied with police, the general trend is that the difference of males and females is not a function of gender attributes (Kusow, Wilson & Martin, 1997). This study support the finding of Tewksbury and West (2001, p.281) who reported a "strong relationship between sex and satisfaction with the police - women being more positive than men".

The results of this analysis may have implications for community policing activities intended to increase citizen satisfaction with police. The results presented above provide several important points for the further development of community policing in Croatia. Firstly, the police can be satisfied with the fact that Croatian citizens substantially assess the quality of police contacts as being more positive than average. It is apparent that citizens are more likely to hold positive attitudes toward police services when police are viewed as respectful, helpful, and concerned. However, it should be kept in mind that the answers to the five statements of the Quality of police contacts composite slightly differ in their average values, whereby the largest difference is between the average for the answer to question V4 (*In general, how fair are the police when dealing with people around here?*) with the lowest assessment and the average for the answer to question V5 (*How good a job are the police doing in keeping order on the streets and public places?*) with the highest assessment. The reason for that kind of respondents' perception might be concerned with the perceived distanced and

depersonalized attitude towards anonymous groups of citizens disturbing the public order. Conversely, respondents are more likely to be personally involved when it comes to the police interfering with individuals they are familiar with.

Secondly, the sum of all Quality of police contacts statements, as well as of all individual questions pertaining to the police politeness, respect and helpfulness were assessed higher by women regardless of their age. Moreover, for most of the questions, the Quality of police contacts assessments were, regardless of sex and age, stable, with an insignificant increasing tendency with age, whereas for the two stated questions, the growth was stable similar to the overall score. In addition, it should be noted that women assess Quality of police contacts somewhat higher than men and that the assessment was age-stable, whereas the assessments of men increased systematically from a young age on, although this has proven to be statistically significant only for V2 (*In general, how polite are the police in this area when dealing with people around here?*). It should be emphasised that Quality of police contacts was over 3 in all sex-age categories (in 90% of cases over 3.2), which points to a good status of Quality of police contacts in Croatian society.

Finally, it is completely understandable and expected that respondents who assess Quality of police contacts with a high grade provide, on average, somewhat lower assessments for Perception of crime and disorder and FOV. It is compatible with the findings of Hwang, McGarrell & Benson (2006) and Scheider, Rowell & Bezdikian (2003), satisfaction with police on the one hand and fear of crime and perceptions of crime and disorder on the other hand are found to be negatively related with one another.

However, Quality of police contacts increases statistically faster with a decrease in Perception of crime and disorder than with a decrease in Personal fear of victimisation (FOV). It should also be stated that somewhat higher Quality of police contacts assessments of respondents with lower Perception of crime and disorder and Personal fear of victimisation assessments are not determined by age and sex. Yet, observable is a tendency that the correlations $r(\text{QPC}, \text{PCD})$ and $r(\text{QPC}, \text{FOV})$ are systematically higher for women than men and that both correlations for women increase with age (from low to medium), whereas such an increase is visible only in the $r(\text{QPC}, \text{PCD})$ correlation for men. It means that it is more visible for women in Croatia compared to men that respondents with lower Perception of crime and disorder and Personal fear of victimisation assessments have a higher Quality of police contacts assessment and that the trend increases with age. Perception of crime and disorder is a serious individual- and community-level problem influencing how freely people move about the places where they live. It is concerned with people's emotional responses and feelings of vulnerability in the face of dangerous conditions or the possibility of victimisation (Ferraro, 1994). Given that personal vulnerability facilitates fear of crime (Goodey, 1997), the facilitation of fear depends on the vulnerability and disorder levels in local surroundings that would lead a rational individual to be more or less fearful. All the process is related to the certain level of social integration factors that may inhibit fear, e.g. social ties, neighborhood cohesion or community attachment. Persons deficient in material and social resources, or lacking the community networks that would enable them to cope successfully with anxiety-producing situations are likely to experience increased social vulnerability. In addition, from a broad theoretical perspective, a patriarchal society awards men a greater deal of privilege than women, and as a result, men (as a social group) are generally more well off than women in a multitude of arenas (e.g., economic, political, occupational) (Johnson, 1997). Any gains women make will theoretically have a greater effect on their social status and access to economic, political, and occupational resources and, as a result, a greater

effect on their perceptions of fear. For example, research has established that women are socialised and taught to fear sexual assault, strangers, and potentially dangerous situations or unknown settings (Schwartz & DeKeseredy, 1997). As opposed to that the results of this study indirectly lead to the conclusion that social networks and social supports exist and women feel enhanced connectedness to others in their immediate local surroundings.

The parallel study in Slovenia (Lobnikar, Prisljan, Modic, 2016) reveals quite similar results. Generally speaking, people in Slovenia feel safe in their communities and they have positive attitudes towards their local police work. As the security issue of most concern, Slovenian respondents highlighted the problem of accumulation of garbage and worthless goods in their local environment. Comparing the same sets of variables (Quality of police contacts, Perception of crime and disorder and Personal fear of victimisation), the Slovenian respondents rated Quality of police contacts the worst. Almost one-third of them believe that Slovenian police officers are not impartial, objective and fair in carrying out police procedures. However, they are very satisfied with police officers' courtesy. Like in Croatia, women in Slovenia rated Quality of police contacts significantly higher than men but show also higher levels of fear of victimisation than men.

There is a great body of research that suggests that sex and age are consistent predictors of fear of crime, whereby women and elderly people exhibit higher levels than men and youngsters (Crank, Giacomazzi, & Heck, 2003; Moore & Shepherd, 2007). It could be assumed that Croatian and Slovenian citizens compensate the fear of crime, notably in females, thanks to their good quality contacts with the police. However, numerous studies indicate that Quality of police contacts is not merely an individual-level feature, as well as a feature of neighbourhoods (Reisig & Parks, 2000; Schafer et al., 2003; Wentz & Schlimgen, 2012) and community-level ecological construct. The obtained results should be reviewed from that perspective in the future accordingly.

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PERFORMANCE MEASUREMENT IN THE HUNGARIAN POLICE - THE LEGACY OF THE PAST AND THE CHALLENGES OF THE FUTURE

Vince Vári¹

ABSTRACT

In my study² I intend to present the endeavour to improve efficiency and introduce the current model for its measurement. I attempt to analyse the disadvantageous effect of linking performance measurement to statistics-based efficiency measurement on the organizational culture and work ethic of the police, thus influencing the subjective feeling of safety of the society. There is no question that the objective indices of criminal statistics are too complicated to completely exclude the possibility of their manipulation if they are connected to performance evaluation. The efficiency indicator is especially important in moving away from quantity towards quality. The subjective feeling of safety as an efficiency factor must be acknowledged and included in the system. That is, gaining the confidence of the people and the community should be as essential as producing a more successful police performance index from a lower budget.

Keywords: measurement, statistics, police, performance, Hungary

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INTRODUCTION

In this paper, I will give a historical overview of the organizational performance of the Hungarian police. I want to show you the most important stages of development. Pointing to the fact that the police's organizational effectiveness can be measured with purely statistical and quantitative data, it can lead to extremely dangerous and manipulative processes. It can have many negative consequences, such as the erosion of organizational culture, the self-employed bureaucratic mode of operation, and the fall of citizens' trust in the police. In my article, I also offer solutions and suggestions that would, instead of or in addition to statistical-based indicators, measure the efficiency of the police performance primarily from the social side.

Hungarian statisticians quickly recognised the potential lying in criminal statistics: without the information and patterns hidden in the data of criminal statistics the state is unable to do anything against crime (Domokos, 2013: 64). The efficiency quotient was based on criminal statistics and it has become the most important indicator showcasing the quality of the system. The reciprocal of efficiency exposes the ratio of inner variables to one another, especially in the simplified relation of investment and profit. Moreover, it shows the integrity of implicit and explicit factors by inserting the whole system into an external environment. When police measurement, we examine the operation of a complex system; in case of incorrect fundamental assumptions, the results, if applied to the system, can cause its structural and functional disorder. An outcome-oriented approach can cause the weakening of the formal and informal facets of the organization. As a consequence, in

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contradiction to its original intention, measuring efficiency can lead to the demotivation and demoralization of the police organization, and instead of strengthening its structure and functionality, the opposite outcome occurs. In this way, measuring efficiency can lead to the refusal or questioning of performance indicators and indices. Not recognizing the real nature of effects is an “ostrich-like policy”, which attempts to evade or dodge objective statistical indicators. It does not take into consideration that organizational efficiency is a complex system based on several factors, the efficiency of which is almost impossible to be expressed in simple figures. As a result, delivering the expected figures becomes the sole measure of performance of the organization and the system itself. Delivering these figures at all costs practically becomes more important than fulfilling the fundamental governmental and social function of the organization. Therefore, it is essential to lay down certain principles which might ensure the theoretical basis for the enforcement of these ‘objective’ figures. They can be objected not only because they are old-fashioned or represent a different kind of mentality, but because they represent a factual and serious obstacle for development.

SEEKING THE WAYS AND MEANS OF THE POLICE PERFORMANCE MEASUREMENT IN THE 1980s

The Hungarian Great Encyclopaedia (Magyar Nagylexikon, 1999: 275) defines efficiency as follows: “1. *the ratio of output and input. Depending on the type of input, different efficiency indicators can be created, e.g. efficiency of material consumption, the capital (inverse of capital intensity, i.e. the quotient of capital and production), and productivity (inverse of labour intensity). Complex indicators can also be produced, which include all the (factors) inputs, in case of fixed or convertible inputs, or in case of those inputs which can be expressed in mutual units of measure.* 2. *evaluation deriving from the comparison of production processes which can be described with diverse, not commensurable outputs. One procedure is more efficient than another, if, for the same output (combination), it uses less of at least one of the inputs, while from the other inputs it does not use more; respectively, with the same input combination it results in more output in case of at least one of the outputs, while the others remains unchanged (vectorial comparison). In this respect procedures are efficient if more efficient procedures do not exist”.*

Some police researchers approached the question of efficiency in the 1980s based on the above given definition. They were aware of the existence of latent crime, and although they accepted that total crime included latent crime, they could not count with it when measuring efficiency. The police authorities also set the theoretically possible maximum as the benchmark, and not total crime which includes latent crime.

In case of efficiency is nothing but a ratio which includes the volume of labour input and the achieved result, where the achievement is weighted by the danger to society and refers to recorded crimes, and where the volume of labour input and work load is determined by the complex system of several factors (Somogyi, Vass, & Madács, 1979: 22). The new indicator evaluates the activities of the police authority regulated by the Criminal Procedure Law; other activities are not included. The categorization of certain crimes was based on the average court sentences and Penal Code sanctions, which resulted in a “danger to society indicator”; nevertheless, this efficiency formula did not go further than surveying and indexing the regional characteristics of the criminal situation. Somogyi, Vass and Madách focused their research on the question whether the labour input of the police reflected the judicial system’s (i.e. court decisions) imposed average sentence in relation to certain crimes. When defining efficiency, they did not draw any conclusion besides indexing crimes; still, their results could show how the courts perceive crimes after police, creating a ground for comparison. This way police authorities could allocate work and organizational conditions better. If they

wished to get an objective picture of a given investigation authority's efficiency, they could transfer the indexed crime numbers to the recorded crime data of the given authority and compare the labour input of the organization to that data. However, they did not draft further recommendations as to how the system should be adapted or how labour input data should be obtained. Although establishing crime categories is a valid line of research, it does not provide enough information to define efficiency. They failed to point out, that the "danger to society" index does not reveal how complicated and time-consuming investigations and verifications are. In fact, only by indexing how time-consuming the verification process is (amount and nature of evidence) and how dangerous a certain crime to society is, can the priorities and the scope of authority of the police organization be determined.

I fully agree with István Tauber's contemporary reflection on the above-mentioned research, who, while defining the efficiency of police, strongly doubted that the police performance can be measured. According to his view, the efficiency of the social function of crime prevention can only be defined through negative procedures, and only as a tendency. With this method, latent crime is not considered assuming that it is less prevalent than recorded crime. I believe in Hungary this is the case. At that time there was not an overall latency survey that is why the author supposes it. After the political change of 1989, Korinek László published data concerning Hungarian latent criminality. *"It is not the social perception of committed crimes that matters, but the labour intensity of the investigation and prosecution of various crimes. Of course, the social perception of a committed crime can also be considered, but only as an underlying characteristic feature."* (Tauber, 1980: 62). In his efficiency theory Tauber (1980) created the following groups of factors:

- cases should be categorized on the basis of a point system according to how complex they are, how much data we have and the quality and type of the data, etc. The types of cases can be indexed based on how much time needs to be devoted to them. The crimes might be assigned between 1–10 points;
- the average investigation and verification activity done at a given type of crime. Personnel conditions of the examined police unit. Professional preparedness, practice and qualification is also rated; and
- social perception of certain crimes, according to the type and size of the court sentence.

Tauber focuses on the cooperation of the criminal procedure's subsystems from the point of view of efficiency, as he says: *"Criminal prosecution requires the cooperation and coordination of different bodies, because efficient police can only be imagined if all the bodies taking part in the criminal procedure strive for maximum performance."* (Tauber, 1980: 59). Tauber (1980) uses the commonly accepted efficiency formula to calculate the efficiency of police, while also considering factors which really influence the efficiency of the activity, such as: (a) crime situation, (b) quantity and quality of the caseload, (c) time factors in the investigation, (d) quantity, quality and successfulness of work, and (e) personnel and material conditions of the police.

According to his viewpoint, the efficiency formula cannot be automatically applied to the field of police performance, since defining and measuring "effective output and established output" is a complicated task, and the "social need" element of police efficiency raises interpretation problems. His efficiency approach is much more chiselled than the former theory, which was flawed from the start. Still, in his assessment of efficiency he neglects the role of the the feeling of subjective safety and the significance of public opinion on the police. However, these aspects are indispensable to determine the efficiency of a modern

police force, integrated into a society. László Korinek's (1998) monograph 'Fear of Crime' was essential to promote this idea, but unfortunately, he only published it well after the change of regime in 1995.

MEASURING EFFICIENCY IN THE 1990s

Valér Dános (2002) conceived the evaluation of police work along three lines: measuring effectiveness, performance and efficiency:

- how well the police manages the resources at its disposal: human resource, budgetary funds and material infrastructure;
- performances compared to each other and their tendencies; and
- meeting social expectations, changes in efficiency in relation to crime data (Dános, 2002).

The medium-term research of Dr. univ. István Komáromi on police measurement at the Pest County Police Headquarters in 1996 is also worth mentioning (Komáromi & Teremi, 1996). According to his views the development of a unified measuring system is still in the initial stages, calling for more research. Our current system, which is based on statistical data, is unfair; it does not account for the different working conditions of the authorities; it does not differentiate between the various types of crimes and offences, each crime counts as one. A further problem is that statistics, which is meant to provide objective results, do not correlate with the public's subjective feeling of safety. Different crimes have different effects on the public consciousness. *Komáromi*, being result oriented, prefers the objective approach, since subordinates cannot be blamed for lower efficiency if organizational aims are not in accordance with efficiency indices. Economic efficiency aims to achieve the most with as little effort and as few resources as possible. The outcome is the output itself. The index of efficiency is the quotient of input and output during a given period of time. After defining correctly, the input and the output, they have to be converted to a commensurable unit of measurement. The measure of efficiency is not the same as the achieved result and different results can be compared thanks to efficiency measurement (Komáromi & Teremi, 1996).

Komáromi's analysis and research is a serious advancement in defining efficiency. Nevertheless, his approach remained mainly statistical, and he failed to clarify several conceptual elements. Neither could he solve the efficiency dilemma between objective safety and subjective feeling of safety. The inner evaluation method of the variables in his system is rudimentary, therefore his system could not become a self-regulating coherent efficiency measurement system, since the variables can be changed arbitrarily (Komáromi & Teremi, 1996).

Marvin E. Wolfgang and his colleagues conducted a similar research about how people see the seriousness of crimes and offences compared with each other (Wolfgang, Figlio, Tracy, & Singer, 1985). They came to the conclusion that when cases – and not offences (contrary to the Hungarian research) – were graded according to their seriousness, people based their decision on whether the victims were able to defend themselves, how big the loss or damage was, what type of firm or organization had been wronged, and what the relationship between the perpetrator and the victim was. Almost all the respondents agreed that white collar crimes are more serious than crimes against property (Wolfgang et al., 1985).

PERFORMANCE MEASUREMENT IN THE PRACTICE

By the mid-1990s, it became obvious to certain police experts that the evaluation practice established for the crime situation in the 1990s contained several dysfunctional elements. The common performance indicators used for evaluating the professional performance of the police was not suitable to measure the real performance of the given body (Dormán, 2002). In 1997 a completely new evaluation system was presented to the leadership of the National Police Headquarters, and its trial implementation was decided upon. The system was to be introduced in three phases, first applying it to the data of three counties, than to five counties and finally to Pest County. The new evaluation system inevitably brought about positive changes. A lot of information, which was not demonstrated by the former statistical indicators, was revealed transforming the former efficiency indices (Dormán, 2002):

- measurements regarding the density of police officers rearranged the order of ranking between the headquarters;
- police authorities could channel their forces better, after the prevalence of specific crimes became visible in the regional data; and
- the expenses per criminal case ranking significantly rearranged the efficiency ranking.

The aspects of the new evaluation system became the following (Dormán, 2002):

- citizens and local governments became involved in the evaluation system through opinion polls;
- combining traditional criminal statistical data with social statistical indices, e.g. certain type of crime incidences per 100 thousand people;
- Regional statistics are not compared to each other, but to the former period of time, revealing tendencies and changes;
- creating weighted indices with nominal numbers based on the average sentences imposed according to the Penal Code;
- using a clarifying index, which shows how many cases the police dealt with during a given period of time. It also contains cases closed but not solved; and
- the human, material-technical and financial conditions of the given body, such as how much money and how many police officers they have, what their technical-equipment utilization is like, etc.

The whole system was to be introduced by 2003, but in the end, it was not implemented. However, it started a way of thinking which led to the acknowledgement of the role of subjective feeling of safety.

POLICE PERFORMANCE MEASUREMENT BY A LAW

THE 'EFFICIENCY' CALCULATION METHOD AS THE BASIS OF PERFORMANCE EVALUATION

18/2012. (X. 12.) ORFK Directive about the Procedure of Evaluation of County (Capital) Police Headquarters, Police Headquarters and Borderguard Offices Based on an Objective Measurement Performance System (18/2012. (X. 12.) ORFK utasítás a megyei (fővárosi) rendőr-főkapitányságok, a rendőrkapitányságok és a határrendészeti kirendeltségek objektív mérőrendszer alapján történő értékelésének eljárásáról, 2012). Efficiency, which is the aim of the directive, is closely linked to the performance evaluation of the organization.

The evaluation system of the set objectives uses 30 index numbers out of which: 20 are crimes, 2 are offences, 4 are related to public order, 3 are related to traffic regulations, 1

reflects the opinion of local governments. The instruction in the evaluation system weights the indicators between 1 and 4 by importance. The indicators included in each importance (1-4x) category are generated primarily based on statistically recorded quantitative data. Only the local government's opinion is an exception, because it is based on the questionnaire survey.

Below I describe the indicators separately according to the importance weighting:

- *Importance (1x)*: The number of investigations per 1 policeman, successful investigations per 1 policeman, prosecution per 1 policeman. The efficiency indexes of investigating crimes committed in a public space, negligence to help, hit-and-run accidents, vandalism, vigilantism, cases involving private vehicles, arbitrary taking of vehicle, damage of property, plundering, solving offences against property committed by an unknown perpetrator, rate of prosecution. The average time of the infringement procedure and the hours spent in a public space per 1 policeman.
- *Importance (2x)*: Solving a crime committed by an unknown perpetrator, the number of crimes committed in a public place per 100.000 inhabitants, the rate of prosecution, the average time of investigating cases, the number of apprehensions per one police officer, the number of arrests per one police officer.
- *Importance (3x)*: Solving homicide cases committed by an unknown perpetrator, the efficiency indexes of investigating theft, burglary, robbery, and the change in the number of traffic accidents with injuries compared to an earlier period of time.
- *Importance (4x)*: The number of registered crimes, opinion of local governments.

CONCLUSIONS CONCERNING THE WEIGHTING OF INDEX NUMBERS

The original significance of the different crimes (20 crimes, 2 offences, etc.) significantly changes after weighting, so it seems that the original rate is only a principle. On the other hand, there are common criminal statistical and other index numbers, which have no relation to either branch of service.

The measure is dominated by the former (investigation) and the current reconnaissance index in case of an unknown perpetrator performance indicators of certain crimes, that is, by the output statistics of police. It is a positive development that the condition of the authority appears in the evaluation, however, it makes up for only 18% of the evaluation. The proportion of criminal tendency index numbers is also low in the measure: only 18% of the whole evaluation system. Moreover, it is a significant question whether empty positions and appointments are accounted for in the per capita values, since at these measures a reduced number of staff means higher efficiency. The proportion of the local government's opinion is also low in the measure (below 10%). Although the opinion of the local government is important, it is not equivalent with the public's feeling of safety, which does not appear in the evaluation at all. Furthermore, we do not get a picture on the rate of latent crime either.

Analysing the directive, one can declare that the evaluation is still largely based on statistics, while to a certain degree it also calculates with the workload of the authorities and with the figures of local crime, the change of which – we must add – is not always due to the effective operation or activity of the investigation authority, but to several macro factors mentioned in my study. Unfortunately, efficiency measures do not reflect how effectively the police react to criminal tendencies, but rather focuses on the number and rate of files that the police authority produces. Apart from this, the advantage of the directive is that it deals

with authorities on the same level in a comparative way regarding their conditions; however, rates could have been weighted more, not to mention the necessity of representing the differences of local criminal 'characteristics'.

This model worked only for a few years, but the police did not even disclose the numbers. The Act XLII of 2015 on the Service Status of the Professional Staff of the Law Enforcement Officers (Évi XLII. 2015 törvény a rendvédelmi feladatokat ellátó szervek hivatásos állományának szolgálati jogviszonyáról, 2015) prior to the entry into force of the Act, the necessary and mandatory norms have been established for the re-regulation of the normative bases of the police's efficiency measurement, such as the recommended elements of the performance assessment of professional members of certain armed forces under the Minister of the Interior, the rules of procedure for the application of the recommended elements, 26/2013 (VI.26.) BM Decree on the criteria for the performance evaluation of organizational performance in the framework of the organizational performance evaluation of certain armed forces. (XII.21.) instruction (26/2013. (VI. 26.) BM rendelet a belügyminiszter irányítása alatt álló egyes fegyveres szervek hivatásos állományú tagjai teljesítményértékelésének ajánlott elemeiről, az ajánlott elemek alkalmazásához kapcsolódó eljárás szabályokról, a minősítés rendjéről és a szervezeti teljesítményértékelésről, 2013). We do not have significant experience yet with the operation of the new system, so it has not been included in this analysis.

THE PRECONDITIONS FOR DEMONSTRATING PERFORMANCE MEASUREMENT

At a conceptual level, the separation and independent handling of crime and the affect of the police working (and their effects) requires consideration. In fact, the authentic interpretation of the relation between the subjective approach to police and crime and the objective figures of public safety is flawed because it is approached in a causal scheme. Crime is not the consequence of the lack of police performance; in the causal chain neither of them fulfils the role of reason or result. In this way different institutional solutions and interventions which treat delinquency, no matter how strict they are, such as 'zero tolerance', wish to make a change via the tools of police, meanwhile remaining within – the tight one-way causality – its uniformed formula (Sárosi, 2008).

We have to realize that improving the quality and the credibility of the police authority together with a growing confidence of the population has a bigger effect than simply fighting crime. It was also verified by researches, which, by analysing the results of opposing police approaches, came to the conclusion that they transformed the criminal situation with very similar effectiveness (Harcourt, 2001). However, criminological research consistently verified the close relation and interaction between crime and police (Szabó, 2002: 35).

The two subsystems, affecting and influencing each other, represent crime, therefore evaluating and emphasizing their conditions independently from each other is meaningless, inconsequent and does not assume a strategic aspect at all. Handling police outside the scope of crime and using its statistics for research purposes leads to faulty results, which can encourage wrong conclusions. Crime can be handled solely in correlation with police activity and social processes, where several factors must be considered, which can make the real nature of police exact and intelligible. Such factors can be:

- complex statistics integrated into society - When evaluating the quality of police activities, it is indispensable to know and reveal local social conditions and figures.

Local unemployment, social stratification, standard of living and other significant macro factors can definitely create different expectations towards the police as a police authority. At a national, county or local level the root cause of crime is the functional disorder of basic social processes which can be traced back to social disorganization, the weakening of social control, cultural conflicts or other anomalies:

- the opinion of local governments, civil organizations and churches - We must pay considerable attention to specifically local public safety requirements, since police can be qualified as meeting these. If local government law enforcers work hand in hand and in active cooperation with civil public safety self-organizations, they can react more effectively to the local challenges of public safety; and
- the basic unit of police is the local body - The foundation of efficiency is the evaluation and measurement of local settlement units revealing its specific crime and police situation. The national survey is not able to show and deal with the social, economic, cultural and other processes of smaller geographical units; which not only creates an opportunity to crime, but also motivates perpetrators (Déri, 2000: 62). Knowing the real quality and size of crime makes it possible to adapt the strategy of crime prevention and investigation; adjusting the organization, structure, division and location of the forces, while considering the tendencies and prediction of crime (Boge, 1991).

CHALLENGES OF THE POLICE PERFORMANCE MEASUREMENT

In accordance with the notion of efficiency expounded above, the following aspects should be considered when developing the method of performance evaluation of law enforcement employees:

- the number of operations, including executed investigation actions;
- the number of solved cases (perpetrators and crimes);
- the number of dissolved and suspended cases;
- the number of cases passed on to prosecution;
- weighting the investigation difficulty of cases based on the crime and the concrete case, which would be a "prequalification" from the leader;
- the period of time spent on certain investigation activities in proportion to the working hours in the given period of time;
- the rate of decisions rejected by prosecution, the same in case of supplementary investigations, compared with the number of investigations in process; and
- the number of commander revisions, and the quantity and quality of the discovered deficiencies, etc.

The listed aspects of evaluation are not complete, and they may vary according to the sphere of activity, nevertheless, it can be seen quite well that a performance evaluation system developed in accordance with organizational efficiency, could basically change the functional system of the organization and would steer it towards the direction of efficiency.

Measuring performance is significant for the efficiency of police, because through increasing individual performances the whole system is developing. To achieve this, there has to be a harmony between the long term and short-term objectives of the organization and between the objectives of the branches. Management theory provides a scientific approach as to how this should be carried out, defining the advantages of modern management

principles and methods, and explaining the means to increase performance motivation. A relevant performance survey at the police contains:

- a committed management;
- an active participation of the subordinates;
- consistent endeavour;
- regular appreciation;
- consistency in the rewarding system; and
- adequate and regular trainings to improve the necessary skills.

If the organization wants to operate successfully, it has to establish a culture which appreciates effort by concentrating on results and performance. All this helps to establish the adequate performance-centric culture based on endeavour (Morgan, 1995: 21).

The crime-case solution index cannot be the basis for performance evaluation; its use deliberately misleads society, public opinion and citizens, and at the same time it is a self-deception to overemphasize its importance in the system of performance evaluation (Finszter, 2008). The impracticality of using the crime-case solution index lies in the interaction between cause and effect, since public safety is the aggregate of objective factors and phenomena, which are also significantly influenced by the efficiency and result-oriented approach of the police working. The crime prevalence index, since ignoring the macro structural elements of social relations, is not suitable for comparison. To sum it up, objective police indices are unsuitable for performance evaluation since:

- There is no causal relation between performance and these indices; e.g. the inverse proportionality between crime solution indices and crime prevalence cannot be measured or verified. It means that the improving crime case solution indices do not necessarily reflect the improvement of the crime situation, they simply show that the activity of police has increased. E.g. if crime indices have increased = public safety has deteriorated = the police have worked badly. On the other hand, if the same happens in case of a hidden crime (drunk driving, family abuse, etc.), we can surely state that the efficiency of the police body has increased (Kertész, 2002: 29).
- The crime situation, i.e. the objective safety is the result of complex factors, which depend on the efficiency of the police to a great extent; the role and effect of police performance, that is the procesual and regressive model cannot be measured or separated from the effect of the proactive model. Only the separated measurement of these two could explain the necessity of their use.
- The crime rate data does not consider important factors, such as the composition of the population or the structure of crime.

According to Dános (2002), goal setting reveals the vision and the basic philosophy of the police, which determines the leading motive of the activities of the whole police force, its units and its members. The quantitative indices of the measurement must be in harmony with the most fundamental aims of the police; the close interaction between them must be thoroughly examined.

As far as community goals are concerned, first of all the indices of contentment must be taken into consideration. The indices of case solving, and successful investigations provide only an indirect and deformed picture of how successfully the police work. As if the success of legislation lay in the number of acts passed each year instead of their social effects. Similarly, the police authorities of the state are successful if they produce the least possible data, and they guarantee social peace and public safety. Guaranteeing objective

safety (negative police indices) is only important as far as they increase the subjective feeling of safety and reveal the fight against hidden crime.

We must make sure that (either centrally or locally) set aims are reached. This activity can be described as measuring general police efficiency. Where the set aims have been reached, the resources used for reaching the aims have to be evaluated, then decide whether they were excessive or not. Another factor must be considered, namely the 'profitability' of the organization in terms of expenses. This is another kind of efficiency measurement or survey to reveal how much loss there is, how much time and energy have been wasted. The ratio between results and methods must be considered here (Skuli, 1995).

The crime solving index is also paramount in evaluating the performance of the organization, but while it highlights the successfully closed cases, it ignores unsuccessful activities and wasted working hours. Therefore, it is important to assess how much time is spent on a case, i.e. how long it takes to produce a report, furthermore how much time is spent on processing cases either successful or unsuccessful. The reasons for stopping investigations can be further detailed revealing how many working hours and how much energy input the authority needs to achieve its success indices. Trends of certain activities must be analysed and all the legislative or law enforcement anomalies must be uncovered, in this way the work load conditions of successful and unsuccessful procedures become detectable. The robocop system records all the investigation activities; these electronic records can uncover the relations between work load and the number of staff providing an insight into the nature of efficiency. We must pay attention to the fact that only the results of similar police bodies can be compared and evaluated drawing conclusions from them. A clear advantage of the revision is that standard figures can be established, which reveal the time-scale of various working processes and highlight more clearly the relations between administration load and success.

The disadvantages of using outcome data for performance evaluation have been presented in several studies. Its problems mainly appear in its inadequacy to reflect latent crime. It is improperly connected to the quality of work and to the salary system, which creates serious contradictions and dissatisfaction inside the organization (Kádár, 1967).

The more efficient German police system evaluates the changes and tendencies in the crime scene. Police management, both at higher and lower levels, reacts to the dynamically changing face of crime with flexible measures. On local levels it means strengthening the patrol and surveillance service, organizing large-scale public safety actions and raids, and establishing different special investigation teams, for which workforce is taken from other fields (Ziegler, 1995).

DISCUSSION

On the basis of the above considerations it can be safely stated that basing performance evaluation purely/only on "objective" police statistical data, does not correlate with the original objective of improving the efficiency of police. This paradigm disregards strategic thinking and does not examine crime and crime control with a scientific approach. It also fails to perceive crime as a social phenomenon and the police as an institution which reacting to it. Moreover, it has a negative effect on the motivation/incentive system of the organization by serving ad-hock purposes and thus alienating the society. The police performance cannot be handled separately from crime and society as a hierarchically controlled system.

There is no question that the objective indices of criminal statistics are too complicated to completely exclude the possibility of their manipulation if they are connected to

performance evaluation. The efficiency indicator is especially important in moving away from quantity towards quality. The subjective feeling of safety as an efficiency factor must be acknowledged and included in the system. That is, gaining the confidence of the people and the community should be as essential as producing a more successful police performance index from a lower budget. The efficiency of a community type police integrated into society, measured with the “objective” indices of criminal statistics is an antagonism in itself.

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A STEPCCHILD OF THE HUNGARIAN LAW ENFORCEMENT SYSTEM? FUNCTION AND PUBLIC IMAGE OF THE HUNGARIAN LOCAL GOVERNMENTAL LAW ENFORCEMENT ORGANISATIONS

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ABSTRACT

This paper³ summarizes some results of the local governmental law enforcement research in Hungary and describes the function and the public image of the Hungarian local governmental law enforcement organisations. The Hungarian law enforcement organisations in Budapest and in the city counties were researched by a complex survey. The public image of the Hungarian law enforcement organisations was examined using the most important national and county newspapers. According to the most important findings, it is proved that there are some anomalies in the function and legislation of the local governmental law enforcement and the public image of the local governmental law enforcement organisations are much better in the county media than in the national media.

Keywords: local governmental law enforcement, municipal police, public judgement, police, cooperation

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INTRODUCTION

Several research projects have been carried out in the recent time by the research group of the Department of Private Security and Municipal Policing at the National University of Public Service, the Faculty of Law based on the research plan of the research group. The research of the local governmental law enforcement has more steps; at first two comprehensive research projects were carried out based on the preliminary assessment and a problem map which results can be introduced in this study (Bacsárdi & Christián, 2016). The aim of the research was to get a comprehensive image about the problems and the social status of the Hungarian local governmental law enforcement.

The relevance of the study is given by the fact that the law material of the local governmental law enforcement has been changed a lot in Hungary in recent years, thus the declared objective of the legislature was to ascertain the national public safety with the enhancement of the possibilities of the local governmental law enforcement (Bacsárdi, 2014). It was correctly recognised by the legislature that the local governments had not been able to give a right answer for the problems of the local public safety. However, if appropriate instruments and authorisation were given, the local governments could be effective partners for the bodies responsible for public service, mostly the police.

In the legal environment being changed from 2013 (in particular with regard to the date of entry into force of the law in charge of the new local governmental and some law enforcement tasks) the possibilities of the local governments have been improved in the view of a more active participation in the local policing, but several recent anomalies in local

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governmental law enforcement have not been eliminated by the legal rules what is more, newer problems have been created. These problems were identified in 2015 (Bacsárdi & Christián, 2016) and the further research can contribute to a better understanding of the identified problems.

The better understanding of the outlined anomalies cannot be possible without getting information about opinions of the local governmental law enforcement organisations due to the analysis of some problems. That was the purpose of the dimension of the complex questionnaire; the inner analysis of the local governmental law enforcement organisations could be carried out with it.

However, it is not enough to carry out an inner analysis so that we can get a picture about the real function of the local governmental law enforcement, thus it is also necessary to get to know how the local governmental law enforcement can be seen and related by the outsiders. It was considered important - being aware of that - the negative perception of the local governmental law enforcement had also been identified in the problem map.

HYPOTHESES

Before the start of the research the following hypotheses were set. Hypotheses of the quantitative research (questionnaire):

- The function of the local governmental law enforcement organisation is impeded by some supervisory problems.
- The relationship between the local governmental law enforcement organisation and the other actors of law enforcement can show a diverse picture nationally.
- The function of the local governmental law enforcement organisation is impeded by some problems coming from the lack of the personnel staff and trainings.

Hypotheses of the perception research:

- A rather negative image of the local governmental law enforcement is depicted by the press.
- The press only marginally deals with the activities of the local governmental law enforcement.
- The county press deals with the local governmental law enforcement more than the national press.
- The local governmental law enforcement is presented in the press in charge of carrying out mainly management and public authority tasks.

METHODOLOGY

Different research methods had to be applied to study the identified law enforcement problems in the problem map and prove the hypotheses outlined above. We would have liked to reach the directors of the local governmental law enforcement organisations with a quantitative research (questionnaire) to identify the problems of the local governmental law enforcement in an extended or deeper level. Having regard to the lack of the central register about the local governmental law enforcement organisations in Hungary, that is why the method of full inquiry (census) was applied to Budapest and its districts (1+23) and to the city counties (23) because we were assured that they had the local governmental law enforcement organisation system worked. Because of the previous things, the research focuses on only the local governmental law enforcement of the local governments with a high population; the research could not deal with the regions with a few or medium-sized population.

The questionnaire was filled in by 22 local governmental law enforcement organisations of 23 county cities, 18 districts in Budapest and the capital governmental law enforcement organisation. It means more than 87% response rate, which is allowed us to draw relevant conclusion from the data.

The external assessment of the local governmental law enforcement's work required another research method. The Polish research method – used in an article about the media appearance of the Polish local governmental guards by Michalina Szafrńska and Anna Wojcieszczak - was applied by us to study the social status because high degree identity can be experienced between the activities of the Polish local governmental guards and persons' activities in charge of the Hungarian local governmental law enforcement tasks. Furthermore, the Polish research was also appropriate for drawing relevant local governmental law enforcement experiences (Szafrńska & Wojcieszczak, 2016). During our research as a secondary research we studied the articles about the local governmental law enforcement of two national public press, a regional wide tabloid and three regional public press printed in 2016.

In the first part of our research the stressed importance of the perception research was pointed out because the negative assessment of the population concerning the local governmental law enforcement (the image of on-the-spot fining and wheel clamping body) (Bacsárdi & Christián, 2017). This kind of local governmental law enforcement perception research similar to the Polish study has not been carried out in Hungary so far in front of the perception research of police (Keller & Tóth, 2013), private security (Christián, 2016) and civilian guard (Christián, 2017).

QUANTITATIVE RESEARCH

Each local governmental law enforcement organisation studied with quantitative (questionnaire) method has a public area inspectorate, which is sometimes completed by other local governmental law enforcement organisations (field guard service, local governmental nature protection guard service). Taking into account that it is compulsory to establish a public area inspectorate in the capital city (Magyarország helyi önkormányzatairól, 2011), while in the county cities the public area inspectorates have been already set up, so it can be stated that the system of public area inspectorates constitutes the backbone of the local governmental law enforcement in the cities of Hungary with a crucial proportion, thus the public area inspectorates were necessarily at the forefront of our research.

THE INSPECTION OF THE LOCAL GOVERNMENTAL LAW ENFORCEMENT

Studying a local governmental law enforcement organisation system in any countries, one of the substantial questions refers to the inspection of the local governmental law enforcement, because the inspection body has a prominent role in creating the unified, legal and consistent practice of law enforcement.

Considering the previous facts, the study of the surveillance of local governmental law enforcement organisations was considered a prominent task for the research group because the shared surveillance of the local governmental law enforcement organisations is used in Hungary. The police generally have the right of professional surveillance but an inspection body in charge of carrying out other state professional surveillance has also been joined some specific local governmental law enforcement types of body (A fegyveres biztonsági őrsegről,

a természetvédelmi és a mezeti őrszolgálatról, 1997; A halgazdálkodásról és a hal védelméről, 2013; A természetvédelmi örökre, illetve őrszolgálatokra vonatkozó részletes szabályokról szóló 4/2000. (I. 21.) Korm. rendelet, 2000). Furthermore, the appropriate function of the local governments' expectations has to be also highlighted which is considered a kind of professional surveillance. The double-expectation system has been mentioned by more respondents based on the precedents.

It must be stressed that the judicial supervision of the local governmental law enforcement organisations in Hungary was abolished with the implementation of the new prosecution law, thus the legal supervisory powers of the prosecution relating to local governmental law enforcement activities had been reduced to the surveillance over the measurements, and procedural force measurements of the deprivation and restriction of personal liberty (Varga Zs, 2011). Because of the previous things there is no judicial supervision above the Hungarian local governmental law enforcement organisations.

During the research more than half of the respondents, exactly 21 respondents fully agreed with the statement that they get the necessary support in the case of anomalies from its inspection body, 15 respondents rather agreed with the statement, while 2 respondents disagreed with it at all, 3 respondents rather disagreed with it. There is no significant difference between the rural and capital local governmental law enforcement based on the responses for the question.

The majority of local governmental law enforcement organisations are satisfied with the professional surveillance of the local governmental law enforcement. 17 respondents are fully satisfied with it, 14 respondents are rather satisfied with it and only 7 respondents are rather unsatisfied with it, while 3 respondents are unsatisfied with it. It is clear that those respondents, who said that they did not get the necessary support from their supervisory body, were rather unsatisfied with the professional surveillance.

Taking into account the question about the transformation of the professional surveillance of the local governmental law enforcement, the respondents were divided, thus it was not considered necessary by 23 respondents, it was considered necessary by 7 respondents and it was considered necessary partially by 10 respondents. There were some respondents who said that they got the necessary support from the inspection body but the transformation of the supervisory system was considered necessary as well. It should be noted that some transformation of the supervisory system was favoured by almost half of the studied local governmental law enforcement organisations.

We have also asked that if a unified local governmental law enforcement inspection would be considered necessary according to the respondents. The responses showed a contrast picture based on the content of the previous ones, thus the transformation of the professional surveillance of the local governmental law enforcement was not considered necessary by 23 respondents, but it was considered fully necessary by 18 respondents, 13 respondents rather agreed with the statement that a unified local governmental law enforcement inspection is needed to establish and only 10 respondents disagreed with this statement.

THE RELATIONSHIP BETWEEN THE LOCAL GOVERNMENTAL LAW ENFORCEMENT ORGANISATIONS AND OTHER LAW ENFORCEMENT ORGANISATIONS

It is known that the establishment of public order, public safety is a cooperation production, that is to say it is the result of more actors' co-operation (Finszter, 2009).

A recent research concluded, that before the turn of the millennium the different security agents considered one another as rivals, however, by now it has become evident, that optimal security is only attainable if these agents actually cooperate as partners (Sotlar & Meško, 2009).

Having regard to the previous things we felt necessary to study the relationship between the local governmental law enforcement organisations and the other two important actors of the local public security, the police and civil guard.

The relationship between the local governmental law enforcement organisations and the police can be considered excellent and good. A perfect relationship can be experienced by 26 respondents and 14 respondents have a good relationship with the police. Only one local governmental law enforcement organisation expressed that it had rather no good relationship with the police.

We also examined what obstacles could be seen by the respondents in the cooperation with the police. According to the majority of the respondents (24) the cooperation is excellent and there is no obstacle in the cooperation. The obstacles collected by the local governmental law enforcement organisations can be ordered in the following:

- organisational obstacles: (a) the supervisory jurisdiction is not carried out by the police appropriately; and (b) the police have problems with the shortage of the personnel (employees).
- the lack of police material regarding the local governmental law enforcement – at executive level persons in charge of local governmental law enforcement tasks are not considered equal partners by the police, they have no enough information about the jurisdiction of the local governmental law enforcement organisations and the procedural rights of the local governmental law enforcement.
- inappropriate flow of information and diverse interpretation of provisions of law can be experienced between the police and local governmental law enforcement organisations.

In most cases the shortage of the police was highlighted by the majority of those respondents who have experienced obstacles in the cooperation. Furthermore, they have also stated that they are not considered equal partners by the police.

The relationship between the local governmental law enforcement organisations and the civil guard - the other important actor in establishing regional public safety - shows a less clear picture.

PERSONNEL STAFF OF THE LOCAL GOVERNMENTAL LAW ENFORCEMENT

Based on the personnel staff of the Hungarian local governmental law enforcement organisations, the following anomalies have been addressed on the problem map: the low qualification of the personnel and executive staff; the lack of the comprehensive, unified local governmental law enforcement trainings.

Significant differences could be experienced between the studied organisations, because the Capital Local Governmental Law Enforcement - a local governmental law enforcement organisation with the biggest personnel staff - while the smallest county local governmental law enforcement organisation employs only three persons for carrying out the duties of law enforcement. The total number of the employees of the organisations giving answers for the questions is 1.962 persons. The number of the employees by the responding local

governmental law enforcement shows how heterogeneous the size of the local governmental law enforcement is despite the fact that the subjects of the research were only the county cities and the capital city with its districts.

Having regard to the age structure of the personnel staff, based on our research, it can be stated that the middle-aged (35-49 year) and the elderly people (50-65 year) having intermediate school qualifications in charge of local governmental law enforcement tasks employed by the local governmental law enforcement organisations. Based on the age structure and the qualification of the personnel staff it is the case that the local governmental law enforcement workers get around minimum wages, which mean 180.500 Ft (around 600 Euro) (A kötelező legkisebb munkabér (minimálbér) és a garantált bérminimum megállapításáról szóló 430/2016. (XII. 15.) Korm. rendelet, 2016).

As for the salary and recruitment difficulties it does not seem surprising that more than half of the respondents (27) have answered that the extraordinary work is considered typical in the organisation while only 13 respondents have thought that the extraordinary work is rather not considered typical or not considered typical at all, which can refer to the problems of the duty rosters.

The respondents basically are satisfied with the capabilities of the local governmental law enforcement workers. There were only two respondents who were not satisfied with the capabilities at all, while 10 respondents were rather not satisfied with it. 24 respondents were rather satisfied, while 5 respondents were fully satisfied with it. Having regard to the local governmental law enforcement workers' professional qualification entirely same responses were given to the question about the workers' capabilities.

THE IMAGE RESEARCH

The study of the social status about the local governmental law enforcement was carried out in the framework of this research; six newspapers were studied in the research (Table 1).

Table 1: *Analysed newspapers and the number of publications*

Analysed newspapers	The numbers of the publication in 2016	The numbers of the articles about local governmental law enforcement in the analysed newspapers
Népszabadság	235 publication	7
Magyar Nemzet	306 publication	21
Lokák	131 publication	2
24 óra	306 publication	16
Kisalföld	306 publication	57
Heves Megyei Hírlap	306 publication	31

The total numbers of the publication of the studied and analysed newspapers were 1,590 pieces. Based on the table it can be stated that the local governmental law enforcement was mentioned in the analysed newspapers or dealt by the studied printed press 134 times per year in any way. At first sight it is prominent that the numbers of the articles are quite low compared to the numbers of the publication: almost an article on average relating to the local governmental law enforcement was involved in every 12th publication. The number of the articles would be worse if we took into account that two articles about the local governmental law enforcement had been published many times on the same day in Kisalföld.

Having regard to that on the one hand we deal with the national printed press and on the other hand the county printed press in our research, thus it is worth separating the analysis based on the national and county newspapers.

131 volumes were published due to the launch of the Lokál regional tabloid in the summer of 2016. We could find references to the local governmental law enforcement only twice in these tabloids; in one of them the capital public area inspectorate was likely to be mixed with the maintenance of the capital public area by a journalist which is considered a serious professional mistake made by the journalist. The two mentions can show the fact that one of the prominent representatives of the local tabloid newspaper would not have liked to deal with the local governmental law enforcement in the studied period.

THE STUDY OF THE NATIONAL DAILY NEWSPAPERS

In the case of studying the national daily newspapers we focused on Népszabadság and Magyar Nemzet, the two most distributed public life and national daily newspaper (Magyar Terjesztés-ellenőrző Szövetség, 2016). The two newspapers were published 541 times in 2016 and there were only 28 days when the topic of local governmental law enforcement was or even peripherally mentioned in the public life national daily newspapers publishing the two the greatest number of copies. It means that the readers could find news and information about the local governmental law enforcement hardly in 5% of the public life national daily newspapers publishing the two most number of copies. It was also found that the studied press involved news almost entirely about the public area inspectorate in the topic of local governmental law enforcement, the field of guard service was involved only once in the press mentioning the obligation to pay the field guard contribution.

The news about the local governmental law enforcement of the studied national daily newspapers could be classified in the following way. The majority of the articles about the local governmental law enforcement is linked to the activities of the local governmental law enforcement as a law enforcement organisation (16 articles). It should be highlighted that over the enforcement actions, any references for the crime prevention activities of the local governmental law enforcement or such an article with this topic have not been published in the analysed national daily newspapers, however, the topic of crime prevention should be the most important part of the local governmental law enforcement organisations besides the authority actions and priority should be given to the efficient communication of crime prevention and its social reporting. 5 articles dealt with the work of the local governmental law enforcement staff and 7 articles only mentioned the theme of the local governmental law enforcement.

It could be concluded that more than half of the articles about the local governmental law enforcement have a neutral relationship with the local governmental law enforcement, there are 9 negative articles (two of them has rather critical evaluation) and there is only one positive article about the local governmental law enforcement. The result is worse if the articles only mentioning the local governmental law enforcement are not involved in the neutral articles thus we can find exactly the same number of negative articles (9 pieces) than neutral articles (9 pieces). It should be also highlighted that those writings which subject deals with the employees' work of the local governmental law enforcement, they have - with only one exception - a negative tone.

THE STUDY OF THE REGIONAL DAILY NEWSPAPERS

Based on the review of the regional articles dealing with the local governmental law enforcement, it is striking that the topic of local governmental law enforcement has been published by the regional daily newspapers much more than the national daily press (28 articles opposite 104 articles).

Statements relating to the activities of the local governmental law enforcement as an organisation are more stressed than the employees' activities of the local governmental law enforcement, thus the total of 78 publications were made in 2016 in the studied press organs. 53 of 78 articles deal with the enforcement actions or authority activities of local governmental law enforcement, 11 of 78 articles are about crime prevention activities, 14 of 78 articles are about other, supporting activities. The dominance of enforcement actions and authority activities is obvious in the county daily press as well, as it could be seen in the national daily press but we can recognise a substantial difference. The national daily press takes a neutral or negative view of the local governmental law enforcement, positive articles cannot be found, but mostly positive (22) and neutral (22) articles were published about the enforcement activities in the county daily press and the articles including negative value judgement (7) were represented in a much smaller rate. Crime prevention and supporting activities, which were not published at all in the national press, except positive (19) and neutral (6) articles could be found.

The majority of the positive articles are about the results achieved by the local governmental law enforcement and the co-operation with the police and the civilian guard. The local governmental law enforcement has been published more times in Kisalföld from the analysed county press, than in the Heves Megyei Hírlap and 24 hours together. The research cannot give a clear answer to the question where this substantial difference comes from but it is likely that the numbers of the copies of the articles about the local government law enforcement can be affected strongly by the range and depth of the relationship between the local governments and the county press; the ability of the announcement and identification of the problems raised by the readers during the function of the local government. In addition, the Kisalföld is considered a county daily press sold in the most copies and it was also experienced during the research period. So, they have the biggest editorial team and resources for exploring social problems and communications of local governments.

Studying the articles dealing with the local governmental law enforcement, the table of the county daily newspapers has been completed with a line called „other, supporting activity” compared to the table prepared for studying the county daily newspapers, because more such activities relating to the local governmental law enforcement were presented by the county daily newspapers which could be classified to neither the enforcement actions nor the crime prevention activities. For example, such an activity was published in the Kisalföld when it reported that the public area inspectorate in the Hungarian town, Komárom controlled the status of the defibrillators used in the local hospital.

It is well-marked that most of the studied articles dealt with the activity of the local governmental law enforcement (78 articles), the number of the articles which only mentioned the local governmental law enforcement are smaller (20 articles) and we could find marginal number of the articles about the work of the local governmental law enforcement staff.

Three of the articles dealing with the employees' work of the local governmental law enforcement have the same topic written about a public area inspector's contested procedure. Strongly negative articles were published about the public area inspector's procedure by every county press; the public area inspector's procedure was described autocratic as an example of a repressive power. The newspaper of Kisalföld generally deals with such a topic which applies the majority of the instruments found in the journalist's toolbox suitable for degrading the organisation and procedure so that the public area inspector's procedure can be given a rather negative way in the article.

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The majority of the negative articles (5 articles) were published in the daily newspaper of 24 hours. Studying these articles, it was stated that the newspaper had made way for the readers' letters and used special turns of the tabloid journalism consciously. For example, we could read in the 24 hours that „*The traffic wardens are always looking at these places and can sanction many drivers a day.*” „*This place became a place for issuing notorious punishment...*” In these articles the public area inspectorate is depicted as a fine issuing body. The use of vulgar words can be found in the negative articles („*the public area inspectorate pisses on it*”), expressing the abusive and wrong existence of the public area inspectorate's activities.

Classifying the tone of the articles it can be stated that the local governmental law enforcement is written in a neutral context in a higher proportion (49 %) but the positive tone is also occurred and positive articles can be found as well. In the case of those articles which involve negative statements, very negative (6%) and less negative (6%) content-based publications can be found in almost the same proportion as well.

If we do not take into account those statements which only mention the local governmental law enforcement (20) to the articles involving neutral value judgement, we can find that more positive articles were published in the studied county newspapers than neutral ones. Furthermore, the number of the positive articles almost reaches the number of the negative and neutral articles. It is a very positive result in the view of the local governmental law enforcement, because it shows that in the county newspapers besides the appropriate communication it is possible to communicate the usefulness of the results and the activity towards the population.

HYPOTHESIS EVALUATION

HYPOTHESIS EVALUATION OF THE SURVEY RESEARCH

The functions of the local governmental law enforcement organisations are impeded by some supervisory problems. The hypothesis can be seemed to be accepted, the research proved that it would be necessary to think about the public area inspectorate because not each local governmental law enforcement gets the necessary support from its inspection body and it proves the deficiency of the supervisory system.

The relationship between the local governmental law enforcement organisation and the other actors of law enforcement can show a diverse picture in the country. The hypothesis can be deemed to be accepted partially. The research stated that the relationship between the local governmental law enforcement and the police could be considered good but some obstacles could be found in the relationship. The cooperation between the local governmental law enforcement and the

civilian guard is different in the country, it shows a various picture and its result is coming from the association structure of the civilian guard the personnel staff and its other features.

The function of the local governmental law enforcement organisation is impeded by some problems coming from the lack of personnel staff and trainings. The hypothesis can be considered to be accepted partially. The local governmental law enforcement organisations are generally satisfied with skills and qualifications of the personnel staff but some demands are appeared for the possibilities of the appropriate local governmental law enforcement training and further training courses.

HYPOTHESIS EVALUATION OF THE PUBLIC IMAGE

The hypotheses - written before the start of the perception research - can be evaluated on the basis of the followings.

A rather negative image of the local governmental law enforcement is depicted by the press. The hypothesis can be seemed to be accepted partially. It was stated in our research that the national and regional press took a different view of the local governmental law enforcement. In the studied national press only neutral or negative articles were published whereas in the studied county press more positive or neutral articles could be found.

The county press deals with the local governmental law enforcement in a higher proportion than the national press. The hypothesis can be deemed to be accepted because the research proved that the local governmental law enforcement was occurred in the studied county press much more often than in the national press.

The local governmental law enforcement is presented in the press in charge of carrying out mainly public authority and management tasks. The hypothesis can be considered to be accepted because it was found that the local governmental law enforcement was presented in the studied national and county press as an organisation in charge of carrying out enforcement or authority activities. The functions of public safety and crime prevention activities of the local governmental law enforcement were not occurred in the national press while they were appeared very rarely in the county press a but at least they were presented.

CONCLUDING REMARKS

On the one hand our research studied the supervisory, personnel staff and relationship problems of the local governmental law enforcement based on the identified problem map, on the other hand the social status was studied as well. The core findings of the research can be concluded in the followings:

- According to the supervisory study of the local governmental law enforcement it can be stated that the supervisory system is required to modify, because among the other things the support of the local governmental law enforcement organisations cannot be guaranteed equally by the supervisory system. It was said by the local governmental law enforcement organisations as well, and the significant part of them voted in favour of the reforming of the supervisory system. In the view of our statement one of the main problems of the supervisory system is that there is no definition of the concept of the professional surveillance.
- It is particularly important for the partner relationships of the local governmental law enforcement to establish the local public safety and it has been ascertained by our research. The police and the civilian guard are the most important partners of the local governmental law enforcement, but the co-operation in practice does not show a unique image.

- The problem of the personnel staff of the local governmental law enforcement basically comes from paying salary and not from the qualifications of the personnel staff. The wage guaranteed by legal rules is not sufficient to the refreshing of the personnel staff with younger employees.
- It is difficult for the local governmental law enforcement to be accepted their activities by the society, to get people's sympathy, confidence because they cannot get the inhabitants' sympathy with the majority of their works. On the other hand, the local governmental law enforcement is a decentralized institute coming from its nature, it is not able to reach the public and affect it in a positive way because it does not include such a centralized set of instruments, communication channels.
- We stated that the main subjects of our research are the enforcement actions and the authority activities of the local governmental law enforcement and the other, crime prevention, public safety activities are not involved or involved marginally in our research. And it means a further difficulty for the local governmental law enforcement from the point of the positive opinion forming because the combat against the crimes can be sold much more than taking actions to combat against the drivers parking illegally or vendors of public areas.
- The attitude on the national and the county media to the local governmental law enforcement is different according to the research, because the rather negative and neutral news is dominant in the studied national media whereas mainly positive and neutral news can be found in the studied county press -, and its result is obviously that the local governments basically can reach the county press with their messages, because they give information about the local news. In order that the local governmental law enforcement could be given a rather positive way it would be necessary such an organisation which is able to communicate in the outrageous cases of the local governmental law enforcement authentically in the national press or if necessary „take up the local governmental law enforcement's quarrel” (Bacsárdi & Christián, 2017) But there is no local governmental law enforcement labour organisation.

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CURRENT SITUATION AND PERSPECTIVES OF INTELLIGENCE – LED POLICING MODEL IN THE REPUBLIC OF SERBIA

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ABSTRACT

The Ministry of Interior of the Republic of Serbia (MoI RS) is currently implementing the Intelligence-led Policing (ILP) model in the territory of four police directorates (Novi Sad, Valjevo, Kraljevo and Leskovac). The starting elements of this approach include improvement of intelligence function and providing criminal intelligence information to police management, based on which it is possible to identify security problems and make adequate strategic and operational decisions directed at prevention primarily. The paper³ analyses the legal framework and organization of ILP and highlights the key principles, positive experiences and problems occurring during its implementation. Organisational changes and the application of the basic principles have made influence on more efficient solving of security problems, primarily prevention. However, time is required for the full implementation of the model, particularly for the change in the manner of decision-making.

Keywords: intelligence–led policing, strategic assessment, operational assessment, Serbia

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INTRODUCTION

Intelligence-led policing (ILP) was developed at the end of 20th century in Great Britain, to be accepted then with certain modifications by other countries among which the first were the European Union (EU) Member States and the United States of America (USA). The increase of crime rate, particularly of organized crime, resulted in the public pressure on the police to try out, in addition to the traditional model of policing used by that time, something new, different, more efficient and economically more rational, which would decrease the number of criminal offences in a short time (Ratcliffe, 2007). By that time, the police used to spend too much time proving criminal offences that had already been committed instead of preventing them from happening, particularly those committed by the repeat offenders. ILP represents a proactive model of law enforcement, a practical alternative to traditional reactive manner of policing.

The police were faced with the request to use as few means as possible, including the number of police officers, to achieve as efficient results as possible, to reduce the number of criminal offences and increase the degree of safety of the society. This also required to change the dominant philosophy which started from a criminal offence and went towards the offender into the philosophy which would start from a registered, potential offender and go towards the prevention of a criminal offence (Đurđević & Radović, 2017). ILP offers

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more objective basis for decision making on priorities of policing and allocation of resources (Ratcliffe, 2016). Proactive policing means the analysis and identification of factors relevant for crime, time and space analysis, assessment and prognosis in order to focus police work on the efficient fight against the most serious security problems. Efficient, effective and economic policing implies also decision making based on relevant, true, complete, timely and useful information on crime, offenders and objects of crime, as well as on capability of the police to combat crime. Without objective and analytical information, the decision making and risk management are hard to achieve.

This is a managerial philosophy, a business model or a theory based on collection and analysis of data on crime, assessment of crime manifestations and defining recommendations for police managers involved in decision making so that they could organise policing in the most efficient manner and influence the selected priority (Gottshalk, 2010). This approach leads to creation of performance culture called the New Public Management, which was first recognised in the policing of Great Britain in early 1980s. ILP cannot be implemented in the same way into the work of all police organisations. Legal framework, the manner of organisation, the degree of centralisation and decentralisation, technical and personnel potentials, including the culture of changes all influence the manner of implementation. Research in Great Britain (Heaton, 2009a, 2009b) showed that there is little force in the argument that practice of ILP significantly reduced all crime and burglary levels, when measured at the police force level. But, their crime reduction results for thefts of motor vehicles were more impressive and this result is linked to particularly high level of repeat offending. Thus, ILP may be effective at curtailing the activities of the most prolific and serious offenders.

STRUCTURE OF INTELLIGENCE-LED POLICING IN THE REPUBLIC OF SERBIA

In order to improve efficiency and effectiveness in achieving their function, which is to protect basic rights and freedoms of citizens, in October 2014, the Ministry of Interior of the Republic of Serbia (MoI RS) initiated the process of change management. One of the steps in this reform includes the implementation of ILP in the work of the police. The implementation of ILP has been recommended by the European Commission, which is defined by Chapter 24, the sub-chapter related to the fight against organised crime. The Action Plan of the Republic of Serbia for Chapter 24 defines the specific activities on ILP establishment (Vlada Republike Srbije, 2016).

Following the functional analysis of the work of the MoI RS the need has been identified to introduce new ways of policing, within which proactive work will be brought to the forefront instead of the reactive policing dominant by that time. It is said in the Action Plan for Chapter 24 that in order to establish an effective, efficient and cost-effective ILP model, the MoI RS has recognized the following needs: to unify all criminal intelligence work functionally and organizationally; to set up the ILP model on all three levels (national, regional, local); to create management and leading groups on the strategic and operational levels. Also, a more precise legal framework needs to be developed for the current databases and integrate them into one system; to create sustainable training systems; to set standards and develop procedures; to build the capacity for devising strategic and operational assessments and plans as well as for intelligence-based decision-making (Vlada Republike Srbije, 2016).

However, the first steps in the ILP implementation were made back in 2005, when the MoI RS and the Swedish National Police Board launched a project (2005–2009), which referred to building capacities of the MoI RS in collection of information, work with

operational links and application of analytical methods through education and training. With the same goal in mind and as a sequel to the first project, the second project was launched titled “The Development of ILP model in the MoI RS (2011/2014)”. A part of this project is a pilot project introducing the ILP model in the Regional Police Directorates of Novi Sad and Kraljevo. In order for the training to be carried out in an adequate manner and in order to give basic information on the model a guidebook titled “Intelligence–led policing” was made (Kostadinović & Klisarić, 2016). Numerous activities have been completed as part of the project, such as: analysis of current decision-making process in selection priorities as well as definition of appropriate methods in preventing crimes, GAP analysis, analysis of the Swedish ILP reference model and the intelligence and operational police work in practice in Serbia. The model of Sweden is focused on the prevention and repression of organized, serious and serial crime. A key issue in the implementation of the ILP in Sweden is the establishment of an operational management team. When these groups were formed and when they began to search for relevant information on crime, they became capable of managing operational police affairs. In this way, they discovered the need for a criminal intelligence unit that will have access to all information and capacity to process and analyse information in order to obtain good crime reports (Svenska polisen, 2006).

The ILP model development in the MoI RS (2016–2018) is currently in progress, which is being implemented as cooperation between the Republic of Serbia and Sweden. Before project implementation in the territory of all police directorates, the General Police Directorate implemented pilot projects in four Regional Police Directorates: Novi Sad, Kraljevo, Leskovac and Valjevo.⁴ One of the significant shifts has been achieved in establishing special records of operational reports. A large number of police officers at all three levels (strategic, operational and tactical) have been trained for ILP implementation (for informant controllers, NOTEBOOK ANALYST analysis methods, for operational and strategic assessment, including the Europol methodology for Serious and organised crime threat assessment (SOCTA) analysis).

The ILP model of the MoI RS consists of three groups of tasks:

- leading and steering;
- criminal intelligence work; and
- planned operational police work (Kostadinović & Klisarić, 2016).

The essence of leading and steering consists of: setting priorities and determining strategic and operational goals in combating crime; identifying needs and submitting requests for criminal intelligence information; making decisions on operational police work, use of human, material and financial resources; monitoring implementation of decisions, strategic and operational goals and tasks; evaluation and constant quality improvement of all ILP entities (the cycles and their products, organisational structure and resources), development of policing methodology (Kostadinović & Klisarić, 2016). *Criminal intelligence work* means planning, collection, processing and analysis of data and information on crime and other security threats based on which criminal intelligence information/products are made and sent to users (leading and steering strategic and operational groups and operational police units) (Kostadinović & Klisarić, 2016). In other words, the criminal intelligence tasks have been defined based on the stages of criminal intelligence process. In this way, intelligence information represents an analysed raw information, which provides new and synergetic knowledge on a security threat (Carter, 2009). Planned operational police tasks include

4 The project was first implemented in the Police Directorates of Novi Sad and Kraljevo, and then in Leskovac and Valjevo.

activities provided by the strategic, operational and tactical plans, which are directed at combating the selected security priorities.

The functions of ILP model have been defined as follows: (a) strategic and operational planning; (b) request; (c) planning the criminal intelligence work; (d) collecting; (e) processing; (f) analysing; (g) submitting the product; (h) decision making; (i) planning the operational police work; (j) execution; (k) follow-up; and (l) evaluation and quality management (Kostadinović & Klisarić, 2016).

In order to implement ILP model into the work of the police there is continuous work on creation and improvement of legal, organizational, administrative and technical assumptions required for its success. The Law on Police (*Zakon o policiji*, 2016) defined that in the performance of police tasks, the Police shall apply ILP model as a model of managing police work based on criminal intelligence (Article 34 of the Law on Police). Legal basis was also defined to establish the platform for safe electronic communication, exchange of data and information between government bodies, special organisational units of government bodies and institutions in order to prevent organized crime and other forms of serious crime within a special information–communication system of the Ministry, which at the same time represents a foundation to establish national criminal intelligence system (Law on Police, 2016).

The MoI continues to work on improvement of organisational conditions for the implementation of the ILP model. A Strategic Group for Leading and Steering has been formed as well as operational groups for the territory of the Police Directorate for the City of Belgrade and for 26 Regional Police Directorates. An important role in the ILP implementation, particularly in working out the Public safety strategic assessment and Strategic assessment of threats from serious and organized crime, was played by the Service for Criminal Intelligence Affairs and Undercover Investigators and a Service for Criminal Analysis, which are part of Criminal Police Directorate. The Service for Criminal Intelligence and Undercover Investigators is responsible for collecting, processing and analysis of information, as well for giving intelligence data related to organised crime, while the Service for Criminal Analysis is in charge of processing and analysis of investigation–related data, most frequently those related to organised crime.

LEVELS OF ORGANISATION AND PERFORMANCE OF LEADING AND STEERING TASKS

The Strategic group for leading and steering was formed to create and implement the activities related to combating crime, and it is formed at the level of the General Police Directorate. Its members are the managers from the strategic and senior level, and the permanent members include the Police Director, the Deputy Police Director and Assistant Police Directors, as well as the Heads of organizational units from the General Police Directorate. The Group is chaired by the Police Director and it holds meetings once in three months, and more often if required. The Strategic group is responsible for making Public security strategic assessment and Strategic plan of the police, in other words for identifying the most serious security problems, selecting priorities, defining measures to fight against them, allocating resources for their implementation, monitoring implementation of activities and evaluation of the results achieved. This Group coordinates and directs the work of organisational units in the headquarters, the Police Directorate for the city of Belgrade and Regional Police Directorates in undertaking the activities set out in the Strategic plan. At the same time, the Strategic group creates conditions to undertake joint activities with other government

bodies and international subjects, which are necessary for efficient fight against crime, it proposes the necessary strategies, including the amendment or adoption of new laws and by-laws required for the efficient fight against crime (Kostadinović & Klisarić, 2016).

To lead and steer the activities of the fight against crime at operational level, the Police Directorate for the City of Belgrade and Regional Police Directorates, leading and steering operational groups have been established. An operational group is chaired by the Head of the Police Directorate for the City of Belgrade, or the Heads of Regional Police Departments. ILP contact persons are in charge of the activities and monitoring of implementation of planned activities. The meetings of leading and steering operational group are held once in two weeks, and more often if required. The tasks at the operational level of leading and steering are to undertake activities in the respective territories of police directorates⁵ which are set out in the Strategic plan regarding the strategic priorities, working out of Operational assessment of security in the territory of a police directorate, or to identify security problems characteristic for that territory, to select work priorities and elaborate operational plan with specific activities directed to fight against the selected work priorities (Zakon o policiji, 2016).

What is currently insufficiently developed and what is intensively worked on is the development of a model organisation at the tactical level. The current activities include work on creation of conditions for ILP implementation at the tactical level, primarily the development of organizational and expert intelligence and analytical capacities. At the same time, the work continues on improvement of information, software support for collection,⁶ exchange of data and working out of intelligence–analytical products necessary to undertake specific activities directed to fight against crime.

CRIMINAL INTELLIGENCE PRODUCTS

PUBLIC SECURITY STRATEGIC ASSESSMENT AND STRATEGIC PLAN OF THE POLICE

Strategic approach to fight crime implies strategic assessment and strategic plan of work. Without a strategic approach it is not possible to have effective and economic work organization, particularly proactive and preventive one. In order to consider the most serious forms of organised crime in the Republic of Serbia in 2015 the first SOCTA was made (Ministarstvo unutrašnjih poslova, 2015). The subject of assessment included: psychoactive controlled substances; irregular migrations; human trafficking; cybercrime; financial crime; general crime (trafficking in arms, kidnapping and extortion, robberies, motor vehicle thefts); money laundering and organised crime groups. Based on the analysis and assessment the recommendations were defined for conduct of police and other government bodies. For the implementation of the SOCTA document, the Action plan was made, within which the areas were set which will be priorities in the work of Prosecutor's Office for Organised Crime and Service for the fight against organised crime. In addition to this, SOCTA contributed to the development of joint strategy of conduct in a number of investigations and criminal prosecutions, which have already been concluded. The majority of investigations in the last five years have been conducted proactively and were directed to organised crime groups

5 In the Ministry of Interior of the Republic of Serbia there is the Police Directorate for the City of Belgrade and 26 Regional Police Directorates.

6 Operational report application has been designed.

active in the Republic of Serbia, the region or the countries of the Western Europe. In the period from January 1, 2014 to October 31, 2014, the Prosecutor's Office for Organised Crime launched investigations against 128 persons, out of which the proactive investigations were conducted against 91 persons (Vlada Republike Srbije, 2016).⁷ This means that more than 70% investigations in the cases of organised crime were conducted proactively. A year later in 2016, in cooperation with Macedonia and Montenegro, the Republic of Serbia made Regional Assessment of Threat from Serious and Organised Crime.

The second strategic document, which represents the most important document in the fight against crime in accordance with the ILP model of policing is Public security strategic assessment (Ministarstvo unutrašnjih poslova, 2017). In 2017, the Police Directorate made the first Public security strategic assessment, which represented the basis for making the Strategic plan of the police. The Public security strategic assessment is made and the Strategic plan of the police is adopted by the Police Directorate (Law on Police, 2016). The Public security strategic assessment sets out the priorities in the work of the police for the period 2017–2021. The Public security strategic assessment took into account also certain strategic documents of the EU, which refer to the field of security, primarily Europol's annual EU Terrorism Situation and Trend Report, SOCTA, Internet Organised Crime Threat Assessment and European security agenda 2015–2020. (Đurđević & Radović, 2015). Public security strategic assessment consists of two sections. The first one includes strategic analysis, which gives the current situation and trends of crime, and the other one includes a strategic assessment. The second section sets out eight priorities of policing in the next five years.⁸ Each of them is elaborated in three segments: description, forecasting trends and recommendations.

Recommendations for each priority are systematised in the following manner:

- improvement of normative framework and practical work;
- improving institutional and professional capacities;
- development of operational procedures;
- promotion of prevention; and
- promotion of national, regional and international cooperation (Ministarstvo unutrašnjih poslova, 2017).

In December 2017, based on Public security strategic assessment, the Police Directorate adopted a Strategic plan of the police for the period 2018–2021. The Strategic plan of the police defines the activities to combat selected priorities, time framework for implementation, the indicators of the results and the sources of verification of results achieved for each priority.

OPERATIONAL ASSESSMENT AND OPERATIONAL PLAN

Police directorates make operational public security assessments and adopt operational plans for their respective police directorates (Zakon o policiji, 2016). The aim of operational assessment is to analyse and assess security problems in the territory for which each police

7 According to the definition of the Republic Public Prosecutor's Office proactive investigations are the investigations conducted before or during the period when criminal offence took place (Vlada Republike Srbije, 2016).

8 Priorities: organised crime; fight against manufacturing and trafficking of narcotics, focusing on marihuana and synthetic drugs; fight against corruption; fight against abuses of information-communication technologies in the territory of the Republic of Serbia; fight against terrorism and violent extremism leading to terrorism; improving public peace and order by fighting violence, particularly at sports events, in schools and public places; improving traffic safety at state roads, including state road passing through human settlements; irregular migrations and human trafficking.

directorate has been established. In the operational assessment, the subject of analysis and assessment is to find out in which way strategic priorities reflect on the territory of the police directorate. In accordance with the Strategic plan of the police and their respective operative assessments all police directorates adopt operational plans. In the same way as the Strategic plan of the police, operational plans define the activities to fight against the selected priorities, the time framework for their implementation, the indicators of the results and the sources of verification of the results achieved for each priority.

EVALUATION OF INTELLIGENCE–LED POLICING IMPLEMENTATION

For objective analysis of the degree of ILP implementation, in accordance with the purpose of the paper, we shall highlight the basic results and problems in the implementation. As we have already stated, the Law on Police (*Zakon o policiji*, 2016) has created a legal foundation for ILP implementation, it has defined concepts of criminal intelligence information and set out the platform for the secure electronic exchange of information, exchange of data and information, as a basis to establish national criminal intelligence system. In addition to this, the activities of the Police Directorate include development of the Public security strategic assessment and the Strategic plan of the police, and the activities of the Police Directorates include operational assessments and operational plans. The Law on Records and Processing of Data in the field of Internal Affairs (*Zakon o evidencijama i obradi podataka u oblasti unutrašnjih poslova*, 2018) has also been adopted. The Data Secrecy Law (*Zakon o tajnosti podataka*, 2009) and the Law on Protection of the Personal Data (*Zakon o zaštiti podataka o ličnosti*, 2008) are particularly important for the ILP. The manner of work with secret sources and collection of data are defined by bylaws, the most important being the Mandatory instructions on operational work. The Code of police ethics (*Kodeks policijske etike*, 2017) is of great importance for the respect of the right to privacy, taking into consideration the line between the right to privacy and necessary protection of security. These facts suggest that basic legal framework for the ILP implementation has been established. However, it is necessary to work more in order to regulate in more details information management, the platform and the criminal intelligence system itself. In addition to this, it is necessary to legally regulate functioning, connection and authority of various levels of the ILP, the division of responsibility regarding the seriousness of crimes, the responsibility and manners of reporting regarding strategic priorities, the work of coordinators and ILP contact persons.

For successful ILP functioning standards have been defined for the work of leading and steering groups at strategic and operational levels. Proactivity in work of the leadership is an important characteristic of this process. The decisions are made based on full understanding of the problems faced and enable managers to define priorities and allocate resources according to them. There is also an ongoing work on the improvement of intelligence functioning and the role of each police officer within the model. In order to provide success, guidelines have been defined for structural organisational changes in order to remove obstacles and promote intelligence work and exchange of information within the Directorate and all national agencies. The national intelligence management model has not yet been established, the link between government services and private security sector or the work of the fusion centre. There is space also to improve operational intelligence and analytical capacities, which would provide support to leading and steering operational groups. It is necessary to coordinate the work and to make organisational connection of two different analytical organisational units and to create space for leading and steering operational groups

to have more influence on criminal intelligence activities. Sheptycki (2004) pointed out to similar problems in other countries.

Four criminal intelligence products are used (a strategic analysis, an operational analysis, a target profile and a problem profile), and there is methodology developed to make them while the analysts who participate in the development have been adequately trained (ACPO & Centrex, 2007). The software for analysis and visualisation of crime (crime mapping) are also used in accordance with parallel efforts by the Serbian police to develop problem-oriented approach (Vuković, Mijalković, & Bošković, 2016). Top-to-bottom management approach has been established. A special segment is dedicated to performances, the analysis and use of results of analysis in order for the “lessons learned” to be kept in the memory of the organizational units. However, taking into account the fact that the ILP model implementation in the territory of all Police Directorates has started since this year, the evaluation of the results achieved cannot be made, or any conclusions as to if and how much it influences the reduction of the number of criminal offences and misdemeanours. However, a work group for ILP implementation has developed methodology for monitoring and evaluation of the ILP results. In order to improve security in work plans, the activities have been defined which focus not only on criminal groups, but also on crime hotspots, hot products, multiple repeat offenders and persons who are repeat victims of crime (Farrell & Pease, 2017). In addition to this, within strategic and operational plans the indicators have been defined for effective and efficient use of financial means in a proper manner, effective and efficient use of human resources and the evaluation of results of measures related to each priority. The activities for continuous work have been defined on improvement of work culture in order to accept the work philosophy based on intelligence information, what is also indicated in research by Nina Cope (2004).

CONCLUSION

ILP has been developed to respond to growing threats by proactive policing, which would complement traditional, reactive model of policing. Proactive policing is oriented towards the future as ILP focuses on crime prevention, i.e. on the influence of the factors contributing to criminal offending. The key to ILP success is systematic collection and analysis of information and data significant for prevention and reduction of the number of crimes. Information is a powerful tool of law enforcement, it provides a clear picture of a security problem. Intelligence process, as a procedure, which results in a criminal intelligence product, makes the law enforcement approach stronger by better understanding of the problem and the environment where the police perform their tasks.

However, the success depends largely on a series of preconditions which must be fulfilled, among which in our opinion the most important include: continuous work on the development of a clear notion of ILP significance, both in managers and in all other police officers; work organization adapted to ILP model; continuous work on the development of intelligence work and analytical capacities, strengthening awareness on the necessity of data exchange both within an agency and among agencies; respect of the right to privacy and legal collection of data; and constant education on the necessity to respect legal standards in collection and use of data, particularly from the aspect of the right to privacy. Using the platform mentioned together with clear consideration of the problems and proactive work, the policy of police management looks towards the future to prevent the most serious security problems by selecting the efficient measures and with rational use of the available resources.

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ATTITUDES ABOUT HATE CRIMES TOWARD LESBIANS AND GAY MEN AMONG POLICE OFFICERS: CASE STUDY OF POLICE FORCES OF CANTON SARAJEVO

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ABSTRACT

Most victims of hate crime that are targeted because of their sexual orientation never report to the police because of their fear of police hostility, abuse and possible disclosure of their sexual orientation. This is strongly supported by the enormous discrepancy between the number of antigay/lesbian crimes reported to the police in the CS FB&H for the period of 2013-2017 and number of those reported to the NGOs in the same period. This paper investigates presence of sexual prejudice among police officers and possibility of its conversion into negative behaviour toward gay men and lesbians. The research is conducted among police officers of Ministry of Internal Affairs of the CS through 300 surveys. The sexual prejudice and its conversion into negative behaviour are questioned through ATG/ATL scale, stereotypes, group position and behaviour. Paper concludes with an outline of implications of sexual prejudice within the law enforcement forces.

Keywords: sexual prejudice, police officer, hate crime, lesbian and gay men

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INTRODUCTION AND OVERVIEW OF PREVIOUS RESEARCH

Most victims of hate crime targeted because of their sexual orientation never report to the police for the reason of their fear of police hostility, abuse and possible disclosure of their sexual orientation. The reporting of crimes to the police is a frequently examined aspect of victimization and although it is relatively independent of the demographic characteristics of victims, victims that are targeted because of their sexual orientation are less likely to report to the police (Kuehnle & Sullivan, 2003).

Hate crimes based on sexual orientation have been historically underreported and dissimilar to non-bias crimes, it is continuously unlikely that they will be reported to the police (Herek, Cogan, & Gillis, 2003; Pikić & Jugović, 2006; Williams & Robinson, 2004). The most frequently cited reason for that behaviour, according to lesbian and male gay victims, is a fear of secondary victimization since they believe that police forces are antigay/lesbian (Berrill & Herek, 1990).⁴ Gross (1988) found that the fear of police was one of the

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4 Secondary victimisation in hate crimes based on sexual orientation appears at multiple levels. Disclosure of victims' sexual orientation may lead to loss of their employment, eviction from accommodation, loss of the child custody etc. Furthermore, victims face the possibility of further victimisation by rejection of their friends, family, coworkers... and society in general due to its homophobic attitudes. Possible insensitivity, indifference and even hostility of police officers, when a victim reports a crime are also strong forms of victimisation. At the end secondary victimisation shapes the way lesbian and gay male survivors respond to the primary victimisation of hate crimes (Berrill & Herek, 1990; Briones-Robinson, Powers, & Socia 2016; Herek, Gills, & Cogan, 1999).

primary reasons for not reporting these crimes to the police. Similar finding is indicated in the results of Finn and McNeil's (1987) summary report prepared for the National Criminal Justice Association (Kuehne & Sullivan, 2001). Pikić and Jugović (2006) described that a one quarter of lesbian, gay men, bisexual and transgender persons who had reported to the police have also experienced some discomfort when doing so. Comstock (1989) found that 67% of respondents who decline to report to police stated their perception of police as antigay/lesbian as a reason, 14% feared abuse from the police while 40% feared that reporting to the police will lead to the disclosure of their sexual orientation in public.

These findings are strongly supported by the enormous discrepancy between antigay/lesbian hate crimes reported to the police and those reported to the various NGOs and support organizations. Similar situation can be found in Canton Sarajevo of the Federation of Bosnia and Herzegovina (CS FB&H). Namely, in this part of Bosnia and Herzegovina (B&H) there is vast discrepancy between the hate crimes occurrences based on sexual orientation that are reported to the police and those reported to the NGOs. Only one NGO⁵ reported 108 hate crime cases for the period of 2013-2017, however none of those cases was reported to the police and consequently not prosecuted.⁶

For that reason, it is important to understand whether lesbians' and gay men's fear of the police is truly justified and to establish dominance of sexual prejudices⁷ among police officers. According to Herek (2002) sexual prejudice refers to all negative attitudes established on the sexual orientation, whether the target is homosexual, bisexual or heterosexual. Due to the current social perception of sexuality such prejudice is usually focused on people who engage in homosexual behaviour or mark themselves as a gay, lesbian or bisexual. Thus, the term sexual prejudice comprises heterosexuals' negative attitudes toward homosexual behaviour, people with a homosexual or bisexual orientation and communities of gay, lesbian and bisexual people. As all types of prejudice, sexual prejudice has three main features: it is an attitude, evaluation or judgment; it is focused on a social group and its members; and it is negative, including hostility or dislike. According to Haddock and Zanna (1998), sexual prejudice contributes to antigay/lesbian behaviours. In experimental studies, sexual prejudice correlates with antigay/lesbian behaviours. For this reason, sexual prejudice among professionals in the field of law enforcement could directly affect the quality of their work. The police officers are a generally important group of social actors due to their roles as gatekeepers in the reporting of hate crimes cases based on sexual orientation and any other

5 Sarajevo Open Centre (SOC) is an independent feminist civil society organisation that strives to empower lesbian, gay, bisexual, trans* and intersex (LGBTI) people and women through community empowerment and activist movement building. Furthermore, SOC offers free legal counseling as a service for the LGBTI community intended to inform and give support to LGBTI persons in B&H related to their human rights, ways of using existing B&H laws protecting them and the mechanisms of exercising those rights. Also, SOC offers possibility of online or via phone reporting of antigay/lesbian behaviour in variety of forms and in a form of hate crime (Sarajevski otvoreni centar, n.d.).

6 The information is derived from the Hate Monitor reports of the OSCE Mission in B&H. Namely, OSCE is the only organisation in B&H that collects data on HC and HS incidents, responses and court cases even though National Point of Contact on HC in the Ministry of Security of B&H is appointed (OSCE Mission in B&H, n.d.).

7 Alongside the term "sexual prejudice" various concepts are commonly used as synonymous in theory and practice. In the late 1960s psychologist George Weinberg coined the term homophobia to define the individual negative attitudes towards homosexuals. In approximately the same period term heterosexism appeared as well, representing an ideological system in which homosexuality is considered inferior to heterosexuality. Due to the fact that the term "homophobia" implies that the negative attitudes towards homosexuals could be explained by irrational fears and that these attitudes are therefore a form of individual psychopathology, rather than socially supported prejudice the term "homophobia" was vastly criticised (Herek, 2002). Herek (2002) argues that the term "sexual prejudice" is more suitable than homophobia because it does not make assumptions about the motivation at the base of these negative attitudes. Beside those terms the terms "Heteronormativity" and "homonegativity" are sometimes used (Etchezahar, Ungaretti, Gascó, & Brusino, 2016; Jackson, 2003).

form of antigay/lesbian violence and because discrimination in a law enforcement venue can endanger the safety of lesbian and gay police officers (Bernstein & Kostelac, 2002).

Therefore, in this paper we investigated the presence of sexual prejudice among the police officers and possibility of its conversion into negative behaviour toward lesbians and gay men in a correlation with certain, most common demographic characteristics. Gender is revealed as one of the most significant predictors of attitudes towards gays and lesbians. Various researches revealed that in general men are more homophobic than women and that they hold more negative attitudes towards gay men than towards lesbians (Etchezahar et al., 2016; Herek, 1994; Kite & Whitley, 1998). It is also well established that men and women are more homophobic toward homosexuals of the same gender than the opposite gender (Brown & Henriquez, 2008). Overall attitudes toward gay men are more negative than attitudes toward lesbians (Barrientos & Cardenas, 2012). Theoretical clarifications of these differences focus on the psychodynamic theory and a gender role analysis (Kite, 1998). Marital status is also recognized as important predictor of homophobia because it affects respondents' devotion to traditional gender roles (Herek, 2002; Kite & Whitley, 1998). Rank i.e. organizational position of police officers (whether police officers are line-level or supervisory employees) is also questioned as a predictor of homophobia as well as the level of the education since researches recognized that persons with higher levels of education are more tolerant towards gay men and lesbians (Herek, 1994; Herek & Capitano, 1996).

CASE STUDY OF POLICE FORCES OF CANTON SARAJEVO⁸

METHODOLOGY

Aware of restraints in conducting research on the sensitive issues in police settings⁹ and after consultations with the Head of Educational Unit of Ministry of Internal Affairs of the Canton Sarajevo, we decided to disseminate printed version of survey in a way that anonymity of questioned subject was guaranteed. The survey was administered with a support of the Educational Unit of Ministry of Internal Affairs of the Canton Sarajevo.

During January and February 2018, surveys were placed on a table in locker rooms of every police station in CS during the shift with a cover letter signed by a first author and the Head of Educational Unit. Also, the Chief of the Police informed all employees about research encouraging them to complete the survey. As the outcome of the process, out of the 300 surveys distributed to police officers, 180 were returned, making a response rate of 60%.

In general, there is a deficiency of research on police attitudes and behaviour regarding the sensitive issues in which police officers, rather than departments, are units of analysis.¹⁰ Our own examination of the literature on the subject of surveys focused on the sensitive issues in regard to the police officers in B&H didn't result with any outcome.¹¹ Therefore,

8 This research was inspired by the research conducted by Mary Bernstein and Constance Kostelac, which draws from a larger project that examines antigay attitudes and behaviour among sworn police officers and civilian police employees of the Saguaro Police Department-pseudonym for a medium-size police department in the Southwest of the United States (Bernstein & Kostelac, 2002).

9 See more in Westley (1956) and Kraska & Kappeler (1997).

10 According to Bernstein & Kostelac (2002), their search of the terms police and survey in the databases Criminal Justice Abstracts and Sociological Abstracts from 1980 to 2001 produced 1,954 abstracts. Out of these, 31 studies, or 1.6% of police surveys over the past 21 years, concerned sensitive issues in which police officers were the units of analysis.

11 The examination was conducted in the virtual library of Bosnia and Herzegovina COBISS/OPAC (http://www.cobiss.ba/cobiss_bh-en.htm).

our research is a first survey on police attitudes and behaviour regarding the sensitive issues such as sexual prejudices.

Even though our sample and response rate are quite low for the overall number of police officers in entire B&H and the results are not suitable for deduction and generalisation of the conclusions for all police agencies in B&H, they still provide a unique opening into a relatively unexplored area and may be used for conclusions about police forces of Canton Sarajevo FB&H. Further researches should determine the extent to which our results can be generalised in regard to the all police agencies in B&H.

We developed original survey to determine the presence of sexual prejudices among police officers and the correlation of the prejudices with certain, most common demographic characteristics. Furthermore, we conducted T tests of the significance between two means for the ATL/ATG and behavioural scales based on sex, marital status, rank and education. Finally, because we wanted to determine whether and how attitudes transform into antigay/lesbian behaviours, we calculated a multiple linear regression to predict Discrimination (D) based on ATL, ATG, Stereotype, Group Position, Gender, Marital Status, Supervisory Position and Education.

For that purpose, we created following hypothesis:

- H1: Male police officers will hold more negative attitude toward gay man and lesbians than female police officers and will be more likely to involve in antigay/lesbian behaviour.
- H2: Married police officers will hold less negative attitude toward gay man/lesbians than those who are single and will be less likely to involve in antigay/lesbian behaviour.
- H3: Police officers employed on supervisory positions will hold less negative attitude toward gay man/lesbians than those employed as line-level and will be less likely to involve in antigay/lesbian behaviour.
- H4: Police officers with at least two years of university education will hold less negative attitude toward gay man/lesbians than those employed as line-level and will be less likely to involve in antigay/lesbian behaviour.
- H5: Sexual prejudice will have strong effect on antigay/lesbian behaviour.
- H6: Stereotypes and group position will have strong effect on antigay/lesbian behaviour.

SURVEY INSTRUMENT AND MEASURES

Investigation of the sexual prejudice among police officers and possibility of its conversion into negative behaviour toward gay men and lesbians was conducted through survey comprised of five parts. First part gathers data on demographic characteristics of the respondents and their position in police forces. The second part assesses the presence of the sexual prejudice among police officers while the third part (stereotypes, group position) question respondents' attitudes toward gay and lesbian co-workers and the grade, to which respondents have interacted with them in the workplace.

The presence of the sexual prejudice among police officers is measured with the most widely used Attitudes toward Lesbians and Gay Men Scale (ATLG).¹² Herek (1994) developed the ATLG to specifically measure attitude towards lesbians and gay men. The twenty-item ATLG scale has two 10-item subscales: Attitudes Toward Lesbians (ATL) and At Investigation of the sexual prejudice among police officers and possibility of its

¹² Beside ATLG scale there are a variety of measures designed to measure sexual prejudice such as Index of Attitudes toward Homosexuality (IAH) which measures the way heterosexuals feel about associating with homosexuals (Hudson & Ricketts, 1980) and Homosexuality Attitude Scale (HAS) (Kite & Deaux, 1986).

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The presence of the sexual prejudice among polices officers is measured with the most widely used Attitudes Toward Lesbians and Gay Men Scale (ATLG). Herek (1994) developed the ATLG to specifically measure attitudes towards lesbians and gay men. The twenty item ATLG scale has two 10-item subscales: Attitudes Toward Lesbians (ATL) and Attitudes Toward Gay Men (ATG) that can be used in its shorter version with 5-item subscale, which we employed. Out scale was typically accompanied by a 5-point Likert-type scale with anchor points from *Strongly Agree* to *Strongly Disagree*. The scales are coded in a way that higher scores indicate more tolerance toward gays and lesbians (see Table 1). In our sample, ATL scales demonstrated an alpha level of reliability of at least 0.876, while ATG scales demonstrated an alpha level of reliability of at least 0.836.

Attitudes toward gay men (ATG) that can be used in its shorter version with 5-item subscale, which we employed. Out scale was typically accompanied by a 5-point Likert-type scale with anchor points from *Strongly Agree* to *Strongly Disagree*. The scales are coded in a way that higher scores indicate more tolerance toward gays and lesbians (see Table 1). In our sample, ATL scales demonstrated an alpha level of reliability of at least 0.876 while ATG scales demonstrated an alpha level of reliability of at least 0.836.

Table 1: Percentage frequencies of Attitude toward lesbians (ATL), Attitudes toward gay man

	Strongly Agree/Agree (%)	Neutral (%)	% Strongly Disagree/Disagree (%)	Total (%)	Average	Cronbach's Alpha
ATL1: Sex between two women is just plain wrong	53.5	22.5	24.1	100.0	3.47	
ATL2: I think female homosexuals are disgusting	28.9	31.6	39.6	100.0	2.95	
ATL3: Female homosexuality is not a natural expression of sexuality between women	53.2	25.8	21.0	100.0	3.50	
ATL: Attitudes Toward Lesbians (average value)	45.2	26.6	28.2	100.0	3.31	0.876
ATG1: Sex between two men is just plain wrong	58.2	19.3	22.5	100.0	3.59	
ATG2: I think male homosexuals are disgusting	28.0	30.6	41.4	100.0	2.91	
ATG3: Male homosexuality is not a natural expression of sexuality between men	53.8	26.3	19.9	100.0	3.58	
ATG: Attitudes Toward Gay Men (average value)	46.7	25.4	27.9	100.0	3.36	0.836

Beside the general homophobic attitudes captured with ATG and ATL, we assessed different dimensions of prejudice more directly, and for the purpose of that we questioned stereotypes and group position among respondents.

It is useful to note here difference between prejudice and stereotypes. Prejudice refers to the attitudes and feelings whether positive or negative and whether conscious or non-conscious—that people have about members of other groups and their implications for general attitudinal dimensions such as approach avoidance, good vs. bad, like vs. dislike, and so on (Schneider, 2004). In contrast, stereotypes have traditionally been defined as specific beliefs about a group, such as descriptions of what members of a particular group look like, how they behave, or their abilities. Bearing in mind that people can be aware of stereotypes and have cognitive representations of those beliefs without personally validating such stereotypes, without feelings of prejudice, and without awareness that such stereotypes could affect person's judgment and behaviour, we decided to question stereotypes about lesbians and gay men police officers (Vescio & Weaver, 2013).

Presence of the negative stereotypes about lesbians and gay men was determined through questioning the respondents' opinions whether lesbians and gay men police officers belong in law enforcement and would their hiring signify lowering of job standards and would it undermine department morale; and whether lesbians and gay men police officers make good role models to the community or they put others at risk for AIDS. Furthermore, questioning the group position, we compared heterosexual with homosexual performance expectations among respondents (see Table 2). The questions were also measured on a 5-point Likert-type scale from *Strongly Agree* to *Strongly Disagree* from which we created two scales. First, Stereotype Scale comprises of the five items that presented the idea that lesbians and gay men police officers would unfavourably affect job standards, morale, values, or health, reliable on negative antigay/lesbian stereotypes. Second, Group Position Scale as previously stated questioned performance expectations. In our sample, the Stereotypes Scale has a reliability of 0.887, and the Group Position Scale has a reliability of 0.978.

Table 2: *Percentage frequencies of stereotype and group position variables*

	Strongly Agree/ Agree (%)	Neutral (%)	% Strongly Disagree/ Disagree (%)	Total (%)	Average	Cronbach's Alpha
Stereotype						
Stereotype1: Homosexuals do not belong in law enforcement	36.9	31.6	31.6	100.0	3.17	
Stereotype2: Departments that recruit homosexuals will lower their job standards	20.9	42.8	36.4	100.0	2.82	
Stereotype3: Recruiting homosexual officers undermines department morale	34.9	36.0	29.0	100.0	3.14	
Stereotype4: Police officers should be role models to the community. Hiring homosexual officers undermines those values	35.3	29.9	34.8	100.0	3.06	
Stereotype5: The department should not recruit homosexuals because homosexuals put everyone at risk for AIDS	27.8	35.8	36.4	100.0	2.91	0.887
Group position						
Group position6: A male homosexual cannot do this job as well as anybody else	30.5	30.5	39.0	100.0	2.99	
Group position7: Male homosexuals are not cut out for law enforcement	34.2	32.6	33.2	100.0	3.12	
Group position8: Female homosexuals are not cut out for law enforcement	32.1	33.2	34.8	100.0	3.09	
Group position9: A female homosexual cannot do this job as well as anybody else	32.1	29.9	38.0	100.0	3.05	0.978

Finally, the last part examines if the respondents have seen or taken a part in behaviours that can be viewed as biased toward lesbians and gay men. Following Bernstein & Kostelac (2002) we questioned respondents' behaviour to determine whether sexual prejudice and adopted stereotypes are in correlation with any form of antigay/lesbian behaviours. In our surveys we asked four questions about respondents' engaging in common antigay/lesbian behaviours that range from avoiding contact with a gay man or lesbian and opposing to work with them to making negative comments and leaving notes, letters or other objects of a sexual nature to point out their sexual orientation (see Table 3). This variable was also measured on a 5-point Likert-type scale from *Strongly Agree* to *Strongly Disagree* from which we created Scale of the Behaviour that allowed us to distinguish between attitudes toward lesbians and gays and stated behaviour toward lesbians and gays, which could affect the performance of police officers and access to the justice for lesbian and gay citizens as well as police officers. This scale demonstrated an alpha level of reliability of at least 0.847.

Table 3: *Percentage frequency of discriminatory treatment toward gay men and lesbians*

	Strongly Agree/ Agree (%)	Neutral (%)	% Strongly Disagree/ Disagree (%)	Total (%)	Average	Cronbach's Alpha
Discrimination1: Avoided contact with a homosexual man or woman	23.2	19.5	57.3	100.0	2.62	
Discrimination2: Objected to working with a homosexual man or woman	28.1	30.8	41.1	100.0	2.88	
Discrimination3: Made negative comments or asked insulting questions about their sexuality or personal life	15.1	34.1	50.8	100.0	2.56	
Discrimination4: Left notes, letters, pictures, posters, or objects of a sexual nature to call attention to their sexual orientation	7.0	23.2	69.7	100.0	2.19	
Discrimination: (average)	18.4	26.9	54.7	100.0	2.56	0.847

RESULTS AND DISCUSSION

In the terms of general overview of demographic characteristics of respondents out of 180 police officers that responded on the survey 82.9% were male. The most present age range of respondent was 40 - 49 age (58.8%). Only 12.3% are 29 years of age or younger, 24.1% were in a range of 30 - 39 years of age while only 4.8% were older than 50 years. Regarding marital status, 79.1% were in a traditional marriage and had at least one child. Average number of children across all respondents was 1.5. The majority of the police officers has a high school degree (61.8%) while 36,6% stated that they have college degree. Among officers with college degree Faculty of Criminal Justice and Faculty of Sport prevail.

Regarding the rank, the majority of respondents (86.5%) were first-line officers while only 13.5% were at a supervisory level. The largest percentage of officers has been on the job more than 21 years (47.3%), which enables long-term exposure to the culture, beliefs and behaviour of the police environment – stereotypes (see Bernstein & Kostelac, 2002). The 27.5% of the respondent has been on the job between 11 and 20 years, 16.7% between 6 and 10 years and 16.7% less than 5 years.

In the Table 1 we presented the results for the ATL and ATG, which show police tendency in holding equally negative attitudes toward gay men (46.7%) as well as toward lesbians (45.2%).

Important finding is that almost half respondents have some form of sexual prejudices. Questioning the Stereotypes (Table 2) the results indicate that third of the questioned police officers believe that lesbians and gay men do not belong in law enforcement (36.9%) while a third (31.6%) were neutral on that question. Attitude that hiring of lesbians and gay men as police officers would meant lowering job standards was confirmed by 20.8% of respondents while significant number of respondents were neutral on this question (42.8%). Almost third (34.9%) of respondents believe that hiring of lesbians and gay men as police officers would undermine department morale and the third (35.3%) respondents stated that lesbians and gay men police officers don't make good role models for the community. On both those questions almost one third of respondents were neutral. It is interesting that a little bit more than one fourth of respondents (27.8%) still accept the myths about the spread of AIDS through casual contact. However, a considerable percentage of the questioned police officers (35.8%) were neutral about these matters.

Group Positioning Scale (Table 2) showed that the one third of respondents believe that both lesbian and gay men police officers cannot do police work as well as anybody else (30.5% for gay men and 32.1% for lesbians). It is interesting that there is only slightly higher number of respondents (for 1.6%) who believe that lesbian police officers are less capable than gay men police officers of doing police work as well as anybody else. This finding is contrary to the results of variety of researches that resulted with opposite findings. Namely, variety of research confirmed that generally established negative attitudes toward women in police transmit in attitude toward lesbians' capability to work as police officers and that attitudes toward lesbians' capability are more negative then toward gays' (Chu & Chang-Chi, 2014; Koenig, 1978). Contrary to this, Couto (2014) found that lesbians are perceived to be more accepted within law enforcement agencies, potentially because they possess masculine capital as a result of their gender performance. Nonetheless, the results of Group Positioning in our survey are worrying having in mind that a lot of research suggests that discrimination against gay men and lesbians police officers is disturbingly widespread (Buhrke 1996; Colvin, 2015; Jones & Williams 2013). It is interesting though that overall results show that the attitude toward performance of gay men and lesbian police officers are similar to their general antipathy/sexual prejudice toward gay men and lesbians.

The results of questioning of Attitudes toward Antigay/Lesbian Behaviour (Table 3) show that despite previously established sexual prejudice and stereotypes in almost one third of respondents the degree of agreement with antigay/lesbian behaviour is generally lower. Only 7% respondents stated that they would leave notes, letters, or other objects of a sexual nature to point out sexual orientation of a gay men or lesbian. The 15.1% respondents stated that they would make negative comments and ask insulting questions about someone’s sexuality or personal life. Almost one third (28.1%) of respondents stated that they will oppose to work with a gay man or lesbian which is in accordance with their attitudes stated in Group Positioning Scale. One fourth of respondents stated that they will avoid contact with a gay man or lesbian. The fact that almost one third of the respondents will avoid contact or object to work with gay man or lesbian indicates strong possibility that they attitude will affect their performance at work and possibly access to justice of this social category. Even though majority of respondents (almost half) did not show willingness to engage in any form of antigay/lesbian behaviour the fact that 18.4% are ready to engage in some form of antigay/lesbian behaviour is disturbing.

GENDER, MARRIAGE, RANK & EDUCATION

Table 4: Means of T tests of significance and correlations between selected demographic characteristics and scales of attitudes and behaviour

	Gender			Marital Status			Line-Level Employee Supervisor			Education Level		
	M	F	Cor.	Single	Other	Cor.	Yes	No	Cor.	High School	At least 2 years of University	Cor.
ATL	3.42	2.79	-.222**	3.59	3.26	-.109	3.20	3.33	.041	3.39	3.18	-.100
ATG	3.46	2.88	-.205**	3.64	3.31	-.110	3.32	3.36	.013	3.43	3.25	-.083
S1	3.30	2.53	-.237**	3.44	3.12	-.094	2.96	3.20	.067	3.35	2.88	-.189**
S2	2.85	2.66	-.067	2.78	2.83	.015	2.72	2.83	.035	2.97	2.57	-.180*
S3	3.26	2.56	-.230**	3.38	3.10	-.086	3.08	3.15	.021	3.27	2.93	-.145*
S4	3.17	2.56	-.189**	3.44	3.00	-.130	3.00	3.07	.021	3.23	2.79	-.179*
S5	2.99	2.56	-.143	3.15	2.88	-.086	2.68	2.95	.083	2.98	2.81	-.077
GP1	3.10	2.50	-.189**	3.22	2.96	-.079	2.88	3.01	.038	3.15	2.75	-.163*
GP2	3.24	2.53	-.231**	3.30	3.09	-.064	3.00	3.14	.040	3.26	2.89	-.157*
GP3	3.19	2.56	-.202**	3.22	3.06	-.048	2.96	3.10	.042	3.24	2.83	-.170*
GP4	3.15	2.53	-.198**	3.19	3.03	-.048	2.92	3.07	.042	3.24	2.74	-.208**
D1	2.69	2.23	-.151*	2.96	2.56	-.124	2.44	2.64	.060	2.65	2.56	-.036
D2	2.97	2.42	-.179*	3.11	2.84	-.085	2.92	2.87	-.015	2.96	2.75	-.089
D3	2.59	2.42	-.061	2.63	2.55	-.027	2.76	2.53	-.075	2.54	2.61	.033
D4	2.24	1.94	-.119	2.19	2.19	.002	2.12	2.20	.028	2.22	2.14	-.040
D (average)	2.62	2.25	-.156*	2.72	2.53	-.075	2.56	2.56	.000	2.59	2.51	-.041

Note. ATL = attitudes toward lesbians, ATG = attitudes toward gay men, S = Stereotype, GP = Group Position, D = Discrimination; *p < 0.05. **p < 0.01

Finally, following Bernstein & Kostelac (2002) we conducted T tests of the significance between two means for the ATL/ATG and behavioural scales based on sex, marital status, rank and education. Table 4 includes the mean scores of the subgroups on the ATL/ATG and behavioural variables and the corresponding zero-order correlations between the variables to facilitate comparing the strength of these relationships.

As expected and in accordance to previous researches we find that female police officers have significantly lower level of sexual prejudice toward gay men and lesbians than male police officers (Bernstein & Kostelac, 2002; Britton 1990; Yang 1999). Analysis of the means shows that female police officers' sexual prejudices toward lesbians are practically identical to those toward gay men. Also, results show that female police officers have significantly lower level of acceptance of stereotypes, and that they are more likely to believe that gay men and lesbians are skilful to be police officers. Regarding behaviour, female police officers are significantly less likely to avoid contact with a gay man or lesbian and to oppose to work with a gay man or lesbian.

We also examined the significance and correlations between ATL, ATG, Stereotypes, Group Positioning and behaviour controlling for marital status and the result showed that single and married police officers do not significantly differ in attitudes, adoption of stereotypes, Group Positioning and discriminatory behaviour toward gay man and lesbians.

Testing significance and correlations between ATL, ATG, Stereotypes, Group Positioning and behaviour controlling for rank (Line-Level Employee/Supervisor), opposite to our expectations and previous finding we find that there is no statistical significance. Both, Line-Level Employee and Supervisor share almost same attitudes regarding gay men and lesbians (sexual prejudice), they have similar level of acceptance of stereotypes, they share believes regarding skilfulness of gay men and lesbians as police officers and their readiness to involve in antigay/lesbian behaviour does not vary.

Even though previous research indicates that individuals with higher levels of education are more tolerant towards gay men and lesbians than those with less education our results showed interesting variations. An examination of the means shows that the level of education does not correlate with the attitudes of police officers but it has statistically significant correlation with level of Stereotypes as well as Group Positioning. Namely, the higher level of education police officers have, there is less acceptance of stereotypes except the myths about spread of AIDS through casual contact where regardless of the level of education as previously stated more than one fourth of respondents (27.8%) still accept that myth. Regarding the Group Positioning the results show that more educated police officers (at least 2 years of higher education-University) are they are more likely to believe that gay men and lesbians are competent to be police officers. But regarding commitment of different forms of discriminative behaviour the results show that there is no statistically significant correlation between behaviour and level of education.

ATTITUDES & BEHAVIOUR

In this part of our research we calculated a multiple linear regression to predict Discrimination (D) based on ATL, ATG, Stereotype, Group Position, Gender, Marital Status, Supervisory Position and Education.

A significant regression equation was found ($F(8,176) = 27.650, p < .000$), with an R^2 of 0.557. Participants' predicted Discrimination is equal to $0.440 - 0.122(\text{ATL}) + 0.111(\text{ATG}) + 0.344(\text{S}) + 0.336(\text{GP}) + 0.010(\text{Male}) - 0.008(\text{Single}) + 0.023(\text{Supervisor}) + 0.188(\text{University})$, where ATL is measured as average of ATL1 to ATL3, ATG is measured

as average of ATG1 to ATG3, Stereotype (S) is measured as average of S1 to S5, Group Position (GP) is measured as average of GP1 to GP4, Gender (Male) is coded 1 = Male, 0 = Female, Marital Status (Single) is coded as 1 = Single, 0=Other, Supervisory Position is coded as 1 = Supervisor 0=Employee and Education (University) is coded as 1= At least two years of University and 0 = High School.

Even though entire model is significant predictor of antigay/lesbian behaviour (discrimination) only two independent variables have statistical significance while the rest of them do not contribute to the model. Namely, while ATG/ATL might be related to acceptance of stereotypes and group positions, they were not significant predictors of actual antigay/lesbian behaviour (discrimination). But both Stereotype (B = 0.344, p < 0.000) and Group Position (B=0.336, p<0.000) were significant predictors of antigay/lesbian behaviour (discrimination). Those results show that adoption of Stereotypes and more negative attitudes in Group Position are significantly related to antigay/lesbian forms of behaviour such as avoiding contact with a gay man or lesbian, objecting to working with a gay man or lesbian, making negative comments or asking insulting questions about someone’s sexuality or personal life and leaving notes, letters, or other objects of a sexual nature to point out sexual orientation of a gay men or lesbian.

Table 5: *Coefficients of multiple regression predicting discrimination by selected demographic characteristics and scales of attitudes and behaviour, N = 187*

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	.440	.187		2.350	.020
ATL	-.122	.099	-.145	-1.232	.220
ATG	.111	.096	.133	1.150	.252
S	.344	.087	.372	3.947	.000
GP	.336	.072	.431	4.687	.000
Male	.010	.126	.004	.077	.939
Single	-.008	.133	-.003	-.057	.955
Supervisor	.023	.138	.009	.170	.865
University	.188	.100	.102	1.876	.062

CONCLUSION

As previously stated there is a general absence of survey research on police attitudes and behaviour regarding sensitive issues in which police officers are units of the analysis. Therefore, this research represents the first one that questions sexual prejudice, stereotypes and in-group feeling toward gay men and lesbians of police officers and its influence on their antigay/lesbian behaviour. Despite the fact that our sample and response rate within are quite low for the overall number of police officers in B&H and that the results are not apt for generalisation of the conclusions for the all police agencies in B&H, they provide a unique opening into an uncharted area and may be used for conclusions about police forces of CS FB&H.

Overall results of this study find little evidence of a direct relationship between attitudes toward gays and lesbians and actual antigay/lesbian behaviour but adoption of stereotypes and more negative attitudes in-group relations/superiority are significantly related to actual antigay/lesbian behaviour. These findings are in accordance to the notion that attitudes and

behaviour are not related in any direct way but that situational factors may be the reasons for actual discrimination more than attitudes themselves (H5 and H6). So, this study advocates that the relationship between attitudes and behaviour is stronger than it is visible in the result of the multiple regression analysis when sexual prejudices are questioned and viewed in terms of acceptance of negative stereotypes and feelings of in group position/superiority.

Following the Wheeler and Petty (2001) and Ajzen and Fishbein (2005) we argue that some groups more than others are more likely to translate negative attitudes, accepted stereotypes and in-group superiority into actual antigay/lesbian behaviour. The fact that female police officers hold less negative attitude toward gay man and lesbians than male police officers and that they are less likely to involve in antigay behaviour should be viewed through prism of masculinist environment of their workplace where they may have more direct experience with workplace discrimination than their male counterparts (H1). The results that show that single and married police officers do not significantly differ in attitudes, adoption of stereotypes, group positioning and antigay/lesbian behaviour should be considered with the sociocultural context of B&H. Also, it is likely that willingness to engage in antigay/lesbian behaviour regardless of marital status is a way of demonstration of commitment to the police subculture (H2). Variation of the results when examining significance of level of education on sexual prejudice, acceptance of stereotypes, in-group positioning and antigay/lesbian behaviour have to be additionally questioned based on the types of the education, institutions and presence of homosexuality related issues in their teaching curriculums (H4). The finding that there is no statistical significance when testing significance and correlations between sexual prejudice, stereotypes, group positioning and antigay/lesbian behaviour controlling for rank (Line-Level Employee/Supervisor) were opposite to our expectations and previous researches findings. Both, Line-Level Employee and Supervisor share almost same level of sexual prejudice, they accept stereotypes in similar level as well as in-group superiority and their readiness to involve in antigay/lesbian behaviour does not differ (H3).

This study presents only the pioneer steps in a research of complex attitude-stereotypes-behaviour paradigm. The results, bearing in mind the limitations, can be used for conclusions only about police forces of CS FB&H while later researches should determine the extent to which our results can be generalised to all police agencies in B&H. Additionally multivariate statistical techniques should be used for further elaboration of the complex interactions between explanatory factors. Also, these results point to a necessity of conducting further comparative studies of attitudes, stereotypes, group positioning and behaviour of students of police academies, students of criminal justice programs and police officers to question influence of police culture on attitudes, stereotypes, group positioning and behaviour toward gay men and lesbians.

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INVESTIGATIVE INTERVIEWING OF CHILDREN IN TURKEY

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ABSTRACT

The interview has been described as a conversation with a purpose, and the purpose in a criminal investigation is the gathering of evidence, allowing the interviewee to have a voice, and supporting the progress of the investigation. In recent decades, children's involvement in the legal system as victims and witnesses has intensified. Large numbers of children are victims of sexual abuse. For example, a report by the NSPCC & Tower Hamlets ACPC suggests that a total of one million children in the UK, are abused each year. Child sexual abuse differs from other forms of childhood victimization in that there is usually no witness apart from the victim and the accused and often no physical evidence. This has increased the importance of obtaining and evaluating information provided by children. In Turkey there has been significant progress in the field of investigative interviewing of children in the last years.

Keywords: interview, child, legal system, interview rooms, crime

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INTRODUCTION

The interview has been described as a conversation with a purpose, and the purpose in a criminal investigation is the gathering of evidence, allowing the interviewee (whether suspect, witness of victim) to have a voice, and supporting the progress of the investigation. In recent decades, children's involvement in the legal system as victims and witnesses has intensified. Large numbers of children are victims of sexual abuse. For example, a report by the NSPCC & Tower Hamlets ACPC suggests that a total of one million children in the UK, are abused each year. In the US, children were reported to be abused or neglected at a rate of 10.6 per thousand children in 2007. Forward and Buck claimed that between 10 and 20 million Americans are victims of abuse (Brown, Goldstein, & Bjorklund, 2000).

Child sexual abuse differs from other forms of childhood victimization in that there is usually no witness apart from the victim and the accused and often no physical evidence. This has increased the importance of obtaining and evaluating information provided by children. Often there are no witnesses or medical evidence to confirm or disconfirm a child's claim or a parent's suspicion. Therefore, children must tell someone about it. However, children may be reluctant to talk with an unfamiliar interviewer about sensitive or embarrassing issues, such as socially proscribed forms of intimate touching or to acknowledge "coercive, repeated abuse" that can install high levels of fear, shame, and mistrust. Victims may be motivated to withhold information or deny that they were abused because they wish to protect familiar perpetrators, especially family members, yield to requests for secrecy, assume responsibility or blame, feel ashamed or embarrassed, or fear negative outcomes. Thus, effective interviewing of children requires a great deal of skill and ability on the part of the interviewer.

In the past in Turkey children were interviewed in police stations which were traumatizing due to the unsuitable interview environments and the possibility of encountering suspects of

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crime. However, there has been significant progress in the field of investigative interviewing of children in the last years. Child Interview Centres equipped with appropriate child interview rooms were established in Turkey in 2012 under the name of Child Monitoring Centers (ÇİM). Staff were trained as interviewers in 2010 by the Ministry of Health and some academics. Interview rooms were placed in big state hospitals especially in order to interview sexually abused children. These centers facilitate the referral of children to necessary health clinics such as child psychiatry clinic, forensic examination unit etc in the same hospital. It is a significant reform for Turkey to allocate these centers for children away from police stations and noisy corridors of law courts.

In addition to that there is effort of the Ministry of Justice in order to form interview rooms for children in courthouses. These rooms enable staff to carry out interview not only with victims but also with witness and suspect of crime. Child friendly interview rooms have been constructed in various provinces' courthouses throughout Turkey.

INVESTIGATIVE INTERVIEWING OF CHILDREN

The interview has been described as a conversation with a purpose (Milne & Bull, 1999), and the purpose in a criminal investigation is the gathering of evidence, allowing the interviewee (whether suspect, witness of victim) to have a voice, and supporting the progress of the investigation (Shawyer, 2009). Each year, increasing numbers of children come into contact with legal systems, social services, and child welfare systems around the world (Malloy, La Rooy, Lamb, & Katz (2011). It is believed that large numbers of children are victims of abuse. NSPCC and Tower Hamlets ACPC (October 1996) cited estimates that one million children are abused each year in the United Kingdom (Aldridge & Wood, 1998 as cited in Sattar, 2000). Further, it is estimated that there was a 12-fold increase in registered cases of sexual abuse in the period between 1983 and 1988 (Fielding & Conroy, 1992 as cited in Sattar, 2000). In America, in 2007 state and county child protective service agencies received an estimated 3.2 million referrals or reports of suspected child abuse and neglect involving approximately 5.2 million children (US Department of Health and Human Services, 2009 as cited in Gelles & Brigham, 2011).

Interviewing is at the heart of any police investigation and thus is the root of achieving justice in society (Milne, Shaw, & Bull, 2007). The interviewing of witnesses and suspects is a core function of policing across the world (Griffiths & Milne, 2006). Gudjonsson (2006) states that investigative interviews are an important form of evidence gathering. The main goal of conducting an investigative interview is to obtain information that is detailed, complete, comprehensible, valid, and relevant to the legal issues in the case that need to be established and proved. Griffiths and Milne (2006) suggest that the interviewing of witnesses and suspects is a core function of policing across the world. There are two aims in all investigations; firstly to find out what happened and whether it was a crime, and secondly, who did it (Milne et al, 2007).

Lamb, Malloy and La Rooy (2011) define that children are often a crucial source of information about the offences in which they have been involved as victims or witnesses. It has been suggested that (Paterson, 2001) over the last few decades the capabilities of child witnesses have been of great interest to professionals in the legal field of child protection. This interest reflects increased awareness of child maltreatment and a subsequent increase in children's involvement in the legal system (Bottoms & Goodman, 1996 as cited in Malloy et al., 2011). In a number of countries legislation has been brought in to allow criminal courts to receive children's evidence. For instance, in England and Wales in 1988, legislation was

introduced permitting children to testify in criminal trials via “live video link” in another room in the court building (Milne & Bull 1999).

It is known that obtaining valuable information from children requires careful investigative procedures, as well as realistic awareness of their capacities and tendencies (Lamb, Hershkowitz, Orbach, & Esplin, 2008). In child-sexual-abuse cases, skillful forensic interviewers are important to ensure the protection of innocent individuals and the conviction of perpetrators of abuse (Lau & Treacy, 2009).

Much of the debate about the reliability of eyewitness testimony and research examining eyewitness evidence has focused on the youngest of potential witnesses. Although children are less often involved in the legal system than adults, their developmental status and characteristics present certain challenges when their testimony is required in a legal case (Malloy, Wright & Skagerberg, 2012).

When children witness crime, they may be asked to describe and identify the persons involved in the event. The information provided by the child witnesses may be used to narrow the search for the suspect and eventually to select foils for the line up identification task (Luus & Wells, 1991 as cited in Pozzulo, 2007). Many child sexual abuse cases have no medical evidence, no physical evidence, and no witnesses other than the child and the perpetrator of the abuse (Lau & Treacy, 2009). Therefore, the child’s interviews are a crucial element of the investigation (Santtila, Korkman & Sandnabba). The issues of competency and reliability have traditionally been defined in terms of characteristics of the witness (e.g. age, IQ), but it is becoming increasingly apparent that, with children in particular (Ceci, Bruck, & Battin, 2000).

Historically, lawyers and indeed, psychologists have viewed children as rather unreliable witnesses (Davies & Westcott, 2006). Children’s developmental immaturity may affect all aspects of their memories, and may make them particularly susceptible to social influences (such as the adult interviewer). However some research show that children can provide highly accurate information about an event, provided they are questioned appropriately (Davies & Westcott, 2006). Paterson (2001) asserts that; the historical perspective of children as unreliable witnesses who lack credibility was reflected in criminal law. For example, until 1990 in England and Wales children under the age of six were not allowed to provide evidence, and unsworn evidence provided by children could not result in a conviction unless corroborated (Spencer & Flin, 1990 as cited in Gitlin & Pezdek, 2009).

Child sexual abuse differs from other forms of childhood victimization in that there is usually no witness apart from the victim and the accused and often no physical evidence (Bussey, 2009; Fanetti & Boles, 2004; Lamb, Sternberg, Orbach, Hershkowitz & Esplin, 2000). The nature of the social stigma and the legal ramifications for engaging in this behaviour may induce a perpetrator to maintain secrecy and to avoid confessions (Fanetti & Boles, 2004). Therefore, children must tell someone about it or someone who suspects abuse must question the child about it (Bussey, 2009). In legal debates legislation, and international doctrine (e.g., United Kingdom’s Children Act of 1989), teaching and practice has emphasized the need to protect children from harm that may occur as a result of their involvement in a legal case. Similarly, the United Nations Convention on the Rights of the Child (United Nations, 1990) mandate that special care is provided to child witnesses during the legal process (Quas & Sumaroka, 2011). Although children are less often involved in the legal system than adults, their developmental status and characteristics present certain challenges when their testimony is required in a legal case (Malloy et al, 2012).

Most researchers agree that the manner in which children are questioned has profound implications for what is remembered. It is especially important that forensic investigators use interviewing strategies that are most likely to elicit accurate and complete accounts (Orbach & Shiloach, 2007).

Children sometimes may have to give testimony as a perpetrator instead of a victim of crime. Unfortunately, children like adults may be exposed to any number of crimes, ranging from witnessing theft, a car accident, or violence between others, to personally experiencing assault or rape (Quas & Sumaroka, 2001). However, there is little direct information available on the interrogation of youthful suspects (Redlich, Silverman, Chen, & Steiner, 2004). Child delinquents invariably attract the attention of the mass media and government officials, especially after each new disastrous offence committed by a very young offender (Loeber & Farrington, 2001). In England a child below the age of 10 incurs no criminal liability at all; a child between 10 and 14 may be convicted of an offence provided he or she is shown to have mischievous discretion (Spencer & Flin, 1993). There are several factors that can influence children's interview. Some of them are summarized below:

Interviewer bias: If an interviewer believes that a child has been sexually abused and that is the only hypothesis he/she is interested in confirming, he/she may very well bias the interview outcome by utilising one or more of the ways mentioned below, in order to obtain from the child a report that is consistent with his/her perception of the allegations made (Kapardis, 2010).

Repeating questions: Repetition of questions across and within interviews influences children's eyewitness memory performance. A replicated finding is that asking specific or misleading questions repeatedly within an interview can at times result in increased inaccuracies, or at least inconsistencies for young children, presumably because children believe that their first answers were incorrect. Also, traditionally, repeated interviews of children have been considered to be distressing because they generate painful memories, and also increase the likelihood of inaccurate information being suggestively introduced by the interviewers (Myklebust & Oxburgh, 2011).

Repeating misinformation in interviews: As a result of repeating misinformation in different interviews, children may well come to incorporate the misleading information in their subsequent reports and/or distort the misinformation itself (Kapardis, 2010).

The interviewer's emotional tone: Children may be led to fabricate information if they are asked in an accusatory or judgemental tone, 'Are you afraid to tell?' Or are likewise told that, 'You'll feel better if you tell', or finally, to falsely assent to abuse related to questions such as, 'Amy touched your bottom, didn't she?' (Krackow & Lynn, 2003 as cited in Kapardis, 2010).

Peer pressure: Telling children in an interview that their peers have already answered a particular question and/or that another child victim has already named them as having been abused and/or is threatening them with exposure to their peers for being uncooperative makes them want to change their answers so as to be consistent with their peers and provide the answers an interviewer wants to hear (Kapardis, 2010).

Being interviewed by adults in authority or of high status: Children's comprehension of legal processes is dependent on their understanding of the role and powers of legal personnel (Kapardis, 2010). From an early age children are socialised to view adults as authority figures who know more than they do. Children think it is desirable to respond favourably to parents and teachers and know that the outcome of not obeying these authority figures can be punishment (Sattar, 2000). This misconception may have serious consequences when a child

is questioned by an adult, as he or she may assume that the adult knows the correct answer and as a consequence may go along with question whether it is right or wrong (Paterson, 2001).

There are also some risks of interviewing children. One of the risks of interviewing children could be suggestibility. Intuitively, it can be expected that because of a lack of experience, children compared with adults, are more suggestible and their accounts of events less accurate and detailed (Blandon & Pezdek, 2009). The empirical research shows that young children are more suggestible than older children and both of these groups are more suggestible than adults (Blandon & Pezdek, 2009). Suggestibility can be increased when the original memory is poor, for instance because of a long delay or the fleeting nature of the event. Social factors too, can influence suggestibility: child witnesses may feel intimidated by the interviewer (Davies & Westcott, 2006).

Young children are sensitive to the status and power of their interviewers and as a result are especially likely to comply with the implicit and explicit agenda they perceive is being defined for them. The child's recognition of this power differential may be one of the most important causes of their heightened susceptibility to suggestion. Children are more likely to believe adults than other children, and therefore they are more willing to go along with the wishes of adults (Ceci & Bruck). Children's accounts of events tend to be short and lacking in much detail. Their speech can be difficult to follow because of their inconsistencies in enunciation and they sometimes use words of which they have little understanding (Howitt, 2009). Moreover young children especially, are prone to change their answers when questioned repeatedly (Holliday, Humphries, Brainerd, & Reyna, 2012). Discussing the detail of what happened in the abuse may be embarrassing to some children and young people. They were also scared of giving information for fear that their abuser would take revenge on them for disclosing the abuse (Howitt, 2009). Child sexual abuse differs from other forms of childhood victimization in that there is usually no witness apart from the victim and the accused and often no physical evidence. Therefore, children must tell someone about it or someone who suspects abuse questions the child about it (Bussey, 2009).

Some children will be feeling frightened or guilty regarding their disclosures. Some interviewers feel that it is important to address these issues during the interview, by asking children about their worries or fears and giving them the opportunity to discuss these feelings. These conversations are particularly justified when a child is obviously very upset or there is a risk of suicide (Bourg et al., 1999).

To disclose sexual abuse, children need an adequate memory of the investigated event and the communicative skills necessary to report it (Orbach & Shiloach, 2007). Children sometimes may be reluctant to talk with an unfamiliar interviewer about sensitive or embarrassing issues, such as socially proscribed forms of intimate touching or to acknowledge "coercive, repeated abuse" that can instil high levels of fear, shame, and mistrust. Victims may be motivated to withhold information or deny that they were abused because they wish to protect familiar perpetrators, especially family members (Orbach & Shiloach, 2007).

Pressuring children during the interview to guess when they do not know the answer could distort their memories, in the same way that suggestive questions introduce information into children's reports. Children may later confuse the source of these guesses, attributing them to real experiences (Earhart, La Rooy, Brubachers, & Lamb, 2014).

The brain, is immature at birth and requires more than a decade to mature fully. Understanding the intricate process of the brain's development may be helpful to those who work with children, for significant changes occur in a relatively short period of time

(Perry & Wrightsman, 1991). Children may be capable of monitoring the quality of their memories more carefully if they do not feel pressured to answer questions. This suggests that interview instructions should not only alleviate social pressures within the interview but must also address children's cognitive development by giving them opportunities to strategically monitor their memory reporting (Earthart et al., 2014).

The forensic interviewer is considered a fact finder, objectively gathering details of legal relevance and documenting children's statements verbatim, if possible. He or she is supportive but remains neutral to the veracity of the information provided and refrains from a relationship that could unduly influence children's reports (Saywitz & Camparo, 2009). Thus, effective interviewing of witnesses requires a great deal of skill and ability on the part of the interviewer (Rogers & Lewis, 2007). Forensic interviewers have a duty to be familiar with current interview methods and the supporting literature (Stewart, Katz, & Rooy, 2011). People remember in different ways and not in a strict chronological sequence. Interviewers, therefore should allow the interviewee to recall the event in their own order without the distraction of interruptions or any questions (Milne et al, 2007). Sattar (2000) asserts that interviewers can influence the quality of children's evidence. Much of the debate about the reliability of eyewitness testimony and research examining eyewitness evidence has focused on the youngest of potential witnesses (Malloy et al., 2012).

Interviewers of children place particular importance on building rapport with young clients so they feel relaxed and unthreatened. To achieve this goal, they may spend time talking of playing with the child before beginning the actual interview or test; during this time, an interviewer may ask the child to talk about school or her family.

Ideally, interviewers attempt to provide a supportive atmosphere by paying attention, acting positively toward the child and taking the child's answers seriously (Ceci et al., 2000). Obtaining valuable information from children requires careful investigative procedures, as well as realistic awareness of their capacities and tendencies (Lamb et al, 2008). Children of preschool age, and young children-under 6 years of age often have difficulty distinguishing between real events that actually occurred from those that were only imagined (Ceci & Bruck, 1995).

When children are witnesses to or victims of a crime, they are often required to tell and retell their story many times, to many different people (Ceci & Bruck, 1995). Research shows that when questions are repeated in interviews with children they sometimes produce answers that are different to their previous ones (Tully, 2011). Traditionally, repeated interviews of children have been considered to be distressing because they generate painful memories, and also increase the likelihood of inaccurate information being suggestively obtained (Lamb, et al., 2008; La Rooy et al., 2010 as cited in Myklebust & Oxburgh, 2011). According to Ceci and Bruck (1995), repeated interviewing may contaminate children's reports (Santtila, Korkman, & Sandnabba, 2004). Laboratory research suggests that repeated requests for information within an interview may signal to a child that their earlier answer was incorrect. Also, young children especially, are prone to change their answers when questioned repeatedly (Holliday et al., 2012). Repeated interviewing is also associated with baleful effects. First, as interviews are repeated, so is the length of time between the original event and the interview; this allows for weakening of the original memory trace, and as a result of this weakening, more intrusions are able to infiltrate the memory system (Holliday et al., 2012).

Numerous steps have been taken nationally and internationally to ensure that multiple interviews do not occur. For example in the United Kingdom, the Memorandum of Good Practice for interviewing children in criminal cases warns against interviewing a child more

than once unless there is a good reason for doing so. The use of inappropriate tactics including repeated and leading questioning, interviewer bias and bribes have all been shown to have a deleterious effect on interview outcomes (Horwath, 2010). There is also a similar legal regulation in Turkey. According to the Turkish penal procedure law (236/1) children must only be interviewed once unless there is a clear reason for doing so (Turkish Criminal Procedure Law, 2009).

The first step was to provide a special room for interviewing children in Turkey. This was begun by the High Education Committee Law in 1981. By this law universities are allowed to establish Child Protection Centers in University Hospitals. Child Protection Centers are still in service and their mission is to detect if there are any child exploitation cases such as physical, sexual exploitation or neglect. In practice they are not dealing only with sexual exploitation (Hümanistik Büro, 2014).

Child Protection Centers are staffed by specialist medical doctors such as Child Health Specialist, Forensic Medicine specialist, Child Surgery Specialist, Child Psychiatrist and Social Worker or Psychologist (Dağlı & İnanıcı, 2011). They call in the police in any cases of maltreatment or exploitation against children and provide a forensic examination report to submit to the law court. Members of Child Protection Centers also hold weekly meetings to discuss any suspicious cases such as Munchausen by Proxy Syndrome (MBP) (Cantürk, 2016). The first Child Protection Center was established in İzmir Dr.Behçet Uz Child Hospital in 1998 (Bağ & Alşen, 2016).

In 2012 Child Interview Centers equipped with appropriate child interview rooms were established in Turkey under the heading of Child Monitoring Centers (ÇİM) to deal only with cases of sexual exploitation of children. Staff were trained as interviewers in 2010 by the Ministry of Health and some academics (Prof. Dr. Betül Ulukol, Prof. Dr. Resmiye Oral) from Ankara University and Iowa University (Bayün & Dinçer, 2013). Interview rooms were placed in big state hospitals especially to interview sexually abused children. These centers facilitated the referral of children to appropriate health clinics such as child psychiatry clinic, forensic examination unit etc in the same hospital. It was a significant reform in Turkey to allocate these centers for children away from police stations and noisy corridors of law courts. In the past children were interviewed in police stations which were traumatizing due to the unsuitable interview environments and the possibility of encountering suspects of crime (Bar of Trabzon: The report of children rights in Turkey, 2015). A Child Monitoring Center Team consists of a forensic interviewer, family interviewer, representatives from The Ministry of Family and Social Policies, a nurse and medical doctor. In Child Monitoring Centers, front interviews, family interviews, forensic interviews, forensic examinations (by a specialist medical doctor), child health examination, psychiatric examination and social work assessment are carried out regularly (Bağ & Alşen, 2016).

All interviews in these centers are able to be observed by both the lawyer of the child and a prosecutor. Questions are asked via a trained Social Worker or Psychologist during an interview. The Prosecutor has a chance to ask any necessary questions of the child regarding the incident via an electronic screen which can be seen only by the interviewer. The entire interview process is recorded by a camera and submitted to the judge who will make the final decision. This interviewing system protects children from being traumatized by repetitive interviewing and facing suspects in a law court (Bayün & Dinçer, 2013). There were 13 child monitoring centers in 2013 in Turkey, and this is targeted to reach 25 centers in the near future (Bayün & Dinçer, 2013).

In addition there is an intention by the Ministry of Justice to form interview rooms for children in courthouses. Child Friendly Interview Rooms are a part of the Justice for Children Project which was carried out by the Ministry of Justice and Unicef. Between 2012 and 2014, 32 child friendly rooms were established in 23 provinces. Their aim is to establish these rooms in all provincial courthouses throughout Turkey.

Child-friendly interview rooms have been constructed in various provincial courthouses throughout Turkey. The Ministry of Justice also seeks to equip various professionals with basic skills on judicial interviewing of children (Unicef, 2014). The Strategic Planning aims to take the necessary measures to protect children in the justice system: to increase cooperation among responsible institutions: to protect children from domestic violence and to increase effectiveness of judicial investigation. Child-friendly interview room consist of three separate sections: (a) an interview room, (b) a waiting room and (c) a monitoring room. The Monitoring room is used by the public prosecutor and lawyer. There are two cameras in the interview room, the first one covers all parts of the room, the second one focuses on the face of child. There is also a microphone which allows the public prosecutor and lawyer to hear the questions of the interviewer and the answers of the child. All communications are followed by the National Judicial Information System (UYAP) and the Voice and Scene Information System (SEGBIS). Paper and pencils as well as interview aids such as anatomic toys are provided. Child-friendly interview rooms serve not only children (victim, witness, suspect) but also women who have been faced with violence. In the Judicial Reform Project (2015 – 2019) of the Ministry of Justice, the concept of the Child-Friendly Interview Rooms has been enlarged and it has been decided to use these interview rooms not only for children but also for all vulnerable groups such as women faced with violence. The regulations concerning Child friendly Interview Rooms (AGO) were published on 24/02/2017 by the Ministry of Justice (The Department for Rights of Victims, 2018).

CONCLUSION

To sum up, Turkey has been making extraordinary efforts in order to provide special rooms for children who have been maltreated and abused. While the Ministry of Health has been using Child Monitoring Centers in hospitals, the Ministry of Justice has been constructed appropriate child friendly rooms in different provinces' courthouses. Other developing countries may take a lead from the initiatives that Turkey is currently undertaking to ensure that childrens' voices are heard in courtrooms and justice is achieved for these children.

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INTERROGATING SUSPECTS OF CRIME IN SLOVENIA

Igor Areh¹, Benjamin Flander²

ABSTRACT

In most countries, the practice of police interrogation is veiled in mystery. We know very little of the methods and techniques used by police interrogators. There are several reasons for this. First, in many countries audio or video (or audio-visual) recording of police interrogation is not mandatory, second, in many countries the presence of a lawyer during interrogation is not always obligatory, and third, in most countries there is no mechanism of direct internal control of the conduct of interrogators. Despite exceptional developments in forensic science, the importance of obtaining testimonial evidence including confession from suspects continues to be a crucial element in criminal investigation. This paper examines how police interrogation is regulated in constitutional and criminal procedural law and what methods and techniques are used by the Slovenian police when interrogating suspects of crime.

Keywords: police interrogation, confession, psychological coercion and manipulation, privilege against self-incrimination, Slovenia

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INTRODUCTION

In most countries, the practice of police interrogation is veiled in mystery. We know very little of the methods and techniques used by police interrogators. There are several reasons for this. First, in many countries audio or video (or audio-visual) recording of police interrogation is not mandatory, second, in many countries the presence of a lawyer during interrogation is not always obligatory, and third, in most countries there is no mechanism of direct internal control of the conduct of interrogators. Despite exceptional developments in forensic science, the importance of obtaining testimonial evidence including confession from suspects continues to be a crucial element in criminal investigation. This paper explores how, in Slovenia, police interrogation is regulated in constitutional and criminal procedural law and what methods and techniques are used by the Slovenian police when interrogating suspects of crime.

In most countries, the law determines what the Police should or should not do during the questioning of suspects, but does not specify precisely how interrogation must be carried out. Detailed guidance on how interviewing and interrogation of suspects of crime should be conducted can be found in soft law and/or police manuals. In this regard, scientists and researchers point out that the practical implementation of police interrogation is, in a good part, veiled in mystery (Redlich, Walsh, Oxburgh, & Myklebust, 2016). It seems that there are several reasons for this. First, in many countries audio or video (or audio-visual) recording of police interrogation is not mandatory. Second, while in many countries the presence of a lawyer during interrogation is not always obligatory, even in the case law of the European Court of Human Rights an access to a lawyer when interrogated is not considered

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as an absolute right of a suspect (see *John Murray v. United Kingdom* (European Court of Human Rights, 1996)). And last but not the least, in most countries there is no mechanism within the police of direct internal control of the conduct of interrogators.

Despite the trend towards its abandonment, the use of torture interrogation technics is still in place in countries such as Iran, China, Indonesia and other. Similarly, while many countries across the world have explicitly banned psychologically coercive techniques, some countries continue legally or illegally to use psychologically coercive interrogation tactics such as threat and entrapment in order to obtain statements or confessions from suspected offenders. Indeed, the research has shown that in recent decades, despite exceptional developments in forensic science and technology, the testimonial evidence including confessions of suspected persons, has not lost its centrality. Apparently, the need for suspects (as well as victims, witnesses and experts) to be interrogated or interviewed has always been and will remain essential. Thus, the ability to obtain accurate and comprehensive information about criminal events remain of great importance for the criminal justice process (Redlich et al., 2016).

LEGAL BACKGROUND

Police interrogation is a fairly recent institution in Slovenian criminal procedural law (Areh, Zgaga, & Flander, 2016). Before 2003, Slovenian police officers were only allowed to gather information from suspects without being able to perform actions for evidentiary purposes, as this was deemed to be completely under the competence of investigating judges. The official explanation for this regulation was that police officers – potentially the most dangerous agents of executive power – could not and should not interrogate suspects since this could only be done by representatives of judiciary. In practice, however, the results of this regulation were quite often the opposite. Instead of protecting suspects' rights, this regulation led to violations and was also ineffective. Only after the Act Amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku [ZKP-E]*, 2003) was passed in 2003 did Slovenian police officers formally get the right previously conferred solely on investigating judges to interrogate suspected offenders, but with the obligatory presence of counsel and only after informing suspects of their rights (Areh et al., 2016).

As in most other countries, the legal regulation in Slovenia distinguishes between custodial and non-constitutional police interrogation. There are no significant differences between the two, with the exception that in the event of a custodial interrogation, preceded with the suspect's police detention, the conditions laid down in the Criminal Procedure Act (*Zakon o kazenskem postopku [ZKP]*, 1994) for the deprivation of liberty shall be met and subsequently the suspect must be guaranteed with the rights under the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije [URS]*, 1991) and the Criminal Procedure Act (*ZKP*, 1994) that belong to a person deprived of his or her liberty. The provisions of the Criminal Procedure Act (*ZKP*, 1994) that refer to the police interrogation, be it custodial or non-custodial, are quite sketchy. Article 227 stipulates that the suspect shall be informed of the offence he (or she) is charged with and of the grounds for the charge. He shall be instructed that he is not obliged to plead and answer questions, that he is not obliged to incriminate himself or his fellows or to confess guilt. Also he shall be instructed that he is entitled to retain a lawyer of his choosing or to have a lawyer appointed for him *ex officio* under conditions defined by the Criminal Procedure Act (*ZKP*, 1994), and that the lawyer may be present at the interrogation. The suspect shall be interrogated orally. During the interrogation he should be enabled to declare himself in an uninterrupted narrative on all the circumstances adverse to him and to put forward all the facts advantageous to his

defence. He may be permitted to make use of his notes during the interrogation. After the suspect has finished his narrative, he shall be asked questions in a clear, distinct and precise manner so that he can completely understand them. Questions must not proceed from the assumption that the suspect has admitted something he has not admitted. The suspect must not be asked questions which in themselves suggest how they should be answered. He must not be misled in order to obtain a statement or confession. Statements of the suspect shall be written down in the record in the form of a narrative. Questions and answers shall be entered in the written record if so requested by the suspect or his counsel or if the investigating judge deems it necessary. While the suspect may not be interrogated in the absence of a lawyer, he may, if so willing, give a statement on which the court may not base its decision. The interrogation shall be conducted with full respect for the person of the suspect. Force, threats or any similar means of extorting a statement or confession from the suspect must not be used. The obligation to respect human personality and dignity, the prohibition of torture or inhuman and degrading treatment and the use of any form of coercion in obtaining statements and confession against any person is stipulated also by Articles 18 and 21 of the Constitution (URS, 1991).

During the mandate of the National Assembly, which ended with the first session of the newly elected deputies at the elections in June this year, the government drafted the Act Amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku [ZKP-N]*, 2014). The amendments tend to introduce some important changes to current legal arraignment of police interrogation. The proposal was prepared by the Ministry of Justice, headed by Minister Goran Klemenčič, within a package of several major reforms in the field of justice. In line with these amendments, the police could, beside interrogation of the suspects, question witnesses with their consent. According to the proposed amendments, suspects and witnesses could also be questioned by the state attorney. A suspect who would expressly renounce his right to the presence of an attorney could be questioned without one if his denunciation of this right and the interrogation were video and audio recorded. With the proposed package of amendments, mostly related to judicial investigation, the government wanted to provide the conditions for a more rapid and effective pre-trial proceedings. Disappointingly, the amendments were opposed by practically everyone, with the exception of the proposer: the state prosecutor's office, the police, academics and civil society. The later identified in the proposal the danger that suspects would be more frequently questioned without the presence of an attorney.

In the following section, we will discuss the legal provisions of police interrogation outlined above are being implemented in practice. Also, we will try to discover what goals are being pursued and what techniques of interrogation are being used by Slovenian police officers.

INTERROGATING SUSPECTS OF CRIME IN PRACTICE

In general, one can argue that the practice of police interrogation is veiled in mystery in Slovenia too. What actually happens in police interrogation rooms is known only to those present (i.e. to suspects, investigators, counsels and prosecutors). In Slovenia there is virtually no scientific research into the implementation of legal framework of police interrogation in practice. In the last ten years, the only survey was carried out by Areh and colleagues who focused on techniques that are being used in the suspect's interrogation and interviews (see Areh, Walsh, & Bull, 2016). Slovene interrogation manual, which was never published and exists only as an internal document, could be considered as based on the traditional accusatorial approach (Areh et al., 2016). It promotes some coercive interrogation techniques

such as maximization, minimization, and projection of guilt. Therefore, it was assumed that the investigators in practice tend to use these and other techniques of the traditional model of interrogation whose primary purpose is to persuade the suspect to confess.

In order to verify this hypothesis, the researchers carried out a study where 86 experienced criminal investigators offered answers about their interrogation methods. The results showed that participants typically use three interrogation techniques in one investigative interview which lasts 90 minutes (Areh et al., 2016). Mostly used interrogation techniques were (a) confronting the suspect with evidence of guilt; (b) identifying contradictions in the suspect's account; (c) conducting the interrogation in a small private room; (d) establishing sympathy and gaining the suspect's trust; (e) isolating the suspect from family and friends; (f) appealing to the suspect's religion or conscience; (g) offering the suspect moral justifications and excuses; (h) alluding or pretending to have an evidence of guilt; (i) using good cop/bad cop routine; and (j) minimizing the moral seriousness of the offence (Areh et al., 2016). These findings suggest that some of coercive interrogation techniques, evident in the second part of the list are used in Slovenia. In contrast, techniques such as physically intimidating and touching or threatening the suspect, were established as hardly ever used (Areh et al., 2016). This finding was expected since threatening the suspect is forbidden by the law.

Generally, findings of Areh and colleagues (2016) are consistent with findings of some other authors (e.g. Kassin et al., 2007) and this consistency may be due to a lack of training of police investigators. Police personnel commonly over-rely on common-sense beliefs about the efficiency of specific interrogation technique (Gallini, 2010). One of these beliefs is that investigators interrogate almost only guilty suspects (Stephenson & Moston, 1993). This was found in Slovenian sample as well. Participants claimed that 90% of their suspects were guilty, although they did not have firm evidence and suspects were not even officially accused of a crime. This proneness to see a suspect as a culprit raises concerns since it may heighten the risk for biased and confession seeking interrogations with the use of coercive interrogation techniques (Kassin & Gudjonsson, 2004).

In the research, it was also found that criminal investigators believe they can detect truth or lies in most of the time when they communicate with suspects (Areh et al., 2016). This finding is consistent with other studies where police officers appeared to be overconfident (e.g. Mann, Vrij, & Bull, 2004). Such a confidence is not justified since police officers are not significantly better than lay people in detecting lies (Vrij, 2008). Furthermore, general ability to detect lies is close to guessing (DePaulo, Lindsay, Malone, Muhlenbruck, Charlton, & Cooper, 2003), especially if detection relies on observation of nonverbal behaviour. Slovenian criminal investigators mainly receive training at the beginning of their career. As such, training is less likely to be the significant source of overconfidence. The more likely reason for high levels of confidence in lie detection may be due to professional experience being selectively recalled. Besides, some police officers believe that they possess a 'sixth sense' which supposedly helps them to regularly detect lies (Leo, 1996). Such beliefs may lead to overconfidence.

In addition, it seems that Slovenian police officers partly rely on myths about lie detection (Areh et al., 2016). Unfortunately, this myth is associated with the application of the polygraph as well. The polygraph's accuracy in optimal measuring conditions is approximately 76 % (see Vrij, 2008); however, in real interrogation circumstances it may fall even below 70% (see British Psychological Society, 2004; National Research Council, 2003). Police personnel may be misled by proponents of the polygraph who claim that the technique is at least 95% accurate (this claim has the purpose; if a person does not believe that polygraph is

highly accurate, than the accuracy of testing is considerably reduced). In the research it was found that the polygraph is rarely used in Slovenia, but when it is, it serves as a coercive interrogation technique with no evidential value (Areh et al., 2016). Of course, if criminal investigators believe in the accuracy of polygraph findings, they may use more pressure and psychological manipulation to force an innocent suspect into admissions of a guilt and gain a false confession. Slovenian study revealed also that interrogations are not audio and/or video recorded. Without recordings opportunities for gaining new information, an interview assessment and supervision are missed. Criminal investigators have no reliable feedback about their efficiency; therefore they cannot learn to be more efficient (Sullivan, Vail, & Anderson, 2008).

Currently, it appears that coercive interrogation techniques dominate over the novel information-gathering approach, which is known but not used in Slovenia. Accusatory techniques may be successful in eliciting true confessions since their success is the result of the interrogator's social influence on the suspect, such as compliance with authority, conformity and obedience (see Bond & Smith, 1996; Cialdini, 2008). However, these techniques have an intimidating effect both on innocent and guilty suspects; they increase the rate of false confessions (Kassin, 2008); force suspects into admissions of a guilt, and they are scientifically unsound and ethically disputable (Areh & Jaklin, 2016).

Proponents of coercive interrogation techniques are convinced that innocent suspects would never be compelled to confess to a crime, which they did not commit. This is rather a naïve perspective, which leads to a conclusion that proponents are not familiar with the basic psychological knowledge. A prominent psychological theory developed by Gudjonsson (2003), points out the interrogative suggestibility and explains it as susceptibility to investigator's suggestions. This can be an important vulnerability of interviewees' during interrogation. Furthermore, a stressful life experience is associated with greater interrogative suggestibility, which leads suspects to be less able to defend themselves (Gudjonsson, Sigurdsson, & Sigfusdottir, 2009). Therefore, coercive interrogation techniques represent a heightened risk of eliciting false confessions and erroneous information. With the use of these techniques investigators may be confronted with increased resistance or reluctance of suspects, thus obtaining relevant information and confessions becomes less possible. Gudjonsson (2003) notes the boomerang effect, where accusatorial interrogation methods elicit a negative attitude from suspects who then refuse to cooperate with investigators. Coercive interrogation is associated with feelings of extortion, humiliation, disappointment, and deceit, which may lead to a break in cooperation with investigators, hatred and a need for revenge (Gudjonsson, 2003). Moreover, coercive interrogation tactics can result in 'the blue curtain' effect, which is associated with police corruption and unwillingness to report other officers' misconduct and crimes (Leo, 1996).

The current domination of coercive interrogation techniques is related to inadequate training of investigators, and their unawareness of psychological findings which reveal the controversial nature of coercive interrogations. Scientific findings of the last two decades have focused on developing techniques which yield more accurate information and more reliable evidence from suspects (Meissner, Hartwig, & Russano, 2010). Therefore, an effective, examined and tested non-controversial alternative is available – the information-gathering approach.

CONCLUSION

Slovenian police interrogations are predominantly confession and not information seeking oriented. Research shows that some manipulative interrogation techniques are at least

sometimes used, most commonly (a) faking sympathy and gaining the suspect's trust; (b) appealing to the suspect's religion or conscience; (c) offering the suspect moral justifications and excuses; (d) alluding or pretending to have an evidence of guilt; (e) using good cop/bad cop routine; and (f) minimizing the moral seriousness of the offence. Therefore, it appears that questionable coercive interrogation practices exist in Slovenia. This finding may be associated with the fact that police training is insufficient and awareness of scientific findings inadequate; therefore, criminal investigators use uncorroborated common-sense interrogation techniques. Unfortunately, this situation may lead to the violation of human rights and gaining more false confessions, and to inefficacy of interrogations as well, since suspects easily become reluctant to collaborate and even hostile toward police officers when questioned in accusatorial (coercive) manner. We suggest that a well examined alternative questioning strategy should be used – the information-gathering approach proved its usefulness and efficiency during past 25 years (see Areh, 2016). Perhaps it is time to go after it and appose Slovenian interrogations to those in the most developed countries.

Of course, as any research, the survey which has been presented here has certain clear limitations and deficiencies. It was grounded on criminal investigators' opinions; therefore, it was difficult to obtain insight into actual interrogative practices, leaving us to rely upon practitioner perceptions or opinions. Namely, what investigators say they do and what they actually do in their practice may be quite different (O'Neill & Milne, 2014). Accordingly, further research is needed to gain more valid insight into Slovenian interrogation practices.

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THE WAY OF HANDLING EVIDENCE OF CRIMINAL OFFENCES OF COMPUTER CRIME

Aleksandar Ivanović¹

ABSTRACT

This paper describes how to handle digital evidence in managing criminal investigations. It provides a way for digital evidence to be packaged, flagged and sent to expertise in the Forensic Centre. At the end of the work, a proposal was made on how to deal with digital evidence in order to exclude the possibility of contamination, replacement, abuse and subsequent changes, which is the accreditation of forensic laboratories according to the ISO 17025 standard.

Keywords: digital forensics, evidence handling, accreditation, ISO 17025

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INTRODUCTION

The handling of evidence is one of the most important segments of the evidence procedure in the management of criminal investigations. The modern judicial procedure does not raise the question of how the evidence was made, but how the evidence was obtained. In the era of applying modern and sophisticated techniques and technology, the presentation of evidence in criminal investigations is not called into question. This refers to the methods of DNA analysis, scanning electromicroscopy, gas and liquid chromatography and other forensic methods, techniques and technologies that are verifiable and reproducible. However, the most and mainly criminal investigations are directed to the acquisition and preservation of evidence in order to avoid suspicion of their contamination, substitution, abuse and subsequent change.

In recent years, in the area of managing criminal investigations, we are coping with digital evidence. Digital proof is any information that has a proving value, which can be stored or transmitted in digital form. Digital evidence is all information that is found on a device, or devices in which information and data can be transmitted. Digital evidence is very important because it represents a combination of different information such as text, images, audio and video (Milorad & Markagić, 2013).

As with any other type of evidence, in the management of criminal investigations in the digital evidence collection phase, the more important segment is to preserve the integrity of the evidence, or in the specific case of the digital data carrier. Digital data is stored in an electronic or magnetic device that is data on the hard disk, memory cards, CD, USB memory, mobile phone, GPS device, SIM card, digital camera and the like. It is very important that digital evidence, as well as any other evidence in criminal investigations, be excluded in the manner prescribed by law. As a candidate country for membership of the European Union, Montenegro recognised the importance of legal standardisation of digital evidence handling. In the Criminal Procedure Code of Montenegro, the handling of digital evidence is included in the part of the Proof of Action. The European Union standards regarding the handling of digital evidence are specified by the ENFSI and its "Best practice manual for the forensic examination of digital technology". In part, the search of movable objects in the Criminal Procedure Code states that the search includes the search of computers and

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similar devices for automatic data processing, which are connected to the account. Further in the same article of this Code, it is mentioned that the search involves the media on which the data is stored (discs, USB flash drive, USB hard disk, floppy disks, tapes and the like). In the following articles of this Code, it is said that the overcrowding of computers and similar devices for automatic data processing must be carried out in the presence of the owner and his lawyer. In the practice of managing criminal investigations, there is a problem in that the prosecutor, as the applicant for computer expertise and similar automatic data processing devices, acts under the pretext of all the above-mentioned actions, and in practice, the owner and his lawyer should attend and monitor the entire process of expertise computer or mobile phone (Farid, 2009).

THE PROCEDURE OF SEIZING MOBILE PHONES DURING THE SEARCH

When searching for immovable and movable property, if there is a finding of mobile phones suspected of being used in the commission of a criminal offence, it is necessary to take the following actions in order to exclude such devices in a proper manner which would disable any activities that would could result in data changes or connections with third parties and automatic data processing devices. Of all the expertise of digital evidence, which is performed in Montenegro, the most common are the expertise of mobile phones.

If the device is turned on, it is necessary to check immediately whether the device is protected by some kind of protection, PIN code (4 or more digits) or pattern (multiple points on the screen). If there is such a type of protection, try to get information from the person whose phone is the information that the PIN or patern is using. It is important to note that the PIN code or pattern is not trying to enter more than 2 times because there is the possibility of permanently locking the device.

Activate AEROPLANE MODE on your phone to disable any type of wireless connection. Aeroplane mode or Airplane mode with the Android devices that are dominant in the market are in Settings - More or More Networks - Aeroplane Mode (Figure 1).

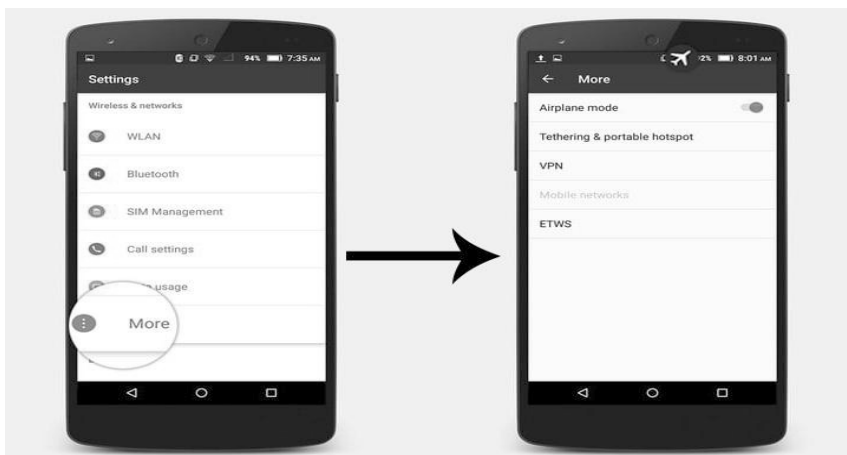


Figure 1: *Activate Aeroplane mode*
Source: Forensic Center of Montenegro, 2018

Also, when the phone's shutter button is held down, as an option that appears next to turning off and restarting the phone, the Airplane mode option will also appear. And finally, it is possible to include Aeroplane mode by double-tapping the finger from the top of the screen to the bottom, whereby we will open Quick Settings, where we also have an icon in the form of an airplane by pressing activate the desired mode.

If we want to activate Aeroplane mode on the Apple mobile phone (Iphone), we'll do this by dragging it from the bottom of the screen to the top, opening Apple's Quick Settings and clicking on the aircraft icon in the upper left corner (Figure 2).



Figure 2: *Activating Airplane mode on an Apple mobile phone (Iphone)*

Source: Forensic Center of Montenegro, 2018

If you cannot access your phone for protection in the form of a patter or PIN, it is necessary to switch off the mobile phone as soon as possible with a long press of the shutter button. It is desirable that the extinguishing is not carried out by violently removing the batteries of the mobile phone. Afterwards, remove the SIM card/card and memory card from the phone. Pack the phone in a Faraday bag and forward it to the Forensic Centre for further processing (Figure 3).



Figure 3: *Faraday bags for the protection of digital data in a mobile phone*

Source: Forensic Center of Montenegro, 2018

The acquisition process is subordinate to the preservation of the integrity of the data and, accordingly, when implementing it, certain principles must be respected:

- the actions undertaken must not change the data contained on the mobile phone or the storage medium (memory card);
- persons accessing the original data must be competent and capable of explaining the

- actions they take;
- it is necessary to accurately document each step in the work; and
- The person conducting the investigation has the responsibility to ensure that the principles are respected and in accordance with applicable laws.

In practice, there is a problem when attempting to respect the first principle: in order to collect data from a mobile phone, it must be active, and the inclusion of the device or its connection to the computer will most likely change certain data. If changing data is inevitable, it should be as small as possible.

In addition to internal flash memory, mobile phones also have other types of memory, such as memory and SIM cards, whose forensics can be done independently. Therefore, when it comes to acquiring data from mobile phones, it is primarily meant to collect data from the memory of the device itself. We distinguish two types of access to data acquisition from mobile phones:

- logic-based acquisition is to collect data from the mobile phone's memory using a file system, that is, a phone's operating system; and
- acquisition at the physical level represents copying of the entire memory, bit by bit, which allows the collection of data from the space that is not located by the operating system, that is, the recovery of the deleted data.

These approaches are applied by applying various methods of data acquisition from mobile phones.

MANUAL OVERVIEW OF MOBILE PHONES

A manual overview of mobile phones is a simple but very demanding and time-consuming method of data acquisition. It is a logical-level approach to the acquisition by using mobile phone applications, through which a person who collects digital evidence can gain insight into various content, whereby he writes data in a report without any automation of the process.

In order to collect evidence in this way, it is necessary to know each phone with which the wrong number of steps is minimised (first of all, it refers to the steps that would make changes on the phone). Therefore, SMS messages, which are very interesting for forensic analysis, are also an extremely demanding segment of manual acquisition, as the entire contents of each message must be entered in the report. Because, due to the nature of modern organised crime, often mobile phones that contain a large number of messages in their mother tongue are temporarily taken away from foreign nationals, the acquisition process is further prolonged.

Phone applications do not tend to systematically display all data that would be interesting for forensics, so most often spend a lot of time searching for different menus and submenus. An example can again be SMS messages, the details of which are related to the communication itself, such as the date, time and subscriber number of the sender, comes through the submenu, because the screen displaying the content of the message usually shows only the name from the directory).

Errors must not be allowed, so the maximum energy is invested in order to maintain concentration. Because of its above characteristics, a manual review is only accessed if certain digital proof is required on the device, or if there is no other way to access the mobile phone and collect evidence. A particular challenge is cheap, and new models of mobile phones sold by operators, which often do not have any interface for communicating with the device, but

have large storage capacities for SMS messaging. Any changes that may occur (for example, receiving calls and SMS messages) due to the need to turn on the device during a manual acquisition are prevented by using a Faraday cage (usually in the form of special boxes that block the electric field) and by cloning the SIM cards (on an empty snapshot card are ICCID and IMSI numbers allowing the phone to work, but not access to the mobile network).

PREPARING AND DOCUMENTING SEARCH SITES

It is very important that all digital evidence is obtained in accordance with legal rules, otherwise the investigating judge will be excluded from the file as illegal evidence. Police officers are the first expert line to handle this kind of evidence. Assistance in the processing of event locations and the collection of digital evidence can be provided by professional persons. The professional duty of each police officer is to never dispose of evidence, ie seized media, hard disks and other equipment, by their actions. Arriving at the location of the search includes: Documentation of the search site, minutes, photos and videos, sound recording (voice recorder, if certain situations so require), acquaintance with the exhibit, computer status (before shutdown, after shutdown, off), operating systems, installed software - hardware.

A tidy and accurate record must be kept at the site of the search. Keeping records during the search is necessary because of the validity of seized evidence before a court. The record of the seized media is the most important document when gathering evidence. It contains the location and list of its evidence that was discovered and collected on the spot. Together with the date and time of collection, a detailed description of each evidence is created. The description must be sufficiently detailed so that similar objects differ from one another, it contains serial numbers, manufacturer's name, model, and other possible identifiers. To record all possible network inputs on the media that are subtracted, you need to document and capture them. Information on all persons present during the search, as well as information about persons who use or used media that are seized as evidence.

When the procedure for extracting digital evidence is carried out, the process of collecting evidence is done in a similar way to the collection of classical evidence at some other place where a criminal act took place.

When conducting a search at the scene, a minimum of two or more police officers are required, depending on the nature and nature of the case.

If there is a presumption that during a search there is a more complex equipment to be seized as evidence, or if such a situation occurs and if the police officer does not have adequate knowledge to handle such equipment, it is necessary to inform the competent head of staff that should provide adequate experts as associates during the search (Figure 4).

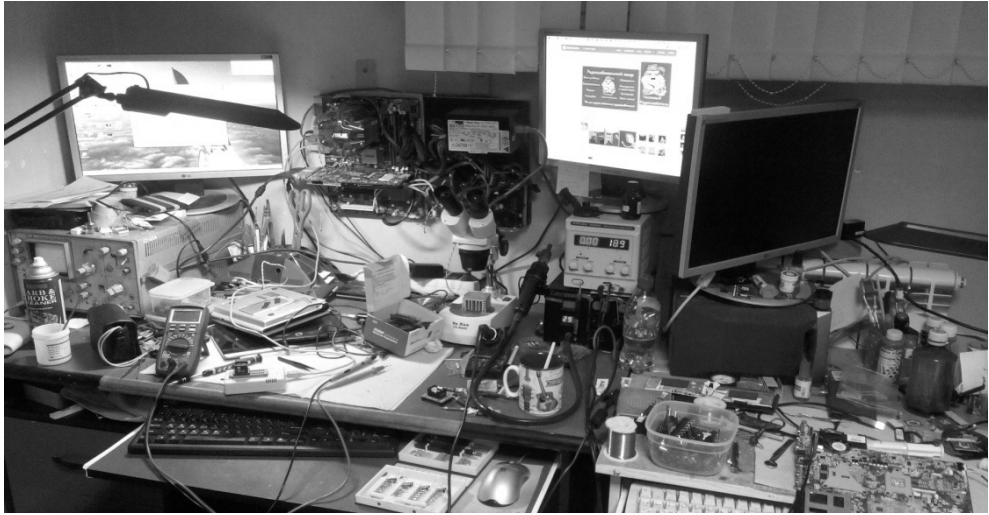


Figure 4: *The lab for the digital data searches*
Source: Forensic Center of Montenegro, 2018

Why is it necessary to have at least two or more police officers present during the search? Police officers go to the scene and, above all, take photographs of the situation and write reports with all relevant information concerning the search site. This relevant information consists of the location where the criminal act took place, the type of computer, its accessories and configuration, and a list of all wireless and wired connections between the media on which the criminal act was committed. What is very important when taking digital evidence is that the medium is left in the state in which it is caught. If it is a computer, it must not be extinguished, because it can damage the digital evidence, i.e. until they are permanently lost if they are in the working memory. It is necessary to record and photograph everything that was on the computer monitor if it was lit. Only after a scan of a computer by an expert can the computer shut down.

THE PROCEDURE FOR PACKAGING DIGITAL EVIDENCE

Digital evidence is much more vulnerable than conventional physical evidence, and it is therefore necessary to comply with certain guidelines in order to avoid destruction or damage. The first steps in finding evidence on a computer are often extinguishing, packing and transporting them in a laboratory to conduct a detailed analysis. All elements that possess electronic properties are sensitive to the influence of external factors such as heat, cold, moisture, blows, magnetic radiation, electricity.

Based on the aforementioned external factors that can significantly affect the status and correctness of digital evidence that can very often be crucial in a court process, it is necessary to take all those actions in order to preserve its original state. The works that include proper packaging, transport and storage.

What is important to pay attention when packing digital evidence? The most important thing is to seal the digital media, laptop or personal computer so it can not be put into operation, that it can not be enabled or accessed in any way where the content of digital evidence could be changed or compromised, and that the official seal is not damaged. Also, it is necessary to ensure that an electronic component, a laptop or a personal computer can not

be installed or downloaded from a seal without the violation of a component that is installed on it. This applies particularly to the main carriers of digital evidence (hard drives). In practice, it often finds personal computers of different designs and shapes from which the homeowner is removed or does not own side pages, for better cooling, or, often, the disk is easier to get out and throw, in case of intervention by the police. In this case, the computer needs to be placed in the bag for evidence if the gauges allow it or wrap it in paper, fasten it and seal it so that the components of the computer can not be accessed without the violation of the official seal (Figures 5 and 6).



Figure 5: *The correct way of packaging digital evidence*
Source: Forensic Center of Montenegro, 2018



Figure 6: *The correct way of marking digital evidence*
Source: Forensic Center of Montenegro, 2018

CONCLUSION

The management of criminal investigations at the beginning of the twenty-first century faces special challenges. One of them is the handling of evidence in the form of digital evidence. The first challenge in dealing with criminal offences, which have digital evidence for the subject, is merely analysing, examining and expertizing the digital evidence carriers themselves, such as computers, mobile phones, payment cards, and the like. The other, according to the author of this paper, the more important the challenge we are facing is the legislation, the handling of digital evidence. Only the proof that was obtained from which it was obtained, and from which it was processed, from the very finding, to further packaging, sent to the expert examination and the expert witness itself, acted legally, can be accepted as evidence in the proceedings. Conversely, if in the part of dealing with digital evidence, all legal positive norms are not applied in order to eliminate the suspicion that with concrete digital evidence it has been applied in such a way as to exclude the possibility of its contamination, replacement and subsequent changes, all modern and sophisticated equipment and knowledge and the experience of experts working on the expertise of digital evidence will not be of any use to us (Rakočević, Ivanović, & Maver, 2018).

The handling of cases and traces of various crimes is of great importance in the management of criminal investigations. The exception to this rule is not when it comes to digital traces or data. An optimum solution for the proper handling of digital trace types is the accreditation of the tasks of analysing, testing and evaluating digital traces. Forensic laboratories that are tasked with analysing, testing and evaluating digital evidence, accredited to ISO 17025, thus guarantee that digital evidence in their laboratory has been delivered in a way to avoid suspicion of: contamination, replacement, abuse and subsequent change. At the end of the paper, we list the countries that by 2017 accredited forensic laboratories for analysing, testing and expertizing digital evidence: Czech Republic, Finland, France, Germany, Greece, Latvia, Lithuania, the Netherlands, Romania, Russia, Slovakia, Sweden, Turkey, Ukraine and Great Britain (Europol, 2017; Swaminathan, Wu, & Liu, 2009).

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PENOLOGY & PUNISHMENT

RESEARCH UTILISATION IN THE PRISON SECURITY POLICYMAKING PROCESS: THE MACEDONIAN EXPERIENCE

Marija Milenkovska¹

ABSTRACT

The paper examines the relationship between the research and policy in Macedonia. It focuses upon the following questions: do policymakers in the country use the research evidence into development and reformulation of the prison security policy? How do they use the research evidence? In order to answer the questions, the paper, first, examines the existing literature and the strategic documents in this area. Then, it analyses the data collected through semi-structured interviews with individuals who were involved in the drafting different documents that have influenced prison security. At the end, the paper employs the basic models of research utilisation developed in the literature and suggests how the prison research evidence should penetrate the prison security policymaking process in Macedonia. While the paper does not overlook the criticism of the evidence-based policy, it concludes by suggesting that the policymakers should consider using research more directly in the development of the prison security policy.

Keywords: research, evidence, policymaking, prison security, Macedonia

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INTRODUCTION

The paper examines the interaction between research and criminal justice policy through analysis of research utilisation in the prison security policymaking process in the Republic of Macedonia.

The research use in the policymaking process and the interplay between the research and policy have been discussed in the literature many times (e.g. Colebatch, Hoppe, & Noordegraaf, 2010; Dobrowa, Goel, & Upshur, 2004; Head, 2010; Ness & Gándara, 2014; Porche, 2004; Tseng, 2007). The review of the existing literature reveals that a vigorous debate is going on between those authors who believe that “evidence matters for public policymaking” (Parkhurst, 2017: 7) and those who believe that evidence-based practice fails “to address the reality of policymaking” (Parkhurst, 2017: 7). Moreover, there are authors who have taken the middle ground and have tried to reconcile both sides by arguing that “both perspectives have valid and useful insights to provide” (Parkhurst, 2017: 7) on how the use of evidence in policymaking can be improved.

The paper does not engage in this debate, but it examines the role of research in the development and reformulation of the prison security policy in Macedonia. It focuses upon the following questions: to what extent do policymakers in the country make use of the research into the prison security policymaking process? How do they use the research evidence? In order to answer the questions, the paper analyzes the relevant documents and research conducted in Macedonian prisons after the adoption of the new Law on Execution of Sanctions (2006) by scholars employed with domestic universities, as well as the data collected through interviews (three semi-structured interviews) with individuals who were

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involved in the drafting of different documents that have influenced prison security (for the purpose of the paper defined as policymakers). The main focus of the interviews was to explore the position of the respondents on factors influencing the development of the prison security policy.

The paper reveals that there is a lack of prison security research in Macedonia. It identifies only one research as relevant for the subject of discussion. This outcome implies that one can hardly speak about correlation between prison security research and prison security policy. Therefore, the paper presents the results of the research, describes the strategic documents dealing with prison security, and suggests how the prison research evidence in general should penetrate the prison security policymaking process in Macedonia. To explain these suggestions, Part I of the paper defines the term “research utilisation” and describes the basic models of research utilisation developed in the literature. Part II of the paper examines the link between prison research and policy. Part III of the paper analyses the legal framework dealing with prison security established in Macedonia. Part IV of the paper analyses the research on “Position of the Convicts in the Penitentiary Institutions in Macedonia” and the data collected through interviews with individuals who were involved in the drafting of different documents that have influenced prison security.

RESEARCH UTILISATION: DEFINITION AND TYPES

The term “research utilisation” is subject of dispute in the literature. Authors attach different meanings to this term by proposing different definitions. They also use the wide range of similar terms to describe the same concept, such as “use of research evidence”, “knowledge utilisation”, “research use”, “social science utilisation” and similar (see in Ness, 2010). Nevertheless, despite the many overlapping terms and many different definitions one can accept that the term “research utilisation” primarily provides an answer to the question of how the research - based evidence is used in the policymaking process. Therefore, for the purpose of this paper, the term research utilisation refers “to the use of scholarly research by policymakers and policy applicers” (Nagel, 1977: 67), which is quite similar definition to the definition proposed by Macnee & McCabbe (2008: 276) – “the use of research in practice”.

Authors disagree about the definition of the term “research utilisation”, but the vast majority of them agree that there is a gap between researchers and policymakers due to different language, values, norms, reward systems and goals – two communities theory (Caplan, 1979) – and suggest how this gap can be bridged. They describe how to move from research to policy (how to improve the quality of research, communication and dissemination of research – supply side) and from policy to research (how practice should inform the research – demand side).

In this context, Weiss (1979: 427) noted that “if are to gain a better understanding of the extent to which social science research has affected public policy in the past, and learn how to make its contribution more effective in the future, we need to clarify the concept”. In this regard, she identified the following seven different meanings of the concept research utilisation: (a) the knowledge driven model (“basic research discloses some opportunity that may have relevance for public policy; applied research is conducted to define and test the findings of basic research for practical action; if all goes well appropriate technologies are developed to implement the findings; whereupon application occurs” (Weiss, 1979: 427)); (b) problem solving model (“the direct application of the results of a specific social science studies to a pending decision” (Weiss, 1979: 427)); “research provides empirical evidence and conclusions that help to solve a policy problem” (Weiss, 1979: 427)); (c) interactive model

(“an interactive search for knowledge” (Weiss, 1979: 428)); “the process is not of linear order from research to decision but a disorderly set of interconnections and back-and-forthness that defies neat diagrams” (Weiss, 1979: 428)); (d) political model (research is used as “ammunition for the side that finds its conclusions congenial and supportive” (Weiss, 1979: 429)); (e) tactical model (the research is used to deflect the criticism); (f) enlightenment model (“education of policymakers gradually over time through the accumulation of research” (Ness, 2010: 10); research diffuses to the policy sphere through indirect and unguided channels” (Weiss, 1979: 430)); and (g) research as a part of intellectual enterprise of the society (“like policy, social science research responds to the currents of thought, the fads and fancies, of the period. Social science and policy interact, influencing each other and being influenced by the larger fashions of social thought” (Weiss, 1979: 430)).

One may agree with Ness (2010) that these different meanings of the term research utilisation identified by Weiss seem to fit the three basic types of research utilisation identified in the literature and accepted by significant number of authors: (a) instrumental use (“direct application of research to policy and practice decisions” (Nutley, Walter, & Davies, 2007: 34; Tseng, 2012: 7)), (b) conceptual use (“directly when evidence diffuses into the population and, overtime, influences policy processes by changing ideas and understanding” (Allen, Ruiz, & O’Rourke, 2015: 689)); and (c) political use (“to engender support for a particular position or else undermine the an opponent’s stance” (Nutley et al., 2007: 34)). It seems that Weiss accepted this terminology (typology) in her latter works too, and more recently, she and her colleagues introduced a new type of research use in addition to these three basic types of research utilisation: imposed use. This type of use comes about “because of pressure from outside” (Weiss, Murphy-Graham, & Birkeland, 2005: 16) and as Tseng (2012: 7) observed it refers to “recent government initiatives that tie funding to the adoption of evidence-based programs”.

The basic types of research utilisation have been used by different authors so far in order for the interplay between the research and policy in different areas or countries to be understood (see for instance, Duke, 2001, 2003). The role of research in development and reformulation of the prison security policy in Macedonia will be discussed below, but first I will briefly address the relationship between the prison research and policy.

PRISON RESEARCH AND CRIMINAL JUSTICE POLICY

Head (2010) listed criminal justice among those human services policy domains in which the strength of evidence-based policy movement has been evident. Therefore, it is hardly a surprise that a number of research addressing the link between prison research and criminal justice police have been conducted so far (e.g. Duke, 2003; Iness & Everett, 2008; Liebling, 2015; Smith, 2015; Starr, 2014; Tonry, 2013; Tubex, 2015). However, the results are different. Authors disagree about both the impact of the prison research on penal policy and the nature of scholars’ involvement in the society. For instance, the authors of the book “Public Criminology” argue that “it is social fact that the criminologists are typically drawn to their chosen field of enquire at least in part by a reformist impulse” (Loader & Sparks, 2011: 6) and that they “generally evince a desire to engage with, and to be taken seriously in, the world of practical affairs” (Loader & Sparks, 2011: 6). They examine how criminologists “in general can give greater coherence to criminology’s relationships to politics and engagements in public life” (Loader & Sparks, 2011: 9) and as Smith (2015: 36) observes: “analyse five different types of criminological engagement with public: the scientific expert (who produce evidence based and objective knowledge to guide or answer questions posed

by policy makers), the policy adviser (who produce autonomous and independent academic research and advise policy makers when possible), the observer-turned player (former researchers who now work inside government agencies), the social movement theorist/activist (critical criminologists producing counter knowledge) and the lonely prophet (who produce theoretical macro explanations of punishment, society and culture of control”.

Tubex (2015) used some of these prototypes to explore how the gap between the prison research and policy can be bridged in a way that is beneficial for both academia and government organisations. She underlines the changes in the penal landscape and the impact of managerialism on corrective services and universities, and argues that “researchers these days need to serve many masters, with risk of losing their autonomy and integrity” (Tubex, 2015: 14). However, Tubex (2015) is convinced that “criminology, and for this part, penology has a role to play in shaping penal policy”. In this regard, according to her ‘the enlightenment model’ of research use can build a healthy relationship between research and policy, because “in this model, research stays at a distance from policy, providing a framework for thinking about the problem” and “rather than science finding solutions to policy problems, it provides information and a conceptual framework within which a problem can be studied and understood” (Tubex, 2015: 14).

Smith (2015) also, examines whether we can use prison research as a reform tool and observes that “what works” research is sometimes used in a time of penal populism and rising prison population. He argues in favour of “a broader approach that recognises the wider societal effects of imprisonment” (Smith, 2015: 33) and develops a model for research and reform which does not fit into one of Loader & Sparks (2011) categories of criminological engagement (model’s stages: identify the problem; bring together the relevant actors; conduct thorough multidisciplinary research; dialogue throughout a research with all relevant actors; recommendations; and advocacy, dissemination and implementation strategy). Smith (2015: 45) observes that “context is crucial when discussing methodologies and possible interaction between research and reforms” and concludes that research should and could take up more space in the arena of interaction between prison research and prison reform.

Liebling (2015: 19), on the other hand (despite the fact that she did not deny that her work (prison research) has had some impact on policy formation), noted that the main moral purpose of the prison researchers is “getting the description right”. She advanced certain arguments against public criminology (lack of ideological consensus among criminologists; overemphasis on applied criminology; risks of working for the market) and concluded that “the greatest contribution to penal practice I [a prison researcher] might aspire to is to achieve the painstaking presentation of empirical evidence which is also found to support deeply – held values” (Liebling, 2015: 30).

PRISON SECURITY IN MACEDONIA: THE LEGAL FRAMEWORK AND THE CURRENT PENITENTIARY SYSTEM ORGANISATION

In December 2005, the Macedonian Parliament adopted the new Law on Execution of Sanctions (2006). The Law, entered in force in 2006 and has been amended a few times so far. One may observe that the legislators (formally) struck a balance between the protection of the society and victim on one hand, and dignity of the convict on the other hand based on the text of the law. The law protects the psychophysical and moral integrity of convicts, as well as their right to personal safety. It prohibits discrimination and any form of torture, inhumane or degrading treatment, and establishes a complex mechanism of control over the

execution of the prison sentence in penitentiary institutions in the country (which involves the Directorate for Execution of Sanction, a judge for execution of sanctions, the State Commission for Execution of Sanctions and the Ombudsman (the National Prevention Mechanism)).

According to Article 14 of the Law on Execution of Sanctions (2006), the Directorate for Execution of Sanctions, which is managed by a Director appointed by the Government, *inter alia*: (a) organises, implements and supervises the execution of prison sentences and juvenile imprisonment as well as the correctional measure of referral to a juvenile correctional-educational facility; (b) provides and organises continuous training and advancement of employees in the penitentiary and correctional-educational institution; and (c) establishes cooperation with institutions, associations and organisations that deal with issues related to the execution of sanctions. The Directorate is in the center of the current Macedonian penitentiary system, which includes the following 11 penitentiary institutions: (a) 3 penitentiary facilities (Penitentiary facility Idrizovo with an open ward in Veles (closed institution), Penitentiary facility Stip (closed institution) and Penitentiary facility Struga (open-type institution)); (b) 8 prisons – semi-open type institutions – (Prison Bitola, Prison Gevgelija, Prison Kumanovo with an open ward in Kriva Palanka, Prison Prilep, Prison Skopje, Prison Strumica and Prison Tetovo, and Prison Ohrid (a separate institution for juveniles sentenced to prison)); and (c) 2 correctional-educational institutions (in Tetovo (for male juveniles) and in Skopje (within the female ward in Idrizovo Prison for female juveniles)). The penitentiary institutions are managed by a Director, appointed by the Government, and in each of them there are sectors dealing with security issues and re-socialisation, as well as a financial and administrative unit.

Convicts serve the prison sentence in different penitentiary institutions – in closed institution, semi-open type institution or in open type institution – depending on the nature of the crime, whether the offender was sentenced to imprisonment before and on his or her personality and motives. If one analyses the legal framework in terms of ensuring security in penitentiary institutions one may observe that it has achieved certain balance (at formal level) between the different types of security measures, and between security measures and human rights and dignity of convicts. The Law on Execution of Sanctions (2006), set minimum physical security standards for each type of penitentiary institution (closed institution, semi-open type institution and open type institution), which, in case of the closed institutions, include, *inter alia*, walls and technical means and other security measures that prevent the escaping of convicts. In addition, the authorities introduced different procedures (regarding risk assessment, classification and allocation of convicts; searching and control; surveillance and communications) that have to be followed. Also, the legal framework established in the country lays down the foundation for development of the positive (good) relationship, communication and interaction between the staff and convicts based on firmness and fairness, professionalism and individualism, which may have crucial impact on the security in prison.

The legal framework established in the country by the new Law on Execution of Sanctions (2006) is significant step forward (despite some deficiencies) in terms of incorporation of international standards in relation to execution of prison sentence under the domestic legal order. However, there is a serious gap between the legal norms and reality. As the European Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishing (CPT) in its last report concerning Macedonia noted “ten years and six visits later, despite many promises from the authorities, the situation in the prisons visited remains

highly precarious or, as the inmates themselves said, a “Katastrofa” and the stated goal of providing “security and rehabilitation”, as articulated in the 2006 Law on the Execution of Sanctions, remains an illusion” (European Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishing, 2017: 5).

RESEARCHING PRISON SECURITY IN MACEDONIA

For the purpose of the paper, I used the Co-operative Online Bibliographic System & Service (COBISS) database established in the country to identify and then analysed the research dealing with the security in Macedonian prisons, conducted after the adoption of the new Law on Execution of the Sanctions adopted in December 2005 (2006) by scholars employed with Macedonian universities. I used different keywords, however, I could not find any empirical research dealing with the security in the Macedonian penitentiary institutions (as main subject) conducted by professors employed with Macedonian universities. It seems that the vast majority of Macedonian researchers prefer to avoid these institutions – “closed, single-sex societies separated from society socially and physically” (Hensley, Wright, Tewksbury, & Castle, 2003) where the individuals live against their will.

The only research that met my criteria (at least partially) is the research (“Position of the Convicts in the Penitentiary Institutions in Macedonia”) conducted by scholars (including me) employed with the Faculty of Security in Skopje. Its aim was to describe the conditions of the convicts in the penitentiary institutions in Macedonia, which implies that it dealt, among other things, with the question of prison security (but not only with this question).

The research was conducted in 2012 and 2013 (November 2012 to March 2013) in five penitentiary institutions (Penitentiary facility Idrizovo, Penitentiary facility Stip, Penitentiary facility Struga, Prison Bitola, Prison Strumica and Prison Tetovo) in the country and, as one of the reviewers of the research reports (studies) notes, this was “the first research in the field of penology in Macedonia, which was conducted after almost 20 years” (Mojanoski et al. 2014: 289). It was a multidisciplinary research. The research team used different research methods and techniques (including interview, questionnaires and a number of psychological tests) to achieve the research goal. The research was not exclusively convict-focused, but it tried to describe the conditions in Macedonian prisons using the experience (attitudes, perceptions and thinking) of both the convicts and the employees (prison staff). It also analysed the reports concerning the Macedonian prisons of relevant national and international bodies.

When it comes to the issue of prison security it bears noticing that the research deals (directly or indirectly) with the three key elements (aspects) in the prison security framework: physical, procedural and dynamic security. And, it identifies a number of weaknesses in the Macedonian penitentiary system that affect or could affect the security in prison. One may classify these problems in the following categories: (a) overcrowding and the deplorable material conditions; (b) ill-treatment of the convicts by the staff and gaps in the established mechanism for combat and recording torture in prison and drugs trafficking; (c) crime and corruption (for instance: 55,2% of the prison employees answered that there is a corruption in the institution where they work; 22,3 % of the convicts answered that they were asked bribes by the employees; almost half of all the respondents (49,6%) testify that one can easily buy or get drugs in the institutions, and more than half of them (55,3%) testify that one can easily buy or get drugs by another inmate); (d) inter-prisoner intimidation or violence; (e) lack of personnel, absence of effective managerial supervision and bad staff – prisoner relationship; (f) inadequate medical care; (g) stress among the convicts and psychological

problems; and (h) stress among the prison staff and job dissatisfaction. At the end, one should emphasise the fact that 54% of the convicts who were part of the research answered that they do not feel safe within the penitentiary institution while 69,7% of those who work in the prisons subject of research answered that they do not feel safe while performing work tasks among the convicts (see: Mojanoski et al., 2014, 2015).

The research team put forward a number of recommendations that directly or indirectly concern the security in prisons (e.g. in relation to: the treatment of the convicts, in particular, the drug addicts and convicts with psychological problems; the relationship between the staff and convicts (building a good relationship); the problem of drug trafficking, corruption and inter-prisoner violence; status of the staff, its work and training), including policy reforms.

Professor Arnaudovski (2014) in his review of this research noted: "Macedonia has introduced a new system for execution of sanctions that has changed the whole philosophy of fighting and preventing crime" (Mojanoski et al., 2014: 289) and that "the process of creating and amending the new regulations is still taking place" (Mojanoski et al., 2014: 289). However, as he observed it has never been accepted that these changes should be based on previously conducted research" (Mojanoski et al., 2014: 289). In addition, Arnaudovski (2014) expressed his hope that this research will change the situation. However, it is questionable whether this research has had some impact on policy development and reformulation.

The team that was involved in the process of drafting the National Strategy for Development of the Penitentiary System (2015), as a crucial strategic document dealing with the Macedonian penitentiary system, adopted by the Government in 2015, notes in the text of the strategy that "information and data about the functioning of the prison system can be found in several reports by both national and international organisations and institutions, such as: annual reports of the Directorate for Execution of Sanctions, annual reports of the Ombudsman/NPM, reports from regular and ad hoc visits by the CPT, reports from evaluation missions, reports from visits by the International Red Cross etc.". It does not refer (explicitly) to the research "Position of the Convicts in the Penitentiary Institutions in Macedonia" or to any other research conducted in Macedonian prisons, despite the fact that some of the people who were involved in the process of drafting the strategy provided assistance to the faculty team during the research. However, the description of the process of adoption of the national strategy provided in the text of the strategy revealed that international experts, including penology consultants were involved in the process of drafting the first National Strategy for Development of the Penitentiary System (2015) engaged by the Council of Europe within the project "Capacity Building of the Law Enforcement Agencies for Appropriate Treatment of Detained and Sentenced Persons". In order to support the strategy preparation process, international experts drafted several comparative reports dealing with different issues (including issues that impact security) and feasibility study for establishing a central admission (observation) centre.

The authorities recognised the weaknesses in the Macedonian prison security system, identified in the research conducted by the research team established at the Faculty of Security, by stipulating different activities in the National Strategy aimed at strengthening the security in penitentiary institutions. These activities *inter alia* include: improvements in the legal provisions governing security in prison; introduction of different procedures (e.g. for proceeding in case of general unrest); procurement of video surveillance equipment; setting up a system of dynamic security etc. Some of these coincide with the research evidence and recommendations, but also with the remarks and recommendations provided in the reports published by the CPT and the Ombudsman of the Republic of Macedonia.

Therefore, one cannot argue that the research analysed above had impact on the prison security policy in Macedonia based on the analysis of the National Strategy for Development of the Penitentiary System (2015-2019), in particular because the team that worked on the strategy did not refer to the research results. Of course, there is some probability that the research entered in the policy arena through indirect channels and that its findings have given a set of ideas or guidelines to the team involved in the drafting of the strategy. However, this is just a presumption. Additional evidence is needed to support this thesis.

The fact that there is a lack of prison security research in Macedonia prevents any serious or comprehensive debate about the impact of the prison security research on the prison security policymaking process. As I mentioned above, I used the COBISS database and I found only one empirical research dealing with prison security (among other things) conducted by scholars employed with Macedonian university contrary to my expectations. Therefore, it is questionable whether one can even establish or explain a link or correlation between prison security research and prison security policy. The analysis of data collected by interviewing some of the people who were involved in the process of drafting other relevant documents showed that the respondents also underlined the lack of prison security research in Macedonia or stated that they were not familiar with this kind of research. The respondents were asked to assess the impact of the scientific research relevant for the prison security on the development or reform (changes) of the prison security policy in Macedonia. One of the respondents answered that the conducted research in the country “do not have any significant influence on the policymaking process” while another answered that they “do not impact the prison policy”. However, as I have already mentioned, they underlined that there is a lack of prison security research in the country. Therefore, it is hardly a surprise that none of the respondents listed prison research among the factors influencing the development or reforms of the prison security policy in Macedonia. If we are to analyse their answers, we can see that some argued that the pressure of the international community and the engagement of the domestic experts (most of whom employed by the prisons) are the factors that have the greatest impact on the development or reforms of the prison security policy, while others think that the political factors have the greatest impact in this regard. However, as noted above, none of them mentioned the prison research in this context.

CONCLUSION

The paper aimed to examine the interaction between the prison security research and prison security policy in the Republic of Macedonia, that is, to assess the impact of the prison security research on the prison security policymaking process in the country. Therefore, I used the COBISS database established in the country to identify and then analysed the research dealing with the security in Macedonian prisons, conducted after the adoption of the new Law on Execution of the Sanctions (2006) by scholars employed with Macedonian universities. The analysis of this database revealed that there is a lack of prison security research in the country – only one research (“Position of the Convicts in the Penitentiary Institutions in Macedonia”) was identified as relevant for discussion. Although the paper analysed the first National Strategy for Development of the Penitentiary System (2015), searching for some links between the mentioned research and strategy one cannot say that it assessed the impact of the research on the process of drafting the strategy. The fact that there is a lack of prison security research in Macedonia prevents any serious and comprehensive debate about the impact of the prison security research on the prison security policymaking process.

The findings of the analysis of the COBISS database (that there is a lack of prison security research in Macedonia) coincide with the data collected by interviewing the individuals who were involved in the process of drafting of some of the documents (aside from the Strategy) relevant for prison security. Namely, the respondents also emphasised the lack of research. Therefore, it is hardly a surprise that none of them listed the prison research among the factors influencing the development or reforms of the prison security policy in Macedonia. In order for the situation to be changed, the researchers in the country should visit the domestic penitentiary institutions more often and conduct research activities there. Moreover, the policymakers should consider using research more directly in the development and reformulation of the prison security policy. However, this does not mean that the researchers should work for the market or lose their autonomy or integrity. It seems that the most suitable way for the research evidence to penetrate the prison security policymaking process in Macedonia is through indirect channels, in a way that corresponds to the enlightenment model of research utilisation.

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THE DUAL NATURE OF LEGITIMACY IN THE PRISON ENVIRONMENT

Rok Hacin¹, Chuck Fields², Gorazd Meško³

ABSTRACT

The aim of the study⁴ was to determine factors that influence prisoners' perception of legitimacy of prison workers and self-legitimacy of the prison staff. In 2016, 328 prisoners and 243 prison workers were surveyed in all Slovenian prisons and a correctional home. Results of OLS regression analyses showed that prisoners' perception of legitimacy of the prison staff depends on procedural justice, distributive justice, relations with prisoners, relations with prison workers, effectiveness of the prison staff, obligation to obey, and individual and sentence characteristics. Furthermore, audience legitimacy, relations with prisoners, relations with colleagues, supervisors' procedural justice, satisfaction with salary, subculture of the prison staff and individual characteristics influence self-legitimacy of the prison staff. These findings point to the prison staff-prisoners relations as the binding factor between legitimacy and self-legitimacy in the prison environment.

Keywords: legitimacy, self-legitimacy, prisons, Slovenia

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INTRODUCTION

DiIulio (1987) stated that prisons are inherently illegitimate and consequently, restless and unmanageable, except in the field of rational use of coercion and sanctions. The so-called "problem of order" in modern prisons derives from the lack (deficit) of legitimacy (Bosworth, 1996). Theoretical definitions suggest that the presence of legitimacy influence good order and behaviour in the prison environment (Tankebe, 2014). Prison presents a form of total institution where, due to the specific environment, a special kind of [closed] society is formed (Hacin, 2018). Prison workers and prisoners represent the members of such a society, and despite great inequalities between the groups, we assume that the presence of legitimacy in such a society is possible if relations between the groups are based on mutual respect, dignity, and fairness.

Studies (Akoensi, 2016; Hacin & Meško, 2017, 2018) exposed the possibility of alternative interpretations of legitimacy in the prison environment. Slovenian prisons represent an outstanding example of prisons in a post-socialist society, which by imprisonment rates and treatment of prisoners, are comparable to prisons in the Nordic countries (Flander & Meško, 2016). The specifics of prisons, which derive from the uniqueness of the culture of an individual country influence the presence of legitimacy in prisons. Specifics of Slovenian prisons are seen in approximation to prison systems of Western countries that were founded on respect for prisoner's rights while preserving elements of the treatment of prisoners from the past. In this paper, we explore the dual nature of legitimacy that is prisoners' perception of legitimacy of the prison staff and self-legitimacy of prison workers. In the

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first part of the paper the dual nature of legitimacy in the prison environment is defined, while in the second part, the empirical study of prisoners' perception of legitimacy and self-legitimacy of the prison staff in Slovenian prisons is presented. In conclusion, findings of the study are discussed, and challenges for future research are highlighted.

THE PRESENCE OF LEGITIMACY IN THE PRISON ENVIRONMENT

Sparks, Bottoms, and Hay (1996) stated that it is possible to achieve a certain degree of internal legitimacy within the prison through fair and respectful attitudes toward the prisoners, but only if it does not significantly differ from other social domains. The presence of legitimacy in prison is complex, as prison environment represents a specific form of micro-society where relations between parties are intense and sanctions stringent. The presence of legitimacy in prison is important not only, as an alternative path for maintaining order, but also due to its impact on prisoner's lives and work of the prison staff. Prisoners, who internalised the norms of prison workers and recognise them as eligible implementers of authority, obey their instruction and do not violate prison rules. Moreover, self-legitimacy of the prison staff has an impact on the quality of their work that is based on propriety, integrity, and fairness. This influences prisoner's perceptions of the effectiveness of prison workers and has a positive impact on establishing good relationships in prison (Hacin & Meško, 2018; Liebling & Price, 2001; Meško, Tankebe, Čuvan, & Šifrer, 2014).

Bottoms and Tankebe (2013) were first to expose the dual nature of legitimacy, where audience (prisoners) and authorities (prison workers) are in an interdependent relationship, despite great differences regarding possession of power. In the dialogue about legitimacy, prisoners represent an audience that is subordinate to rulers (prison workers) and recognise them as the legitimate power-holders. Such a perception of legitimacy is based on prisoner's compliance with prison rules and the authority of prison workers in the forms of instrumental compliance, which is based on avoiding sanctions and obtaining privileges, and is unstable over the longer term, and normative compliance that is based on the internalisation of the norms of prison workers through good relations and trust between prisoners and prison workers, which leads to prisoner's voluntary compliance (Sparks & Bottoms, 1995; Tyler, 2011). Moreover, prison workers must possess beliefs that they are eligible power-holders in prison, to whom power and authority over prisoners have been entrusted, as they represent rulers in the prison society. Legitimacy of the prison staff can be described as the ability of prison workers to implement their authority in an honest, lawful and just manner, while prisoners acknowledge their status of eligible power-holders, who deserve to be obeyed and to comply with their decision (Bottoms & Tankebe, 2013; McLean Henderson, 2016).

Legitimacy in prison should not be measured unilaterally as a form of prisoner's perceptions of legitimacy of the prison staff. Self-legitimacy of power-holders (prison workers) must also be considered (Snacken, 2015, Tankebe, 2013), as it represents the foundation for successful dialogue between prison workers and prisoners.

PRISONERS' PERCEPTION OF LEGITIMACY OF THE PRISON STAFF

Most of the approaches of working with prisoners focus on control strategies – rewards and sanctions (Reisig & Meško, 2009). Such “carrot and stick” strategies eventually lead to prisoners' disapproval as the ratio between rewards and sanctions is disproportionate,

because prison workers have limited options of rewards. The presence of legitimacy in prison, which is built by the prison staff through respectful and dignified relationships with prisoners – relationships that are based on justice, represents an alternative to control strategies. Bottoms (1999) argued that prison workers represent a mediation factor to prisoners, which influences good or bad behaviour – respect and compliance with the prison rules. Prisoner's perception of legitimacy of the prison staff is based on the quality of relations with prison workers and fellow prisoners as a result of everyday interactions. Franke, Bierie, and MacKenzie (2010) wrote that the experience of imprisonment can be positive, or at least neutral, if prisoners perceive procedures of authority as just. Tyler (2010) highlighted four components of procedural justice in correctional institutions (prisons): (a) *voice* (prisoners should be allowed to express their views), (b) *neutrality of decisions* (decisions are made in accordance with rules and are not based on personal bias of the prison staff), (c) *respectful and dignified treatment of prisoners* (prison workers must refute negative stereotypes about prisoners and acknowledge them certain rights), and (d) *trust in authority* (authorities are concern about the welfare of prisoners). Despite the fact that a prisoner's perceptions of legitimacy of the prison staff is based on the quality of relations, which derives from justice, numerous factors such as distributive justice, relations with prisoners, relations with the prison staff, individual characteristics and sentence characteristics, procedural justice, cooperation with the prison staff, effectiveness of the prison staff, prison subculture, and trust in authority influence the process of building legitimacy in prison (Hacin & Meško, 2018; Lieblich & Price, 2001; Reisig & Meško, 2009).

SELF-LEGITIMACY OF THE PRISON STAFF

Power-holders strive to establish their own legitimacy by promoting the image of identity who has the right to command. The legitimacy of power-holders is defined as the prison staff's trust in their own moral eligibility to exercise power. McLean Henderson (2016) described self-legitimacy of the prison staff as the self-esteem of prison workers in their own ability to implement entrusted power. For achieving self-legitimacy, beliefs about the legality and consistency of work with moral values of the society are needed (Bottoms & Tankebe, 2012). Tankebe (2014) defined self-legitimacy as the process of construction, validation, and resistance to a certain self-esteem of a power holder. Power-holders enter into a dialogue with the audience about legitimacy, with a certain image of themselves, as confident and just bearers of power. Such a dialogue in prison is based on the quality of relations between the prison staff and prisoners that derive from everyday interaction. Interactions of power-holders with their colleagues, supervisors and the audience represent teachable moments about legitimacy (Tyler & Blader, 2000). Moreover, power-holders enter into interaction with their audiences to project and seek the confirmation of a certain self-identity, who believes that they are the eligible power-holders (Bottoms & Tankebe, 2013). Consequently numerous external and internal factors, such as relationships with colleagues, relationships with prisoners, individual characteristics, supervisors' procedural justice, pro-organisational behaviour, stress, subculture of the prison staff, use of force, and audience legitimacy influence self-legitimacy of the prison staff (Akoensi, 2016; Hacin & Meško, 2017; Meško, Hacin, Tankebe, & Fields, 2017). In the following section, we present the study of the dual nature of legitimacy in Slovenian prisons.

THE CURRENT STUDY

This study focuses on the dual nature of legitimacy: (a) the prisoner's perceptions of legitimacy regarding prison staff and (b) self-legitimacy of the prison staff. The study took

place from October 2016 to December 2016, and surveys were conducted in six prisons (Celje, Dob, Ig, Koper, Ljubljana, and Maribor) with departments (Ig, Murska Sobota, Nova Gorica, Novo mesto, Puščava, Rogoza, and Slovenska vas) and a correctional home (Radeče). Participation was voluntary and confidential, and all prisoners and prison workers were invited to participate in the study. Prior to distributing the questionnaires,⁵ the context of the study was presented to prisoners and prison workers. Questionnaires were then distributed to individuals who decided to participate in the study, and were completed in their rooms (cells), offices (in the case of prison workers), or common rooms (in some of the smaller prisons, prisoners gathered in the common room, where the context of the study was presented to them). Respondents personally delivered completed questionnaires to the researcher or they were collected by the researcher at a previously agreed-upon place. Data from the questionnaires were entered into the SPSS computer programme enabling structured analysis of the data. Based on the survey data, descriptive statistics, factor analyses, and regression analyses were performed.

MEASURES

In order to explore prisoners' perception of legitimacy of prison workers, 29 variables measured on a 5-point scale ranging from 1 - Strongly disagree to 5 - Strongly agree, were subjected to factor analysis (Principal axis factoring, rotation Varimax) and the following eight factors were created: (a) legitimacy (mean [M] = 2.91; standard deviation [S.D.] = 1.05; Cronbach's α = 0.91), (b) distributive justice (M = 2.52; S.D. = 1.16; Cronbach's α = 0.92), (c) obligation to obey (M = 3.48; S.D. = 0.99; Cronbach's α = 0.82), (d) relations with prisoners (M = 2.41; S.D. = 1.01; Cronbach's α = 0.80), (e) relations with the prison staff (M = 3.27; S.D. = 1.07; Cronbach's α = 0.87), (f) procedural justice (M = 3.09; S.D. = 1.07; Cronbach's α = 0.89), (g) effectiveness of the prison staff (M = 2.85; S.D. = 1.13; Cronbach's α = 0.87), and (h) prison subculture (M = 2.21; S.D. = 1.09; Cronbach's α = 0.86).⁶

In order to explore self-legitimacy of the prison staff, 38 variables measured on a 5-point scale ranging from 1 - Strongly disagree to 5 - Strongly agree, were subjected to factor analysis (Principal axis factoring, rotation Varimax) and the following eight factors were created: (a) self-legitimacy (M = 4.12; S.D. = 0.61; Cronbach's α = 0.79), (b) relations with colleagues (M = 3.97; S.D. = 0.66; Cronbach's α = 0.91), (c) relations with prisoners (M = 3.44; S.D. = 0.67; Cronbach's α = 0.61), (d) supervisors' procedural justice (M = 3.56; S.D. = 0.77; Cronbach's α = 0.94), (e) stress (M = 3.28; S.D. = 0.81; Cronbach's α = 0.75), (f) subculture of the prison staff (M = 3.86; S.D. = 0.79; Cronbach's α = 0.78), (g) satisfaction with salary (M = 2.05; S.D. = 0.94; Cronbach's α = 0.92), and (h) audience legitimacy (M = 3.15; S.D. = 0.74; Cronbach's α = 0.89).⁷

5 The questionnaire for surveying prisoners was based on a modified questionnaire for researching prisoner's perceptions of legitimacy used by Reisig and Meško (2009). Furthermore, the questionnaire for surveying prison workers was based on a modified questionnaire developed by Tankebe and Meško (2015). Both were pre-tested in the Slovenian prison environment (Meško et al., 2014; Reisig & Meško, 2009).

6 Factors measuring prisoner's perceptions of legitimacy of the prison staff were designed in the same way than in the doctoral dissertation entitled Comparison of self-legitimacy of the prison staff and prisoner's perceptions of prison staff legitimacy (Hacin, 2018).

7 Factors measuring self-legitimacy of the prison staff were designed in the same way than in the doctoral dissertation entitled Comparison of self-legitimacy of the prison staff and prisoner's perceptions of prison staff legitimacy (Hacin, 2018).

SAMPLE

The sample of prisoners ($N = 328$) represents 29.5% of the average number of prisoners in 2016 (29.2% male prisoners, 26.9% female prisoners and 73.6% juvenile prisoners). It consists of 308 males (93.9%) and 20 females (6.1%), which is proportional to the ratio between male and female prisoners in Slovenian prisons. More than two-thirds of those surveyed were younger than 45 years, and approximately 11% of prisoners were younger than 24. The majority of respondents (83.2%) had completed elementary, vocational or high school, and more than half of them were in a relationship, married or in a non-marital partnership (52.8%). The length of sentences of surveyed prisoners was proportionate to the average length of sentences in 2016. Almost 50% of respondents were convicted for criminal offences against property, followed by prisoners convicted for criminal offences against human health (11.6%), criminal offences against life and limb (7.0%) and criminal offences against the economy (3.7%). Approximately a third of surveyed prisoners served six months or less of their prison sentence. Approximately 50% of surveyed prisoners were recidivists. More than half of the respondents (57.6%) served their sentences in closed departments of prisons.

The sample of prison workers ($N = 243$) represents 28.6% of all prison workers in 2016 (28.7% prison officers and 29.3% specialised workers). It consists of 175 males (72%) and 68 females (68%), and more than 30% of respondents were older than 45 years of age. More than 40% of respondents have completed vocational or high school, and approximately 50% of surveyed prison workers have achieved some level of higher education, with specialised workers representing the majority. More than three-quarters of those surveyed were married or in a non-marital partnership. Approximately 60% of surveyed prison workers were employed as judicial police – prison officers, with more than 30% being specialised workers. More than a third of surveyed prison workers have been employed in the prison system for 16 years or more, 30% of respondents between 6 and 10 years, and approximately 15% of respondents have been employed 5 years or less.

FINDINGS

Prior to regression analyses, based on which those factors that influence prisoner's perceptions of legitimacy of the prison staff and self-legitimacy of prison workers in Slovenian prisons were identified, Pearson's r correlation test was conducted that ruled out threats of multicollinearity. Moreover, further diagnostic tests confirmed the initial absence of multicollinearity, with the Variance Inflation Factor [VIF] for variables in each model being less than 2.0.

In Table 1, results of OLS regression analysis predicting prisoner's perceptions of legitimacy of the prison staff are presented. In Model 1, the impact of distributive justice, obligation to obey, relations with prisoners, relations with the prison staff, effectiveness of the prison staff, prison subculture, individual characteristics, and prison sentence characteristics on prisoner's perceptions of legitimacy of prison workers was tested. Results showed that distributive justice ($\beta = 0.40$; $p < .001$), relations with the prison staff ($\beta = 0.29$; $p < .001$), effectiveness of the prison staff ($\beta = 0.21$; $p < .001$), obligation to obey ($\beta = 0.07$; $p < .10$), and prison regime ($\beta = -0.08$; $p < .05$) influence prisoner's perceptions of legitimacy. Distributive justice revealed as the factor with the highest impact on prisoner's perceptions of legitimacy of the prison staff, followed by the quality of prisoner's relations with the prison staff. Prisoners who have positive perceptions of the effectiveness of the

prison staff, perceive legitimacy of the prison staff more positively, while the severity of the prison regime has a negative impact.

In Model 2, relations with the prison staff was replaced with procedural justice, which is seen as a basic element in establishing and maintaining quality relations between prisoners and prison workers. Results showed that procedural justice ($\beta = 0.55$; $p < .001$), distributive justice ($\beta = 0.28$; $p < .001$), effectiveness of the prison staff ($\beta = 0.12$; $p < .001$), prison regime ($\beta = -0.06$; $p < .05$), relations with prisoners ($\beta = -0.06$; $p < .10$), and age ($\beta = -0.06$; $p < .10$) influence prisoner's perceptions of legitimacy. Inclusion of procedural justice, which has the highest impact on prisoner's perceptions of legitimacy, decreased the size of regression coefficients of distributive justice and effectiveness of the prison staff. It seems that quality of relations between prisoners influences an individual's identification with the prison group, which is characterised by the rejection of authority. Moreover, older prisoners perceive legitimacy of the prison staff more negative.

Table 1: OLS regression analysis predicting: prisoner's perceptions of legitimacy of the prison staff

Dependent variable: Legitimacy	Model 1			Model 2		
	(s.e.)	β	t	(s.e.)	β	t
Distributive justice	.05	.40****	8.85	.04	.28****	7.04
Obligation to obey	.04	.07*	1.76	.04	.04	1.07
Relations with prisoners	.04	-.03	-7.0	.04	-.06*	-1.89
Relations with the prison staff	.05	.29****	6.62			
Procedural justice				.04	.55****	13.78
Effectiveness of the prison staff	.05	.21****	4.69	.04	.12****	3.29
Prison subculture	.04	-.01	-2.1	.04	-.01	-1.16
Individual characteristics						
Family status	.04	-.01	-1.5	.03	-.02	-0.78
Education	.03	.03	.80	.03	.01	.24
Recidivism	.04	-.03	-7.5	.03	-.05	-1.48
Gender	.14	.00	.07	.12	-.01	-0.38
Age	.02	-.03	-8.4	.02	-.06*	-1.79
Prison sentence characteristics						
Length of sentence	.04	-.01	-2.6	.04	-.03	-0.73
Length of served sentence	.03	-.02	-3.7	.03	-.05	-1.34
Education in prison	.07	.01	.27	.06	-.01	-0.39
Substitutional therapy	.09	.00	.09	.07	.03	.90
Criminal offence	.02	.01	.31	.02	-.02	-0.63
Prison regime	.05	-.08**	-2.18	.04	-.06**	-2.01
Employment in prison	.07	-.01	-3.4	.06	-.01	-0.22
F		32.20****			52.57****	
R ² (adjusted)		63.1%			73.8%	
N		328			328	

Note. * $p < .10$. ** $p < .05$. *** $p < .01$. **** $p < .001$.

In Table 2, results of OLS regression analysis predicting self-legitimacy of the prison staff are presented. In Model 1, the impact of relations with colleagues, relations with prisoners, supervisors' procedural justice, stress, subculture of the prison staff, satisfaction with salary, audience (prisoners) legitimacy and individual characteristics on self-legitimacy of the prison staff was tested. Results showed that results with colleagues ($\beta = 0.39$; $p < .001$), education ($\beta = 0.22$; $p < .001$), subculture of the prison staff ($\beta = 0.21$; $p < .001$), satisfaction with salary ($\beta = -0.19$; $p < .001$), supervisors' procedural justice ($\beta = 0.17$; $p < .01$), and age (β

= 0.15; $p < .05$) influence self-legitimacy of the prison staff. Prison workers who develop good relations with their colleagues and perceive decision of their supervisors as fair, have better perception of their own legitimacy. Moreover, those who have internalised norms of the subculture of the prison staff, and older and more educated prison workers perceive self-legitimacy more positively. However, [dis]satisfaction with salary has a negative influence on the self-legitimacy of the prison staff.

In Model 2, in addition to factors that were included in Model 1, relations with prisoners, which are seen as one of the factors that affect self-legitimacy of the prison staff, was included. Results showed that relations with colleagues ($\beta = 0.36$; $p < .001$), subculture of the prison staff ($\beta = 0.21$; $p < .001$), education ($\beta = 0.21$; $p < .001$), satisfaction with salary ($\beta = -0.20$; $p < .001$), supervisors' procedural justice ($\beta = 0.15$; $p < .05$), age ($\beta = 0.13$; $p < .05$), relations with prisoners ($\beta = 0.12$; $p < .10$), and audience (prisoners) legitimacy ($\beta = 0.10$; $p < .10$) influence self-legitimacy of the prison staff. Similar to results in Model 1, relations with colleagues and subculture of the prison staff have the highest impact on self-legitimacy. Moreover, relations with prisoners and audience legitimacy have no significant impact on self-legitimacy. Once again, older and more educated prison workers have more positive perceptions of self-legitimacy.

Table 2: OLS regression analysis predicting: self-legitimacy of the prison staff

Dependent variable: Self-legitimacy	Model 1			Model 2		
	(s.e.)	β	t	(s.e.)	β	t
Relations with colleagues	.06	.39****	5.86	.06	.36****	5.28
Relations with prisoners				.07	.12*	1.95
Supervisors' procedural justice	.06	.17***	2.65	.06	.15**	2.27
Stress	.06	.02	.39	.06	.01	.09
Subculture of the prison staff	.05	.21****	3.84	.05	.21****	3.96
Satisfaction with salary	.05	-.19****	-3.50	.05	-.20****	-3.54
Audience (prisoners) legitimacy	.06	.09	1.57	.06	.10*	1.67
Individual characteristics						
Years of service	.05	.00	.04	.05	.00	.05
Workplace	.10	-.07	-1.11	.09	-.08	-1.24
Family status	.07	.02	.44	.07	.02	.35
Education	.05	.22****	3.72	.05	.21****	3.45
Gender	.13	-.02	-.30	.13	-.04	-.65
Age	.05	.15**	2.29	.05	.13**	2.02
F	14.66****			13.99****		
R ² (adjusted)	40.4%			41.1%		
N	243			243		

Note. * $p < .10$. ** $p < .05$. *** $p < .01$. **** $p < .001$.

DISCUSSION AND CONCLUSION

Prison is seen as a living organism, within which numerous processes take place that have an impact on a prisoner's life and work of the prison staff, and consequently on the presence of legitimacy. In general, findings suggest that legitimacy and self-legitimacy in the prison

environment derive from the quality of relations between different actors, which are based on fairness. Results exposed procedural justice, distributive justice, relations with prison workers, obligation to obey, effectiveness of the prison staff, relations with prisoners, and individual and sentence characteristics as factors influencing prisoners' perception of legitimacy of the prison staff.

Prisoners associated justice with respectful behaviour, dignified treatment, and legality of decisions of the prison staff. Prisoners perceived fairness in decisions of the prison staff reflecting not only the formal and professional attitudes of prison workers but also as their willingness to establish positive informal relations with them. Prisoners expected equal treatment in procedures, especially in the field of granting benefits and enforcing sanctions. In the "society of sufferers," it is of utmost importance that certain individuals do not suffer more or less than others (Sparks & Bottoms, 1995).

The quality of relations with prison workers influences prisoner's transition from instrumental to normative compliance. A prisoner's normative compliance with prison rules points to the presence of legitimacy in prisons and has a positive impact on prisoner's compliance in the "long run" - the absence of violence in prisons, as prisoners comply with the rules and instructions within the normative consensus (Bottoms, 1999). Furthermore, the obligation to obey authority has a positive impact on prisoner's perceptions of legitimacy, which refers to the idea that legitimacy of power-holders arises from the voluntary compliance by individuals (Tyler & Jackson, 2013).

Prisoner's perceptions of the effectiveness of prison staff influence their perception of legitimacy of prison workers. Prisoners associated the effectiveness of prison staff with the provision of security and safety in prison, which is reflected in a low number of emergency situations, suicides and escapes in Slovenian prisons (Uprava Republike Slovenije za izvrševanje kazenskih sankcij [URSIKS], 2017). However, we have to point to the findings of Meško, Frangež, Rep, and Sečnik (2006) who discovered that differences exist between perceptions of different group of prison workers, where specialised workers are in a disadvantaged position, as they decide on benefits and sanctions given prisoners.

As expected, relations with prisoners have a negative impact on prisoner's perceptions of legitimacy of the prison staff. Relationships between prisoners are based on cohesion and closeness of the group, which is characteristic by negative attitudes towards the prison staff (prisoners refuse to cooperate with them). The quality of relations between prisoners affects the identification of an individual with the prison group, for whom rejection of authority is characteristic (Hacin & Meško, 2018). Similar to results of previous studies (Brinc, 2011; Hacin, 2018; Hacin & Meško, 2018), we found that the prison subculture does not affect prisoner's perceptions of legitimacy of the prison staff. This points to the assumption that the influence of the prison subculture in Slovenian prisons on the behaviour of prisoners is limited.

Findings showed that age of prisoners has a negative impact on prisoner's perceptions of legitimacy of the prison staff. We assume that older prisoners reject the possibility of the rehabilitation, as most of them are recidivists. Furthermore, findings point to the negative impact of severity of the prison regime on prisoner's perception of legitimacy of the prison staff. Reisig and Meško (2009) highlighted the specificity of prisoner's perceptions of legitimacy in Slovenian prisons. Prisoners who are serving their sentences in closed prison departments, are less orderly and more problematic than prisoners in more liberal prison departments.

Moreover, results showed that relations with colleagues, subculture of the prison staff, supervisors' procedural justice, relations with prisoners, audience legitimacy, satisfaction with salary, and individual characteristics influence self-legitimacy of the prison staff. Prison workers felt that relations with colleagues are good. Coleman (1988) stated that a group in which a high reliability and strong confidence are present, will achieve better results than the group that does not possess these attributes. Trust is important for the creation of social capital that influences work efficiency and prevents misbehaviour of the prison staff. However, the work environment produces a specific form of behaviour and impact on creation of the subculture of the prison staff, which affects their perception of self-legitimacy. Prison workers are a closed homogenous group of conservative individuals, and identifying with such a group evokes a sense of belonging and the eligibility of a power-holder in the prison environment (Liebling & Price, 2001). Moreover, as expected [dis]satisfaction with salary that does not provide social security or a decent life for prison workers has a negative influence on their self-legitimacy.

Prison workers perceived decisions of supervisors as fair, which indicate that an [anti] authoritarian approach to management in prison as a form of total institution, is possible and even successful. We assume that prison workers appreciate supervisors, who consider their opinions in decision-making – giving them a “voice”. Prison workers, who perceive supervisors as individuals who make fair and equitable decisions, a model which they wish to follow, and individuals who give them support in time of crises, cultivate positive emotions toward them, as supervisor's leadership has a positive impact on their self-esteem, confidence in their abilities and self-legitimacy (Meško et al., 2014).

Prison staff-prisoners relations affect self-legitimacy of prison workers. Gilbert (1997) argued that the main product of prison workers is not safety, security or control, but personal interactions between themselves and prisoners. Prison workers, in the process of establishing relationships with prisoners, are led by instrumental (smooth running of daily activities in prison) and normative reasons (providing quality of life for prisoners) (Hacin & Meško, 2018). Prison workers expressed a willingness to enter into informal relationships with prisoners but with certain limitations. Furthermore, positive feedback from prisoners influences the self-esteem of prison workers, as they expect some kind of confirmation or acknowledgment of their work. In cases, when prisoners do not provide prison workers with feedback or their feedback is negative, prison workers are forced to re-examine their role within the prison. If prison workers start to re-examine the purpose of their work, their self-legitimacy is already heavily compromised (Meško et al., 2014, 2017).

Results also showed that an employee's education has a positive effect on their perception of self-legitimacy. It seems that higher educated prison workers are more confident in performing their work assignments and interactions with prisoners. Moreover, senior prison workers have a more positive perception of their own legitimacy, and their confidence is based on years of experiences working with prisoners. Tait (2011) pointed to a different degree of development of prison workers during their employment in the prison system.

The findings confirm the theoretical assumption on the dual nature of legitimacy, and the linking roles of relations between prisoners and prison workers in Slovenian prisons. In order to achieve normative compliance by prisoners with prison rules (prison staff) that represent the basis of maintaining order in prisons over a longer term, prisoner's recognition of prison workers as legitimate power-holders in prisons is crucial. Factors that have an impact on prisoner's perceptions of legitimacy highlighted the complexity of relations in the prison environment. Consequently, prison workers should strive to establish informal relations with prisoners that are based on fairness, legality and equal treatment of all prisoners.

Limitations of the study can be seen in the sincerity of participating prisoners and prison workers, and a significant number of incomplete questionnaires, with demographic information of participants, most often missing. Both limitations indicate a distrust of prisoners and prison workers and fear of disclosure of their replies to superiors in case of prison workers and the prison staff in case of prisoners. We tried to avoid this kind of behaviour by ensuring confidentiality when the study was presented to prisoners and prison workers.

As findings of the study exposed the crucial and complex nature of relations (especially prison-staff-prisoners relationships), future research should focus on a qualitative research of relations within and between different groups of prison actors, and their influence on perception of legitimacy and self-legitimacy.

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PRISON STAFF-PRISONERS RELATIONS IN SLOVENIAN PRISONS

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ABSTRACT

The quality of relations between prison workers and prisoners influence the social climate and maintaining of order in the prison environment. The aim of the study⁴ is to determine factors that affect prison staff-prisoners relations in Slovenian prisons. In 2016, a survey was conducted in all Slovenian prisons and a correctional home. The sample comprises 328 prisoners and 243 prison workers. Results of OLS regression analyses show that distributive justice, procedural justice, obligation to obey, effectiveness of the prison staff, and perception of legitimacy influence prisoners' relationships with the prison staff. On the other hand, self-legitimacy, relations with colleagues, supervisors' procedural justice, stress, education, gender, and age influence prison workers' relationships with prisoners. The implications of these findings are discussed.

Keywords: prisoners, prison workers, quality of relations, Slovenia

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INTRODUCTION

Bottoms (1999) defined prisons as: (a) total institutions that are severed from the outside world, where pre-structured daily life is dominant, (b) an environment dominated by punitivity, (c) an environment where prevailing strict routines create a special social climate, (d) an environment where the execution of daily routines is crucial to the preservation of the status of a total institution, (e) an environment where relations between prisoners and the prison staff are the key element for the successful implementation of daily routines, and (f) institutions, with their own history and specific methods of maintaining order. Developing relations between different actors in such an institution is hardened as the possession of power and authority is concentrated in the hands of one group – prison staff, while the other group – prisoners is in the role of subordinates. Consequently, relations between prison workers and prisoners are formed with more effort, more intensive (mostly negative), and disrupted more quickly (Weinrath, 2016).

Alison Liebling (2011) wrote that relations between prison staff and prisoners represent the beating heart of a prison. However, our knowledge of factors that influence prison staff-prisoners relations is limited (Meško, Tičar, Hacin, & Hojs, 2016). In this study the role of prisoners' perception of legitimacy and fairness of the prison staff in establishing and maintaining good relationships with prison workers will be tested, and the influence of self-legitimacy of prison workers on their willingness to establish good relations with prisoners will be explored. In the first part of the paper, the complexity of relations in the prison environment is reviewed and the Slovenian prison system is presented. In the second part of the paper, results of the study on prison staff-prisoners relations in Slovenian prisons are highlighted, and in the final part, findings are discussed.

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RELATIONS IN THE PRISON ENVIRONMENT

Relationships between prisoners and prison workers have advanced significantly since the eighties when McDermott and King (1988) described them as the culture of contempt and interpersonal hostility. These changes are the result of the reconstruction of penal power (Crewe, 2009), as personal interactions between prison workers and prisoners replaced security and control as the main product of prison workers (Gilbert, 1997). In the forced environment of a total institution such as the prison, relations are shaped with much effort, and the ability of one actor to influence the behaviour of others is hardened. The distrust between prisoners and prison officers (prison staff) within the prison environment can be reduced only by mutual coercion (Liebling, 2004). Pilling (1992) wrote that an orderly and safe environment is dependent on open and relaxed relations and mutual respect between prisoners and the prison staff.

The use of formalised rules for establishing authority has a negative impact on relations between prison staff and prisoners, for whom an anti-authoritarian posture is characteristic. Prisoners are confronted with rules in prison that are usually not explained to them or they do not understand them completely. Consequently, feelings of weakness, helplessness and dependence appear among prisoners (Sykes, 1971). Elliot (1999) found that prisoners in such conditions often feel misunderstood, unappreciated and persecuted.

Relations between prisoners and prison staff are important, as everyday decisions in prison are imprinted in the knowledge of prison workers and prisoners, who take these decisions for granted – practical consciousness (Giddens, 1984, Sparks, Bottoms, & Hay, 1996). Weinrath (2016) highlighted forms of behaviour of the prison staff that influence the legitimacy of their position in the prison environment, and consequently have a positive impact on prison staff-prisoners relationships. (Table 1).⁵

Table 1: *Impact of relations in prison on prisoner's perceptions of legitimacy*

Behavioural strategies	
Get respect/Be able to exercise authority	
Be strong/Do not show fear	
Be smart/ Help prisoners, but do not be taken advantage of	
Legitimizing behaviours	Delegitimizing behaviours
<ul style="list-style-type: none"> • Show respect to prisoners • Fair in exercising authority enforcing rules • Courteous • Willing to listen • Empathetic • Sense of humour • Not judge prisoners on crime(s) • Try to understand prisoner's cultures • Knowledgeable of the institution and its rules and regulations • Being physically present on the unit (interactions with prisoners) 	<ul style="list-style-type: none"> • Treating prisoners in a demeaning manner • Punitive in exercising authority and enforcing rules • Rude and discourteous • Not willing to listen • Judging prisoners on their crime(s) • Does not know or care about prisoner's culture • Incompetent at rules and regulations • Never being physically present on the unit • Bringing personal problems to work • Engaging in illegal behaviour

Source: Weinrath, 2016

Liebling (2000) found out that prison officers use discretionary power more often than formal power for enforcing prison rules. Humane, fair and sometimes even informal

⁵ Brinc (2011) studied different approaches to work with prisoners (treatment and control) and found that these provoke different behaviours of the prison staff and prisoners, and have an impact on the formation of interpersonal relations.

attitudes of the prison staff toward prisoners, influence the development of good relations in a prison. Honest relations influence a prisoner's perceptions of fairness in the prison system, and consequently, the establish respect between the groups is reflected in respect of power, respect of individuality, and respect as a form of moral power (legitimacy). The quality of relations enables prison workers to solve "dangerous" situations in prison using discretionary power instead of referring to official authority that destroys good relations between them and prisoners. Moreover, relationships are important in promoting justice at the micro level, and prison workers represent the prison in every interaction with prisoners (Tyler, 2006). Prisoners, who perceive prison workers as legitimate power-holders, who present a certain standard or model of behaviour, are more willing to enter into relationships with them and try to maintain these relations (Bottoms, 1999; Liebling, 2004).

The quality of prison staff-prisoners relations is the reflection of prisoner's perceptions of legitimacy of the prison staff as the legitimate power-holders in prison, and their recognition of prison workers' authority, with whom they have to comply, and self-legitimacy of the prison staff that directs their everyday work with prisoners. The prison staff-prisoners relationships can be seen as the factor that influences both natures of legitimacy, and as the product of legitimacy and self-legitimacy in the prison environment. The importance of relations between prisoners and prison staff is reflected in instrumental reasons (a smooth workflow in prison and the provision of information) and normative reasons (influence of good relations on the prison life) (Costa, 2016; Jacobs, 1977; Liebling & Price, 2001; Scraton, Sim, & Skidmore, 1991). In the following section, characteristics of the Slovenian prison system are presented.

THE SLOVENIAN PRISON SYSTEM

Independence of Slovenia in 1991 caused significant changes in Slovenian penal policy. Legislation regarding the penal sanctions became increasingly tightened, with the simultaneous multiplication of penal sanctions (Flander & Meško, 2016). Petrovec and Muršič (2011) argued that authoritarian and punitive attitudes toward delinquents increased after the fall of a socialist system, which has in some strange way discourage such practices. In the last 25 years, changes that effected the effectiveness of the criminal procedure, fight against economic crime, and road safety were implemented. Moreover, the maximum penalty in the Penal Code has been raising, alternative sanctions were reduced, and harsher regimes were established in penal institutions that affected the entire prison system (Flander & Meško, 2016).

The Slovenian prison system consists of the Prison Administration headed by the Director General, six prisons, and a correctional home. Imprisoned persons serve their sentence in different types of prisons according to their gender and age, the nature of the sentence, duration of the sentence, and the degree of security (Aebi, Burkhardt, Hacin, & Tiago. Flander and Meško (2016) described Slovenian prisons as an outstanding example of prisons in a post-socialist society, which by imprisonment rates and treatment of prisoners, are comparable to prisons in the Nordic countries. Prison workers in cooperation with the prisoner upon his arrival to prison, prepare an individual personal plan, which defines: (a) special forms of professional treatment, (b) programmes in which the prisoner will be included (education, leisure activities etc.), (c) specification of a workplace, and (d) other activities that are important for the rehabilitation of the prisoner and improving the quality of his life during confinement (Uprava Republike Slovenije za izvrševanje kazenskih sankcij [URSIKS], 2017).

The Slovenian prison system has been faced with a growing prison population in recent years (the number of prisoners increased from 728 in 2000 to 1,110 in 2016), which despite the increase in capacities for the accommodation of prisoners, is causing overcrowding in several prisons and the correctional home (URSIKS, 2017). Nevertheless, the progressiveness of the regimes and small capacities of prisons enable prison workers to develop more “intimate” relationships with prisoners.

THE CURRENT STUDY

Studying prison staff-prisoners relations in Slovenian prisons has a long heritage with its routes in the eighties, when first studies on social climate were implemented (Brinc, 2011). Besides longitudinal study of social climate, researchers focused on interpersonal communication between prison actors (Mlinarič, 1985), prisoners’ perception of relations in prison (Meško, Frangež, Rep, & Sečnik, 2006), the role of relations in prisoner’s perception of legitimacy of prison workers (Hacin & Meško, 2018) and self-legitimacy of the prison staff (Hacin, Fields, & Meško, 2018), etc.

The current study was carried out in the period from October 2016 to December 2016 in all Slovenian prisons, dislocated departments and a correctional home. Prior the study consents of the Director General of the Slovene Prison Administration, directors of individual prisons, heads of departments, prison workers and prisoners, who decided to take part in the study were obtained. All prison workers and prisoners were invited to participate in the surveying, which was confidential and voluntary. The context of the study was presented to prison workers and prisoners, and questionnaires were distributed to those who decided to participate in the study. Respondents completed the questionnaires in their rooms (cells), offices or common rooms (in some of the smaller prisons). They personally delivered completed questionnaires to the researcher or they were collected by the researcher at a previously agreed-upon location. Based on the obtained data from surveying the following statistical analysis were carried out: (a) descriptive statistics, (b) factor analyses, and (c) regression analyses.

VARIABLES

For the purposes of this study 16 factors comprising 67 variables (measured on a 5-point scale ranging from 1 - Strongly disagree to 5 - Strongly agree) were formed. Variables were subjected to factor analysis (Principal axis factoring; rotation Varimax) and the following eight factors influencing prisoners’ relations with prison staff were created: (a) relations with the prison staff (mean [M] = 3.27; standard deviation [S.D.] = 1.07; Cronbach’s α = 0.87), (b) legitimacy (M = 2.91; S.D. = 1.05; Cronbach’s α = 0.91), (c) distributive justice (M = 2.52; S.D. = 1.16; Cronbach’s α = 0.92), (d) obligation to obey (M = 3.48; S.D. = 0.99; Cronbach’s α = 0.82), (e) procedural justice (M = 3.09; S.D. = 1.07; Cronbach’s α = 0.89), (f) relations with prisoners (M = 2.41; S.D. = 1.01; Cronbach’s α = 0.80), (g) effectiveness of the prison staff (M = 2.85; S.D. = 1.13; Cronbach’s α = 0.87), and (h) prison subculture (M = 2.21; S.D. = 1.09; Cronbach’s α = 0.86). Moreover, in order to explore prison workers’ relations with prisoners the following eight factors were created: (a) relations with prisoners (M = 3.44; S.D. = 0.67; Cronbach’s α = 0.61), (b) self-legitimacy (M = 4.12; S.D. = 0.61; Cronbach’s α = 0.79), (c) relations with colleagues (M = 3.97; S.D. = 0.66; Cronbach’s α = 0.91), (d) supervisors’ procedural justice (M = 3.56; S.D. = 0.77; Cronbach’s α = 0.94), (e) stress (M = 3.28; S.D. = 0.81; Cronbach’s α = 0.75), (f) subculture of the prison staff (M = 3.86; S.D. =

0.79; Cronbach's $\alpha = 0.78$), (g) satisfaction with salary ($M = 2.05$; $S.D. = 0.94$; Cronbach's $\alpha = 0.92$), and (h) audience legitimacy ($M = 3.15$; $S.D. = 0.74$; Cronbach's $\alpha = 0.89$).

SAMPLE

The sample consists of 328 prisoners, representing 29.5% of the average number of prisoners in 2016, and 243 prison workers, representing 28.6% of all prison workers in 2016. The sample of prisoners comprises 193 male prisoners, 21 female prisoners, and 14 juvenile prisoners. All respondents were older than 18 years of age since the relevant Slovene legislation (Marriage and Family Relations Act) stipulates that a person is granted full legal capacity after reaching the age of majority (*Zakon o zakonski zvezi in družinskih razmerjih* [ZZZZDR-UPB1], 2004). More than a fifth of the respondents were older than 45, and approximately 11% were younger than 24. The majority of participants completed elementary, vocational or high school, and more than 50% of them were in some form of a relationship. Almost half of the respondents were convicted for property crimes, followed by those convicted for crimes against human health (11.6%) and crimes against life and limb (7.0%). The length of sentences of surveyed prisoners was proportionate to the average length of sentences in 2016, and approximately a third of them served six months or less of their prison sentence. Almost a half of the surveyed prisoners were recidivists. Moreover, 57.6% of participants served their sentences in closed departments of prisons.

The sample of prison workers comprises 175 males and 68 females. Almost 60% of respondents were younger than 45 years of age, and more than a third of prison workers have been employed in the prison system for more than 16 years. Judicial police officers (prison officers) represented the majority of prison workers, while specialised workers presented more than 30% of respondents. Approximately a half of surveyed prison workers completed some form of higher education (specialised workers presenting the majority). More than three-quarters of respondents were in some form of a relationship.

FINDINGS

Prior to regression analyses, based on which those factors that influence prisoner's relationships with the prison staff and prison worker's relationships with prisoners in Slovenian prisons were identified, Pearson's r correlation test was conducted that ruled out threats of multicollinearity. Moreover, further diagnostic tests confirmed the initial absence of multicollinearity, with the Variance Inflation Factor [VIF] for variables in each model being less than 2.0.

In Table 2, results of OLS regression analysis predicting prisoner's relationships with prison workers are presented. In Model 1, we tested the impact of distributive justice, procedural justice, obligation to obey, relations with prisoners, effectiveness of the prison staff, prison subculture, individual characteristics and sentence characteristics on prisoner's relationships with prison workers. We found that procedural justice ($\beta = 0.49$; $p < .001$), distributive justice ($\beta = 0.16$; $p < .01$), and obligation to obey ($\beta = 0.14$; $p < .01$) influence prisoner's relationships with prison workers. Prison workers' fairness in procedures has the greatest influence on establishing quality relationships between them and the prisoners. Moreover, equal treatment of prisoners has an impact on prison staff-prisoners relations. Prisoners who internalize the feelings that is their duty to obey instructions and commands of prison workers, perceive relationships with them more positively.

In Model 2, we replaced distributive and procedural justice with legitimacy, which is seen as the product of fair and equal treatment of all prisoners. We found that legitimacy ($\beta =$

0.51; $p < .001$), obligation to obey ($\beta = 0.17$; $p < .001$), and effectiveness of the prison staff ($\beta = 0.11$; $p < .05$) influence prisoner's relationships with prison workers. Replacement of procedural and distributive justice with prisoners' perception of legitimacy of the prison staff increased the size of the regression coefficient obligation to obey. It seems that besides recognition of legitimacy, effectiveness of the prison staff influences prison staff-prisoners relationships.

Table 2: OLS regression analysis predicting: prisoners' relationships with prison workers

Dependent variable: Relations with prison staff	Model 1			Model 2		
	(s.e.)	β	t	(s.e.)	β	t
Distributive justice	.05	.16***	2.90			
Procedural justice	.05	.49****	8.94			
Obligation to obey	.05	.14***	3.10	.05	.17****	3.61
Relations with prisoners	.05	-.07	-1.55	.05	-.02	-.41
Effectiveness of the prison staff	.05	.07	1.31	.05	.11**	2.06
Prison subculture	.05	.02	.38	.05	.02	.39
Legitimacy				.05	.51****	9.26
Individual characteristics						
Family status	.04	.01	.17	.04	.04	.91
Education	.03	-.04	-.84	.03	-.04	-.82
Recidivism	.04	-.02	-.37	.04	.01	.21
Gender	.15	.05	1.15	.16	.06	1.34
Age	.03	-.01	-.14	.03	.04	.93
Prison sentence characteristics						
Length of sentence	.05	.02	.29	.05	.04	.79
Length of served sentence	.03	-.07	-1.35	.04	-.04	-.75
Education in prison	.08	-.03	-.64	.08	-.01	-.33
Substitutional therapy	.09	.04	1.04	.10	.02	.44
Criminal offence	.03	-.02	-.42	.03	.00	-.02
Prison regime	.06	-.02	-.38	.06	.00	.07
Employment in prison	.08	-.06	-1.52	.08	-.07	-1.56
F	19.83****			16.78****		
R ²	53.4%			47.8%		
N	328			328		

Note. * $p < .10$. ** $p < .05$. *** $p < .01$. **** $p < .001$.

In Table 3, results of OLS regression analysis predicting prison worker's relationships with prisoners are presented. In Model 1, we tested the impact of relations with colleagues, supervisors' procedural justice, stress, subculture of the prison staff, satisfaction with salary, audience (prisoners) legitimacy, and individual characteristics on prison worker's relationships with prisoners. We found that relations with colleagues ($\beta = 0.27$; $p < .001$), gender ($\beta = 0.20$; $p < .01$), supervisors' procedural justice ($\beta = 0.19$; $p < .01$), age, ($\beta = 0.15$; $p < .05$), stress ($\beta = 0.14$; $p < .05$), education ($\beta = 0.13$; $p < .05$) influence prison worker's relationships with prisoners. The quality of prison workers' relations with their colleagues and their perception of supervisors' fairness is reflected in their relationships with prisoners.

It seems that stress perceived by prison workers force them to establish good relations with prisoners, in order to reduce some tensions of working in prison. Older and more educated prison workers and female prison workers develop better relationships with prisoners.

In Model 2, self-legitimacy of the prison staff was introduced. We found that relations with colleagues ($\beta = 0.21$; $p < .001$), gender ($\beta = 0.20$; $p < .01$), supervisors' procedural justice ($\beta = 0.17$; $p < .05$), stress ($\beta = 0.14$; $p < .05$), self-legitimacy ($\beta = 0.14$; $p < .10$), and age, ($\beta = 0.13$; $p < .10$) influence prison worker's relationships with prisoners. Inclusion of self-legitimacy decreased the size of regression coefficients of relations with colleagues and supervisors' procedural justice, while the size of stress remained the same. Prison workers who have positive perceptions of their own legitimacy are more willing to establish good relations with prisoners. Once again older prison workers and female prison workers have more positive relationships with prisoners.

Table 3: OLS regression analysis predicting: prison workers' relationships with prisoners

Dependent variable: Relations with prisoners	Model 1			Model 2		
	(s.e.)	β	t	(s.e.)	β	t
Self-legitimacy				.07	.14*	1.95
Relations with colleagues	.06	.27****	3.63	.07	.21***	2.71
Supervisors' procedural justice	.06	.19***	2.78	.06	.17**	2.42
Stress	.06	.14**	2.33	.06	.14**	2.29
Subculture of the prison staff	.05	-.05	-.78	.05	-.08	-1.23
Satisfaction with salary	.05	.01	.19	.05	.04	.62
Audience (prisoners) legitimacy	.06	-.05	-.76	.06	-.06	-.96
Individual characteristics						
Years of service	.05	-.01	-.13	.05	-.01	-.13
Workplace	.10	.07	.98	.10	.08	1.13
Family status	.07	.04	.76	.07	.04	.71
Education	.05	.13**	2.01	.05	.10	1.50
Gender	.13	.20***	2.75	.13	.20***	2.81
Age	.05	.15**	2.07	.05	.13*	1.77
F	8.51****			8.24****		
R ²	30.8%			31.9%		
N	243			243		

Note. * $p < .10$. ** $p < .05$. *** $p < .01$. **** $p < .001$.

DISCUSSION AND CONCLUSION

Relations between prison workers and prisoners represent the foundation of the entire prison system (Home Office, 1984). The way of detection of stimuli, to which prisoners are exposed in the prison environment, is conditioned by the quality of relations between themselves and the prison staff. Moreover, quality relations with prisoners enable prison workers more effective implementation of treatment of prisoners. This study represents the first comprehensive research of prison staff-prisoners relations implemented at the national level. In general, results show that the quality of prison staff-prisoners relationships is influenced by prisoners' perception of distributive and procedural justice, effectiveness

of the prison staff, legitimacy of the prison staff and obligation to obey the authority and prison workers' perception of their own legitimacy and supervisors' procedural justice, relations with colleagues, and demographic characteristics.

The profound influence of procedural and distributive justice on the quality of prison staff-prisoners relations confirmed the findings of Lombardo (1981), and Reisig and Meško (2009), who emphasised the importance of fair and equitable treatment of prisoners as a basis for establishing relations between the prison staff and prisoners, which have a positive effect on prisoner's compliance with prison rules and maintaining order in prison. Procedural and distributive justice present the basic elements of (formal) relations between prison workers and prisoners, which can evolve to quality relations, based on a certain degree of informal behaviour.

The impact of legitimacy on the quality of prison staff-prisoners relations is important in the view of prisoners' voluntary compliance with prison rules – normative compliance of prisoners that is based on the internalisation of the norms of prison workers (Sparks & Bottoms, 1995; Tyler, 2010). This is reflected in a prisoner's internalised feelings of obligation to obey the prison staff. Prisoners who perceive prison workers as legitimate power holders develop genuine relations with them and do not exploit them in order to obtain benefits or avoid sanctions (Meško et al., 2006).

Prisoners' positive perception of the effectiveness of the prison staff, especially in the fields of providing safety and security, and respect of human rights influence their willingness to establish quality relations with them. The quality of prison staff's work is reflected in low number of emergency situations, suicides and escapes in Slovenian prisons (URSIKS, 2017), and violations of the rights of prisoners that were highlighted in the annual reports of the Human Rights Ombudsman of the Republic of Slovenia (Varuh človekovih pravic Republike Slovenije, 2018).

Positive perceptions of self-legitimacy affect prison workers' performance and their willingness to help the prisoners (Meško, Hacin, Tankebe, & Fields, 2017). Prison workers are in daily interactions with prisoners, who expect that they will do their job correctly and efficiently. Furthermore, a positive perception of their own legitimacy enables prison workers to establish good informal relations with prisoners, which have a positive impact on prisoner's normative compliance with prison rules.

Coleman (1988) argued that any group in which trust between workers and supervisors is present achieves better working results than a group in which such trust is not present. Perceptions of prison workers that decisions of their supervisors are fair indicate that an [anti]authoritarian approach to management in prison as a form of total institution, is possible and even successful. Prison workers in such semi-democratic organisations are more willing to establish relations with prisoners that are not based on coercion but fairness, legality, and trust.

Prison workers are a closed homogenous group of conservative individuals, and identifying with such a group evokes a sense of belonging and the eligibility of a powerholder in the prison environment. Simultaneously, such feelings of belonging present an obstacle for establishing informal relations with prisoners. The social distance between prison staff and prisoners is always present as prison workers are reluctant to establish "too" friendly relations with prisoners, and persistent to maintain "appropriate" boundaries with prisoners (part of the norms of prison staff subculture) (Kauffman, 1988; Weinrath, 2016).

Prison workers with higher education are more confident in performing their work and interact with prisoners more easily, which results in the quality of relations. Their self-esteem

is based on the confidence in their expertise to work with prisoners. Moreover, senior prison workers, with years of experience, develop better relations with prisoners. Tait (2011) pointed to a different degree of development of prison workers during their employment in the prison system. It seems that female prison workers develop better relations with prisoners than their male colleagues. We can only assume that women are not subjected to the norms of masculine prison workers subculture that prevents establishing informal relations with prisoners, as intensive than men (further research is needed).

Good relations between prison staff and prisoners are seen as an upgrade of justice of the prison staff, who in addition to legal and fair treatment, establishes informal relations with prisoners. Moreover, Weinrath (2016) noted that good relations influence prisoner's perceptions of legitimacy of the prison staff – the cyclical process of the impact of prison staff-prisoners relation on legitimacy and vice versa. However, not all prison workers are able to establish good relations with all prisoners; the prison code prevents prisoners from establishing good relations with the prison staff. The main obstacle for the establishment of informal relations is seen in: (a) the hostility and distrust of prisoners toward prison workers (specialised workers are seen as manipulators, who are not worthy of trust; uniformity of prison officers and their authority create mistrust and hostility with prisoners), and (b) the disinterest of prison staff to enter into informal relations with prisoners (Meško et al., 2006; Molleman & Leeuw, 2011).

The main limitation of the study is seen in the sincerity of the respondents. It is possible that both prison workers and prisoners gave socially desirable answers in the process of surveying, due to the fear of sanctions. Prisoners often provide misleading answers in order to obtain benefits from prison workers or do not dare to be honest due to negative consequences. Moreover, similar behaviour patterns can be observed with prison workers, who give socially desirable answers in order to endear superiors or to avoid negative consequences or to conceal their own impotence or inappropriate treatment of prisoners (Jacques & Wright, 2010; Polsky, 1998). Moreover, a significant number of incomplete questionnaires, with demographic information of participants most often missing, present the second limitation. Such behaviour was tried to avoid by ensuring confidentiality when the study was presented to prisoners and prison workers.

The future research should focus on qualitative study of relations between prisoners and the prison staff. Hacin and Meško (2018) found out that prisoners' perception of prison workers differs. In general, prisoners perceive prison officers more positively than specialised workers who are seen as manipulators with benefits. Consequently, the nature of relations between prisoners and specialised workers who are responsible for the implementation of the treatment, and prison officers who are responsible for ensuring safety and maintaining order in prison should be explored in greater depth. Moreover, the impact of prison staff-prisoners relationships on prisoners' perception of legitimacy and self-legitimacy of the prison staff should be tested in the future.

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DETERMINATION OF TYPE AND DURATION OF SENTENCES - MACEDONIAN GOVERNMENT'S ARGUMENTS VERSUS CONSTITUTIONAL COURT'S DECISION

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ABSTRACT

Macedonian Government in 2014 proposed the Article 39, paragraph 3 of the Criminal Code to be changed, i.e. the sentence determination should be carried out by the court according to the Rule-book on the manner of determination of the sentences (January), i.e. Law on the determination of the type and duration of sentences (December). Although arguments were given as a support to the proposed changes, the Constitutional Court in 2017 abolished the Criminal Code's Article 39, paragraph 3 and the said Law. Having in mind the above, the Paper shall analyse the Government's arguments versus Constitutional Court's decision, from the aspect of lawfulness, individualisation of sentences, sentences proportional to the committed criminal act, uniformity of sentencing policy and free evaluation of evidence.

Keywords: sentencing policy, constitution, law, evidence evaluation, Macedonia

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INTRODUCTION

The general goal of the Macedonian Strategy for Reforming the Judicial Sector, adopted in 2004, was to build a functional and efficient justice system based on the European legal standards. Consequently, the Strategy for Reforming the Criminal Law, concerning its material aspect, in 2007 observed that the Criminal Code (CC) (1996, 1999, 2002, 2003, 2004, 2005, 2006) in the past decade has shown certain deficiencies in the legal provisions that produced difficulties in its practical implementation by the relevant institutions. As to the problematic provisions, the Strategy noted that in some of them a correction of the exiting formulations was needed, and the rest of them needed a re-examination of the entire concept. Ten years later, the Strategy for Reforming the Judicial Sector indicated that in all analyses prepared by domestic and foreign experts, an unbalanced practice of the courts has been identified as a problem that was producing a legal insecurity among the citizens.

The Government argued that, in order legal security to be introduced and sentencing policy to be equalized, CC (1996, 1999, 2002, 2003, 2004, 2005, 2006) should be changed as well as a new Law on the determination of the type and duration of sentences (LDS) (2014) should be adopted. However, at the very outset it should be noted that the legal logic is a specific and different from the mathematical logic and symbols, 2 plus 2 are and are not always 4, since the legal logic is not a result of static symbols and relations, but it is a dialectical logic that stems from the knowledge of the individuality of the human being and the complexity of the relationship between the human being and the society (Kambovski, 2010: 314). For that purpose, as noted by the Recommendation No. R (92) 17 (Council of Europe, 1992) concerning consistency in sentencing, the decision of the court must always be based on the individual circumstances of the case and the personal situation of the perpetrator, and that the consistency in sentencing should not lead to more severe sentence.

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Therefore, the major aggravating and mitigating factors should be clarified in law or legal practice, and wherever possible, the law or practice should also attempt to define those factors which should not be considered relevant in respect of certain offences.

NOVELTIES IN THE MACEDONIAN CRIMINAL LEGISLATION

The original text of the CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006) stating that in determination of the sentence, the court shall pay special attention of the overall effect of the sentence and its consequences towards the perpetrator and the needs for his re-socialization, was changed for two times in 2014. The first change of the provision was done in February, i.e. the court shall determine the sentence in accordance with the Rule-book on the manner of determination of the sentences (2014), which should be adopted by the President of the Macedonian Supreme Court, upon prior opinions of the Public Prosecutor and the Bar Association. It should be noted that there were differences between the text that was adopted by the Assembly and the Government's proposed Draft - Law on changing the CC (First Draft - Law) (Government of the Republic of Macedonia, 2014a). Namely, the Government proposed the President of Supreme Court to adopt the Rule-book within 30 days starting from the day when the Law has entered into force. However, the Rule-book was adopted on 16 April 2014 and one day later it was published in the "Official Gazette", since two commissions of the Assembly (Commission on Political System and Relations among the Communities and Legislative Commission), suggested the deadline for its adoption to be prolonged to 45 days.

To be exact, the Government in the First Draft - Law (Government of the Republic of Macedonia, 2014a), argued that several conducted surveys encompassed similar conclusions - the average imposed sentence was far below the lowest limit of the sentence prescribed by law; the range of sentences applied by the judges was much lower than the highest sentence prescribed by law, indicating that the judges did not use the upper limit at all of the sentences prescribed by law; and there was a great inequality of the sentences imposed by various courts. In order to overcome the mentioned weaknesses, based on the Government's opinion, an instrument should be created for equalizing the sentencing policy while imposing the sentences. As a result of it, a Rule-book (2014) was proposed. In essence, the subject of the Rule-book (2014) was to regulate the manner and actions of the court in determining the type and duration of sentence, and by doing so - to ensure efficient and successful functioning of the new concept of criminal procedure in the practice and a reliable basis for the promotion and equalization of the sentencing policy by the domestic criminal courts (Articles 1 to 5). Further, one of the basic arguments of the Government was the institute "Sentence bargaining" that was promoted for the first time into the Macedonian legal system in 2010 by the new Law on Criminal Procedure (2010, 2012, 2016), i.e. the Chapter 29 "Reaching a judgment on the basis of a plea agreement between the Public Prosecutor and the suspect" was dedicated to this institute. Basically, the Government assessed that by its implementation, a significant number of the cases should be solved without conducting a court procedure for them, which means that the courts should be released by a large number of cases, the procedure for the other criminal cases should be accelerated, and a significant financial funds should be saved.

As mentioned before, the Rule-book (2014) was adopted by the Judge Lidija Nedelkova, as a President of the Supreme Court, on 16 April 2014 upon prior opinions given by the Public Prosecutor and the Bar Association. It is important to note that the Public Prosecutor Marko Zvrlevski in his letter dated 10 April 2014 recommended few changes to be made

in the proposed Rule-book (2014), however the Management Board of the Bar Chamber in its letter dated 31 March 2014 informed that its members unanimously decided to give a negative opinion. When it comes to the Rule-book (2014), the Judge Nedelkova explained that it was a sublimation, on one side of legally postulated institutes, bases, criteria and rules, and on other side of the results of practice and comparative research. In essence, the Judge Nedelkova categorized the objectives of the Rule-book (2014) into two basis, i.e. a solid ground for promotion and equalization of the sentencing policy by the domestic criminal courts (first base), and efficient and successful functioning of the new model of criminal procedure in practice (second base). The Rule-book (2014) regardless of its formal inadequacy as a by-law, was a revolutionary venture that should not be overlooked or rejected, but to be further developed, depending on the problems and requirements that shall arise from its practical application (Nedelkova, 2014: 13).

At the end of 2014, the Government submitted a new Draft - Law on changing and amending the CC (Second Draft - Law) (Government of the Republic of Macedonia, 2014b), in which it proposed CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), to be changed once again, i.e. the Rule-book (2014) to be replaced with the LDS (2014). The Government only stated that the Law on changing the CC was adopted in February 2014, prescribing that the sentence determination shall be done based on the Rule-book (2014), but it did not explain why the Rule-book (2014) was replaced by a law, as an act with a higher legal value. So, the Assembly on 29 December 2014, adopted the new text of the CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), under which the court shall carry out the determination of the sentences in accordance with the LDS's provisions (2014), with a remark that the Second Draft - Law prescribed that until the commencement of the application of the LDS (2014), the Rule-book (2014) shall apply. In the same month, the Government submitted to the Assembly the Draft - Law on the determination of the type and duration of sentences (Draft - LDS) (Government of the Republic of Macedonia, 2014c), in which it explained that if an analysis is done about the current sentencing policy, it would be concluded that it is a very lenient policy; the imposed sentences are usually below the minimum prescribed by CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), or at the very limit of the lowest sentence; and in most of the cases, the alternative measures are being imposed, among which the dominant one is the suspended sentence. As a support of its proposal, the Government called upon previously conducted surveys, in which the experts concluded that the imposed average sentence, in all categories was far below the lowest limit of the sentencing range prescribed by law, and that the sentence range that was used by the judges, i.e. the lowest and highest sentences, was far below the highest prison sentence prescribed by law, which means that the judges did not use the upper legally prescribed limit of sentences. Regarding the equivalence of the sentences, the analyses showed that, there were significant differences depending on the specific territorial jurisdiction. The Government noted that generally there was a great variation of the sentencing policy, which implied that the Macedonian citizens were not equal before the law. Namely, the sentence was depending on the location where the criminal act was committed and on the location of the court that was ruling the judgement. In addition, if the analyses of the mitigating and aggravating circumstances that were taken into account by the judges in determination of the type and duration of sentence was being conducted, then the Government presumed that completely chaotic situation would be established. From everything that was presented, the Government concluded that the necessity to adopt the proposed law was obvious, and

by doing so - unobstructed implementation of the Law on Criminal Procedure (2010, 2012, 2016) should be provided, as well as the entire judging process would become far more objective and transparent than the current one. Further, the voluntarism, unprincipled and tendentious judgments would be reduced, and any possibility for corruptive behaviour of the various participants involved in the criminal procedure. Therefore, as the Government pointed out, the main principles on which the LDS (2014) is going to be based, were legality, individualization of sentences, proportionality of the sentence with the committed criminal act, efficiency, equalization of the sentencing policy and transparency. It is interesting to note that LDS (2014) was adopted by the Assembly on the same day as the Law on changing and amending the CC (29 December 2014), and also it was published in the same number of the "Official Gazette" (No. 199/2014; 30 December 2014). According to the LDS's Article 24 (2014), the law shall be enforced eight days after its publication in the "Official Gazette", and shall begin to apply after expiration of six months from the date of its entry into force.

METHODS

CONDUCTED SURVEYS ABOUT THE MACEDONIAN SENTENCING POLICY

So far, in the Republic of Macedonia several surveys have been published referring to the sentencing policy. In 2012 the OSCE Rule of Law Department in close cooperation with the Macedonian Judges Association developed a joint project which aimed to present an assessment of the current sentencing policy of the national criminal courts, and its product was "An Analysis of Macedonian Sentencing Policy and Recommendations for Future Directions: Towards a More Uniform System". The team of judges by means of previously prepared Form for final judgments processed 500 final judgments, randomly selected via the Automated Court Case Management System. In order to provide wide statistical snapshot, the 500 final judgments were chosen from cases that refer to charges that were the most common for the courts, in all four appellate court areas. Thus, the reviewed sentences had shown the following situation: 34.2% of all cases resulted in prison sentences and 65.8% did not; fines were used in 26.0% of the cases; alternative measures were used in 26.4% of the cases; 13.6% of the cases resulted in acquittal and 0.8% were rejected. Because judges predominantly heard cases with fairly low prescribed sentences, the majority of sentences were correspondingly low. Despite some differences, the comparison of the distribution of punishments in the first and second instance demonstrated that in general second instance courts were in agreement with decisions of the first instance courts. Amendments to first instance punishments were relatively infrequent indicating a great deference to judges' decisions in the first instance. Regarding the aggravating and mitigating circumstances, the Analysis showed that the judges considered this circumstances in two ways. First, they were used by the judges during the determination of the sentences within the range of sentences prescribed by law. Second, they were used to sentence perpetrators outside the limits prescribed by law (Brashear Tiede, 2012: 3).

Further, within the EU funded project "Network 23+", an analysis of the application of the LDS (2014) in the courts of first instance Tetovo, Veles, Kočani and Kavadarci, was conducted. The opinion of the researchers Lažetic - Bužarovska and Nanev (2017), was that the reasons for the adoption of LDS (2014) listed in its explanation - that shall contribute to overcome the perceived weaknesses of the sentencing policy and that it should be understood as an instrument that shall contribute to the equalization of the sentencing

policy while imposing the sentences - was a direct interference in judicial authority and was a disrespect of the role that the Macedonian Supreme Court has in accordance with the Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011), i.e. to ensure equality in the application of laws by the courts.

The researchers pointed that it was inevitable impression that the legislator was not sufficiently familiar with the views of the prominent Anglo-Saxon theorists who pay attention to the fact that the guidelines for the determination of sentences can only have an ancillary role, since the final decision on the type and the duration of the sentence is made by the judge. In this regard, during the LDS's adoption (2014), the fact of free judicial conviction was ignored, as an unknown category in the Anglo-Saxon Law, given the role of the jury. Since the LDS's adoption (2014) produced a significant deviations from the established fundamental values and jeopardized the basic legal principles on which the modern criminal legislation is based, the researchers proposed LDS (2014) to be abolished for the following reasons: LDS (2014) was contrary to the Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011), and seriously violated the principle of separation of powers envisaged in the Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011), and allowed the legislator to influence over the judicial determination of the sentences; LDS (2014) led to unusual contradictions in the CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), that have had serious repercussions; LDS (2014) led to formalization of the free judicial conviction, reducing it to scoring and calculating points of difference between the mitigating and aggravating circumstances, instead of looking after the special prevention and individualisation of the sentence; LDS (2014) on "a small door" returned the multiple repetition into the Criminal Law as an aggravating circumstance, and this was not optionally prescribed, but as a mandatory aggravating circumstance that inevitably has led to sentence tightening; Law with a similar content does not exist in the European countries, nor in the countries of the Anglo-Saxon Law. Having in mind the above, the researchers suggested LDS (2014) to be abolished in two ways. First way - CC's Article 39, paragraph 3 to be changed (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), which shall deprive the basis for LDS's application (2014), and LDS (2014) shall be abolished by the entry into force of the CC's novelties (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), and the second way - an initiative to be submitted to the Constitutional Court.

In the same project ("Network 23+"), another survey was done addressing the LDS's application (2014) within the jurisdictions of the first instance courts in Prilep, Bitola and Ohrid, followed by a working groups of relevant stakeholders (public prosecutors, judges and lawyers). Among other things, the Analysis payed attention to the Rule-book (2014), that was subject of a serious criticism because it jeopardized the independence and autonomy of the judicial system, the principle of free judicial conviction in the selection and individualization of the sentences as well as the legal security of citizens. The analysts Binoska, Slivoski and Dimkoski (2017), observed that the theorists and practitioners took a clear position about the unconstitutionality and unlawfulness of the Rule-book (2014), and that after a short period, without a public debate, LDS (2014) was adopted with a note that its structure and content showed that the Rule-book's text was transferred into the law. Based on the opinion of the analysts, the criteria for determining sentences were strictly and objectively given (horizontal and vertical categories), which implied judge's hands to be "tied" in the individualization of the criminal sentence. Further, LDS (2014) was contrary to the efforts and goals of the Academy of judges and public prosecutors to select skilled, qualified and

professional judges, because of the existence of objective criteria it did not matter how specialised and professional the judges were. In addition, process of determining in which horizontal and vertical category the case belonged to and the mathematical operations for calculating points of the mitigating and aggravating circumstances, could also be performed by the typists and professional associates. Concerning the perpetrators of more serious criminal acts, as stated by the analysts, they shall decide to bargain with the public prosecutor about the sentence, because they shall be aware that a lower sentence is going to be imposed. The conducted survey observed that to the perpetrators - returnees for less harmful criminal acts, a higher prison sentences had been imposed, i.e. closer to the upper limit prescribed by CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014). In such cases, the judges were obliged to implement LDS (2014) and to pronounce higher prison sentences even though they knew that the sentence shall not fulfil the purpose of resocialization. Therefore, the frequent determination of prison sentences and also higher ones, implied that the accent had been placed on the retributive aspect of the sentence instead on the resocialization, which on other hand shall not reduce the criminality.

RELEVANT PAPERS ABOUT THE MACEDONIAN SENTENCING POLICY

Corresponding to the surveys, several papers were published addressing LDS (2014). Namely, Macedonian Review for Criminal Law and Criminology in 2017 dedicated a special issue to the challenged law, with a remark that all papers expressed a negative opinion about LDS (2014). So, the following overviews and statements given in the papers, can be emphasized: Derogating the complex thoughtful process of making judicial decisions called judicial syllogism, and its replacement by calculating the sentence by using a calculator, in the Macedonian Criminal Law a hybrid model of absolutely determined sentences has been introduced, which is an impudently retrograde act (Jakimovska & Jakimovski, 2017: 8). It must be acknowledged that so far a good number of the judgments did not contain qualitative and sufficiently elaborated parts as how the court determined the sentence and on which criteria each of the perpetrators deserved the imposed sentence. Therefore, instead of this “unlucky” law, a better solution is the advisory guidance, which would be of assistance to the judges in determining the sentence and explaining the judgments (Irpenoski, 2017: 13); It can be concluded that the existing law did not justify the expectations and goals for its adoption, the equity in punishment had completely disappeared, the judge’s function was vulgarized to the very limit, and the basic principles of determining the sentence were completely abandoned - individualization and free evaluation of evidence. The sentencing policy was undoubtedly tightened, often resulting in absurd outcomes and illogical sentences. In its future steps, the legislator must not ignore the fact that the matter of the determination of the sentence must remain within the CC’s framework (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014) (Tupančeski & Deanoska-Trendafilova, 2017: 15-16).

RESULTS AND DISCUSSION

It should be noted that LDS (2014) was part of the Macedonian legal system from 7 July 2015 till 27 November 2017, because the Constitutional Court on the session held on 27 September 2017 decided to initiate a procedure for assessing the constitutionality of LDS (2014) and CC’s Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008,

2009, 2011, 2012, 2013, 2014), and on 16 November 2017 adopted a Decision to abolish both of them (Decision to abolish the Law on the determination of the type and duration of sentences and the Article 39, paragraph 3 of Criminal Code, 2017). The whole procedure began in 2017 with the Initiative to assess LDS's constitutionality (2014) submitted to the Constitutional Court by Hristijan Georgievski, lawyer from Kumanovo. In addition, the Constitutional Court, on its own, initiated a procedure for assessing the constitutionality of CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014). Georgievski (2017) challenged LDS (2014) because by it a categorization of the criminal acts was done, levels of criminal acts were determined, as well as new ranges of minimal and maximal sentences within the newly introduced categories were prescribed, which was possible to be done only by CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014). The manner of determining which criminal act to which level belongs to, not only had no legal basis, but also was unclear and without consistent criteria. Further, the pronouncement of conditional conviction, community work and other alternative measures was excluded. Georgievski (2017) raised a question about the independence and autonomy of the court to rule on its own free assessment, i.e. when the court was forced to rule, not on its own free judicial conviction under the CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), but on the basis of another special law - the challenged law. Therefore, he symbolically asked how it is possible to tie the judges' legs, and then to ask them to run?! As the LDS (2014) was prescribed, the judges were seen as copywriters of spreadsheets of sentences, without taking into account the circumstances related to the persons that appear as perpetrators of criminal acts. The principle of free judicial conviction did not mean the arbitrariness of the judges, but an assessment, within the framework of legally presented evidence, on which the court should hold its decision.

The Macedonian Government submitted an Opinion to the Constitutional Court about the above-mentioned Initiative, in which it elaborated the LDS's content (2014), and noted that by its consistent application the principle of equality of citizens was ensured (Government of the Republic of Macedonia, 2017). Also, the Government quoted the Constitution's Article 9 (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011) (Macedonian citizens are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status, as well as the citizens are equal before the Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011) and law), and pointed that the essence of such constitutional provision was its antidiscrimination character, followed by prohibition and exclusion of any privilege and form of advantage of any kind and on any grounds... it obliged all authorities and organizations applying the law, to apply it equally to all, which means in the same cases to make the same decisions, and to take into account the particularities of each case and make individualization by its character, not according to the participants. The Government stressed that LDS (2014) excluded the voluntarism, preferences, subjectivism and protectionism when the court was judging. Additionally, LDS (2014) did not go beyond the determined limits of the criminal sentences, nor in any other way affected or limited the free judicial conviction. LDS (2014), on one hand - provided a legal security for citizens, and on other hand - disabled for the same criminal acts different judges to make different decisions about the sentences. Also, it allowed the determination of sentences to be based on objective criteria, i.e. the sentences to be more predictable.

Finally, the Constitutional Court assessed that LDS (2014) and CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006), were not in accordance with the Macedonian Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011), and therefore decided to abolish them (Decision to abolish the Law on the determination of the type and duration of sentences and the Article 39, paragraph 3 of Criminal Code, 2017). The Constitutional Court paid attention to several constitutional provisions, among which were Article 8, paragraph 1, indents 3 and 4 (The rule of law and the division of state powers into legislative, executive and judicial are among the fundamental values of the constitutional order.), Article 51 (In the Republic of Macedonia laws must be in accordance with the Constitution and all other regulations in accordance with the Constitution and law. Everyone is obliged to respect the Constitution and the laws.), Amendment XXV that replaced the Article 98 (Judiciary power is exercised by courts. Courts are autonomous and independent. Courts rule on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution...), and Article 101 (The Supreme Court of the Republic of Macedonia is the highest court in the Republic, providing uniformity in the implementation of the laws by the courts). In addition, the Constitutional Court noted that in the line of operationalization of the constitutional amendment for the autonomy and independence of the courts while exercising the judicial power, the principle of free evaluation of evidence had been established in the Law on Courts (2006, 2008, 2010) and in the Law on Criminal Procedure (2010, 2012, 2016), according to which the judges in the court procedures act and decide on the basis of their free judicial conviction. In essence, the Law on Courts (2006, 2008, 2010) prescribed that the procedure before the court is regulated by law and is based, among other, on the principle of free evaluation of evidence (Article 10, paragraph 1, indent 12) and the judge unbiasedly decides by applying the law on the basis of a free evaluation of the evidence (Article 11, paragraph 1). Further, the Law on Criminal Procedure (2010, 2012, 2016) has dedicated provisions on the free assessment of evidence, i.e. the Article 16 stipulates that the right of the court and any state authorities that participate in the criminal procedure to evaluate the existence or non-existence of facts shall not be bound nor limited by any special formal rules of evidence (paragraph 1), and the court and the other state authorities shall be obliged to clearly elaborate and indicate the reasons for their decisions (paragraph 2).

Constitutional Court explained that the principle of free evaluation of evidence arises from the same theory, according to which the facts that should serve as a material basis for the decision, are subject to logical and psychological analysis by the judge, and depending on the subjective impression that he/she receives, as well as based on the analysis of each evidence separately and in correlation with other evidence, the judge evaluates and concludes what evidence shall be trusted or not, i.e. the judge freely and independently shall evaluate and decide which evidence to take as relevant in order to determine the factual situation. In addition, the Constitutional Court pointed out that contrary to the theory of free evaluation of evidence is the legal or formal theory of evidence, according to which the evaluation of all evidence is carried out by rules that are previously prescribed by law - the law stipulates which evidence should be provided in order one fact to be considered as established. Based on the theory of free evaluation of evidence, accepted in the Macedonian legal system, the law does not require judges to be accountable for the manner on which they have created their conviction, nor does it prescribe the rules by which they should determine the completeness and sufficiency of the evidence. Since the legislator for each criminal act, determined the sentence's type and framework within CC (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), that is - the orientation in which the court

should be moving while determining the sentence, it means that the Macedonian criminal legislation accepts the system of relatively determined sentences comprised as a combination of determined sentences by law and the determined sentences by court within the legally determined frameworks. Therefore, the court's determination of the sentence represents leaving a space for the court independently to make a choice and to determine the sentence within the legally established framework for each criminal act.

However, by the 2014 CC's novella (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), the concept of court's determination of the sentence was abandoned, meaning that the court's determination of the sentence was not carried out by its free judicial conviction, but according to special rules prescribed by the challenged law, i.e. the determination of the type and duration of sentences was done by working criteria set in horizontal rows and vertical columns of LDS's Annex 1 (2014), as well as by the list of mitigating and aggravating circumstances (annex 2), and the other working papers (annex 3, 4 and 5). Consequently, the Constitutional Court observed that the 2014 CC's novella (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), established the legal determination of the sentences based on the rules and criteria which are obligatory for the court. Such concept, led the principle of free judicial conviction to be formalized, as a principle through which the constitutional commitment for the independence and autonomy of the courts was directly expressed, because a pre-defined system of established and evaluated criteria for the perpetrator of the criminal act was given to the court, under which the judge should measure and customize the sentence. Further, the Constitutional Court noted the judge's activities were reduced to a simple mathematical scoring operation and calculating points about the mitigating and aggravating circumstances, for which LDS (2014) had provided fixed value points. The fixed points that valued the mitigating and aggravating circumstances, as well as the imposed mathematical operation, according to the Constitutional Court, did not guarantee an objective individualization of the sentence for the perpetrators and it was not in the spirit of the principle of individualization of the sentence, whose essence is to adjust the type and duration of the sentence on the perpetrator's personality.

Also, the Constitutional Court pointed out that the free judicial conviction does not mean an absolute discretion and arbitrariness in deciding, and it cannot be understood as a basis for voluntarism and improvisation of any kind, because as a guarantee of the court's arbitrariness, is its duty to explain the reasons which were relevant to the decision-making process, implying that the court's decision is subject to a review by the higher court in the remedies procedure.

Regarding the goal that the legislator wanted to achieve by LDS's adoption (2014), i.e. to provide a uniform sentencing policy by the Macedonian courts, as a goal taken on its own cannot be seen as contrary to the Constitution (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011), however LDS (2014) as an instrument for achieving such goal, as stated by the Constitutional Court, did not support the constitutional justification from the aspect of its accordance with the established fundamental values of the constitutional order, the constitutional commitment for the independence of the courts, as well as the basic legal principles on which the modern criminal legislation is based. In the Decision (2017), the Constitutional Court also gave an attention to the Commission on equalization of the sentencing policy, as well as to the institutes "Sentence bargaining", "Guilty plea during the main hearing" and "Mitigation of the sentence for the perpetrator under the limit prescribed by law".

It should be noted that the Constitutional Court's Decision (2017) was supported by the latest Report of the European Commission about the Macedonian progress to European Union, observing that a positive step towards restoring separation of powers was taken with this Decision (2017), because the LDS (2014) interfered with the independence of the judiciary (European Commission, 2018).

CONCLUSION

In the historical and legal sense, it is commonly believed that the determination of the sentence was regulated in two "extreme ways", both abandoned in the modern Criminal Law. First is the system of complete judicial arbitrariness, when the sentences are absolutely unspecified, i.e. the judge may, for any criminal act, impose any type and measure of sentence. The other system is *vice versa*, and it comes down to a complete "tying the hands of the judges", i.e. for each specific criminal act, a specific sanction is determined by the law, which means that the judge does not have any space to impose any other criminal sentence when it is proven that the accused person had committed the specific criminal act (Škulić, 2017: 4).

If the sentencing policy is taken into account, it should unite three aspects: CC's systematics (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014); judicial practice in the CC's application (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), respecting the constitutional position of the judiciary as one of the three authorities; and theoretical knowledge of Criminal Law and practice (Lažetic-Bužarovska, 2014: 54). In essence, providing a uniform sentencing policy, as the Constitutional Court observed, cannot be done by the LDS (2014), since several laws in which the principle of free evaluation of evidence has been established, stipulate that the judges in the court procedures act and decide on the basis of their free judicial conviction. Therefore, the free judicial conviction in the part of assessing which circumstances and to what extent are important when selecting and determining the criminal sentence must not be templated or restricted, because it is an expression of judicial independence in deciding, and it is an important principle in the evidence law and theory. The freedom of judicial conviction does not imply arbitrariness, but an assessment within the legally established evidence on which the court bases its decision (Lažetic-Bužarovska & Nanev, 2017: 6). Consequently, calculating points about the mitigating and aggravating circumstances of the committed criminal act as given in the LDS (2014), was a derogation of the principle of free evaluation of evidence. As Kanevčev observed (2017: 3-4), long ago it was sad that every specific criminal event and every specific perpetrator are stories of themselves: in the background of every criminal act there is a human being with countless motives (envy, greed, love, hate, etc.) and aspirations that mark the act with a special seal (although it looks exactly the same to other act in its type and severity), therefore it cannot and should not be insisted on identical, or even approximately the same sentences.

At the end, the Decision (2017) of the Constitutional Court to abolish LDS (2014) and CC's Article 39, paragraph 3 (1996, 1999, 2002, 2003, 2004, 2005, 2006, 2008, 2009, 2011, 2012, 2013, 2014), is the right one since their inconsistency with the Constitutional provisions is obvious (1991, 1992, 1998, 2001, 2003, 2005, 2009, 2011). The Government's goal to provide a uniform sentencing policy and equality among the citizens, should not be done by drafting LDS (2014). The Government as an executive authority interfered into the area of judiciary, since the Supreme Court has the mandate to provide the above mention goal. For that reason, it can be concluded that the set up goal was right, but the means for its realization were wrong.

Finally, when it comes to the principle of free judicial conviction, judge's hands should not be tied. On the contrary, the judge should freely and independently evaluate and decide which evidence to take as relevant in order to determine the factual situation, and afterwards to decide about the type and duration of sentence. For that reason, it can be acknowledged that the judge's decision should be in the line with the famous Cicero's quote "*Cavendum est etiam, ne maior poena quam culpa sit et ne iisdem de causis alii plectantur, alii ne appellentur quidem*" ("It should be ensured that the sentence does not exceed the guilt, and also that some men do not suffer for the offences for which others are not even accused").

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SECURITY TOPICS

A CONFLICT/SOLUTION MODEL FOR THE WESTERN BALKANS – A WORKING GROUP FOR A DEVELOPMENT PROJECT

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ABSTRACT

This article explains the engagement of the International Community in the Western Balkans. In order to help the integration of Western Balkan countries into the EU, a working group for a development project shall be implemented into the EU integration process within the context of peace processes. The International Community should support regional stability procedures so that EU candidate countries undertake the necessary activities faster and more diligently. Interviews and the benchmarking of the best practices and syntheses from meta-analyses have brought us to the conclusion that EU enlargement is unlikely to be realistic in the coming years. Therefore, an appropriate security concept in the Western Balkans will still be an important factor. The region needs strict commitment to the rule of law, the construction of functioning state institutions, socio-economic reforms, prosperity for the welfare state and the elimination of nationalist interests as the primary driver for local politicians.

Keywords: international community, Western Balkans, conflict solutions, EU enlargement

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INTRODUCTION

The International Community has intervened over the last three decades in the Western Balkans (Bosnia and Herzegovina, Serbia, Kosovo, Montenegro and Macedonia) and it is still active today using different modes of action. We did not include Albania only because we focused on the disintegration of the former Yugoslavia and the emergence of new countries in its former territory. Concerning form and function, the International Community is a very heterogeneous club with very different aims, methods, missions and actual performance (Paris, 2004). In the primary stage, the International Community has been addressing the specific implementation of the peace agreements (The Dayton Accord, The Ohrid Agreement and The Kumanovo Settlement) for partial solutions in conflict prevention and in some cases preventing further conflicts or even wars (F. L. Altmann, interview, 13.1. 2017). In doing so, they have been creating a new geopolitical relationship with the entities in the Western Balkans. The approaches and actions of the International Community to achieve regional and local security in the Western Balkans are important indicators for what might happen in the region in the future (Booth & Wheeler, 2008). The instability and fragility of peace agreements (although firmly enshrined on paper, could change or stop these processes (Cohen & Lampe, 2011). The International Community cannot force people or entities to begin cooperating overnight to the extent it had three decades ago (Busek & Kühne, 2010). Alternatively, examples of good practice and the

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transfer of these processes to the level of civil society greatly contribute to the increased intensity of the developments of such integration. The International Community should give a clear message to local politicians in the region so that every joint initiative to reform is the cogent attempt by the International Community for normalization in the region. A serious warning must be sent from the International Community to the region. “Do you want to stay in Europe’s backyard for several decades and do not think that you are the centre of the world” (J. Rupnik, interview, 22. 4. 2017). The International Community still has uncompleted work and therefore must continue to define their tasks very carefully (N. Arbatova, interview, 24. 12. 2016). Ex-YU countries must take care of themselves and start to work on their futures by meeting all the conditions to become full members of the EU (Mus & Korzeniewska-Wiszniewska, 2013). The article examines the functioning of the International Community in the Western Balkan countries and those processes that accompany its engagement in specific cases. We have researched the operational functioning and mechanisms, by which the International Community decides to intervene and which objectives and tasks it should pursue for work in the future.

METHODOLOGY

This article is based on extensive research in which a combination of different methods and approaches were used. Firstly, we analysed the content of sources, which include scientific literature, research reports, documents from international organizations, international agreements, examples of good practice, books, films, videos, sound recordings and memories from active participants. Secondly, we used the method of policy analysis in terms of designing, implementing and evaluating peace process policies. Existing practices in other countries, where similar problems have been dealt with in the past served as a starting point for us regarding what functions there are when ensuring security. Finally, we carried out interviews with twenty-four (24) reputable experts in the Western Balkans who participated in a project to find useful solutions for peace processes in the region. In order to prepare a final questionnaire for the interviews, we pre-conducted three pilot interviews where we also asked interviewees to give their opinion on the questionnaire, for example, about the shortcomings of the issues or about any relevant crucial issues. The basic structure of the questionnaire consisted of six headings with a total of fifteen questions. Under the first five headings we covered individual candidate countries for EU membership. The sixth and last heading of the questionnaire was intended to test information on the International Community. We tried to find out what prominent positive contribution, effectiveness of measures and major failures of the International Community in the region were. What the key problems in individual countries of the Western Balkans are and should the International Community find the appropriate answers for them as soon as possible also interested us. In the end, we were interested in the content about measures the International Community should immediately begin to introduce and whether they would achieve their intended goals by using them. The questionnaire was also interconnected as a whole, so that it enabled us to obtain conclusions for which key objectives the International Community should pursue in order to better link the region to the desired reforms. As a cross-section, we can name the group we interviewed as a group of strategic and opinion leaders, reputable journalists, internationally renowned professors, heads of state, presidents and vice-presidents of governments, ministers, directors of institutes, international researchers and experts for introducing reforms into the economic and socio-political landscape.

WHAT ARE THE PROBLEMS IN THE WESTERN BALKANS?

Conflicts that appear are quite common in the Western Balkans, whereby armed conflicts are local in nature and violence is often associated with criminal groups, which freely exploit political conflicts to their advantage and transfer such forms of activity to official formal state institutions (C. F. Wehrshütz, interview, 13. 3. 2017). All these phenomena have an impact on regional security. The International Community has invested a great amount of work, financial resources and human potential in the region but much less has been achieved than expected (Štiblar, 2007).

National and international political institutions, including all possible advisory bodies and intelligence agencies have good information about what is going on in Bosnia and Herzegovina. The next step is to prepare complete uniform and necessary solutions and join them to an effective plan to prevent further disintegration of the country (Keil, 2015). Recommendations from civil society, non-governmental organizations and expert groups are necessary as well as listening to them very carefully and actively involving them as part of the output regarding the existing situation. It would be possible to rationalize the functioning of the entire system of the country with pragmatic and intelligent collaboration, which means the beginning of reform processes from the bottom up through institutions and the replacement or elimination of those institutions that have proven to be unnecessary, unsuccessful and dissuasive (M. Pejanović, interview, 13. 2. 2017). The present situation is much worse than a decade ago and the delay for key changes is longer. Today, there are requirements from Croatia's politicians for the creation of a third entity. Croats and Bosniaks, who were once partners in a dialogue with the Serbian side, are on opposite sides today. Due to a serious warning about the increased Islamization of Bosnian society in conjunction with increasing Bosniak nationalism, it is becoming more and more obvious that there is less of a chance for a smart solution and less room to manoeuvre. Since its post-war constituting, The Serb Republic has rejected Bosnia and Herzegovina as a legitimate state and is trying to prevent it from becoming one at every step (Sebastián, 2014).

Kosovo was established by military, political and legal international intervention. The new entity has written operating rules (The Ahtisaari Proposal) set on democratic principles and tries to take into account the situation within the country and steer the future for its citizens. It is not a big public secret that the State does not work (Dobovšek, 2011). This has been confirmed by the words of Albanian experts, Serbian representatives and international experts in the region (S. Bianchini, interview, 28. 4. 2017). Evident examples of different interpretations are reflected in the agreement reached between Belgrade and Pristina in Kosovo's northern territory and the conditional inclusion of both Serbia's and Kosovo's EU integration.

Macedonia is in a situation where incentives and international co-operation at the level of technical support for EU integration are much needed. Some reforms are being implemented but the efficiency and speed are far from the desires of people as well as external international observers (European Commission, 2015a). At one time it was number one in the region and now it is a country that has a very vague date for entry into EU integration. The EU has proposed seven core reform⁴ measures for Macedonia and now it expects the country to implement them. Macedonia may have an advantage in that it does

4 Rule of law, legislation and judicature, economic development, minority protection, freedom of media, educational system and regional cooperation.

not have unresolved problems with its neighbours over border issues and it did not have any major conflicts with its neighbours other than with Greece over the country's name (Konstandaras, 2018).

The management of government and state institutions in Montenegro has already been engaged for a very long time and the situation is within the realm of corruption and organized crime. Certainly, this problem is not any bigger than those in the neighbourhood are, but these deficiencies must still be emphasized. The problem is that probably the same people appear on both sides: the beautiful positive side or the negative ugly side of the application (European Commission, 2015b). The same group that writes Montenegrin laws violates them for their selfish purposes. In addition, these people give the country a basic political stability so that cases are not unambiguous and simple (V. Teršelič, interview, 15. 10. 2016).

Serbia is still the most important, almost pivotal country for stability in the region. Certainly, nobody has an interest in any warfare neither today nor tomorrow, even though Serbia and Croatia are arming themselves very rapidly armed. So politics have become the basic tool for regulating and creating changes within the country. As a result of the situation in which the country finds itself after the full collapse of nationalist policies, reforms for the country have been far from simple. Domestic political changes are largely influenced by many weighty factors, which definitely include the lack of freedom for the media (Sotlar, 2009). The people in power, Aleksandar Vučić and Ivica Dačić are the successors of the leaders and parties who had led the country into war and subsequent isolation. However, it is similar in other Western Balkan countries where nationalist policies have re-emerged and in the forefront of government. Furthermore, the youth are leaving the country because they see no future (Z. Živković, interview, 11. 11. 2016). This very weak impact of people's departure in order to find better living conditions and employment actually involved the entire wider region, including Slovenia, Croatia, Bulgaria and Romania as EU members, and similar happens in Serbia. This very weak impact because of people emigrating in order to find better living conditions and employment has actually engulfed the entire wider region, including Slovenia, Croatia, Bulgaria and Romania as EU members and a similar trend is happening in Serbia. New negotiations with Kosovo led by the EU and signed agreements have slightly opened the door for future Serbian EU membership.

There are still very large and often pivotal conflicts within the region as a result of its initiatives because the International community itself causes these conflicts. They are in the form of various unverified peace processes and projects involving "international experts" who do not have the slightest notion or previous experience on the matter, region and problem (E. Petrič, interview, 8. 9. 2016). After the last war, the entire population of the Western Balkans was often a "guinea pig" for the ideology of "peace and coexistence among nations" (Cohen & Lampe, 2011). The International Community has often been negotiating with individuals who do not comply with democratic standards by any means and do not give any assurance that on behalf of the community they represent they shall also fulfil what was agreed to (P. Sokolova, interview, 28. 11. 2016). As a result, vast amounts of international funds were therefore misused or simply used for the personal interests of cliques and individual political elites, which in reality is more reminiscent of organized crime (Chandler, 2000). In recent years, many international experts were not skilled enough to work in the region and the International Community did not examine whether these people actually had the much-needed skills to work in special circumstances that are required by the situation within the region (S. Mesić, interview, 22. 11. 2016).

SOLUTIONS FOR THE WESTERN BALKANS - A WORKING GROUP FOR A DEVELOPMENT PROJECT

The Development Project Working Group – A Conflict Solution Model for the Western Balkans (DPWG) is a task group, whereby experts for the region would like to establish operations of the International Community in the Western Balkans and the processes that accompany its engagement for individual cases of reforms. The DPWG is a proposal of a project team that will bring together international experts for the Western Balkans and link them with advisory and operational tasks regarding concrete missions for peace processes. The structure of the DPWG is informal in nature involving institutions or experts in relation to individual tasks or as advisory assistance in solving a particular problem. The International Criminal Tribunal for the former Yugoslavia had a similar approach of using external advisory experts, which invited individual expert associates or institutions to cooperate on a case-by-case basis. Therefore, a more efficient solution to the concrete reform process is achieved faster and easier in this manner. Defining the cooperation within the International Community to find a solution by consensus that adopts solutions and puts them into practice for the reforms is definitely one of the most important goals of the DPWG project (Erin, 2015). The DPWG project tries to examine the integration of the Western Balkans into the EU within the context of peace processes. A parallel task is to find out what the International Community can do to these procedures with the aim of alleviating the situation for countries in order for a candidate to undertake the necessary activities faster and more diligently.

Efforts to achieve progress and normalization of the current situation should begin within the region itself, from people, policies, institutions and civil society without nationalistic sentiments (Sebastián, 2014). Expert legal policy & governance assistance (technical support) is one of the wisest methods on how to gradually start implementing changes. Serious interest and willingness for reforms from the region must be demonstrated for the implementation of technical support. If there is no political will from the region, the IC cannot develop adequate assistance (Vesnić-Alujević, 2012). Control of the performance for assistance for technical support should remain in the hands of the donors. The IC must bring together all their interests in the region and speak with one voice and act in unison to realize a common endeavour. What kind of impulses does the region still need? Politicians and IC representatives must visit the region more often including higher political ranking visits to the region. The DPWG project tries to explore the current operations and the mechanisms by which the IC has to intervene or to perform certain tasks in the region (Power, 2013). Therefore, we have been trying to establish what the real aspects of possible participation of the IC are in order to achieve common goals within the region.

BOSNIA AND HERZEGOVINA

The transfer of a large part of governance to the federal state is a necessity for the functioning of the state, which is stronger and in good order. At this point, the International Community should speak with one voice, although there is one big problem in that it does not do this consistently (V. Perry, interview, 23. 1. 2017). No one finds themselves in partial regulations of individual cantons in the Federation of BiH any longer. The systematic degradation of BiH by nationalist politicians in The Serb Republic is dangerous and should be stopped as soon as possible. The persistent denial of BiH as a state should be taken as a serious warning that this is a systematic plan that wants to erase BiH from the political map (Sebastián, 2014).

Upgrading the Dayton Agreement. The Dayton Agreement is to be understood as a process and as such it should be present. It is the result of a war and peace agreement after the end of the armed conflict. The agreement has created a physical separation of people and division of territory, which has led to considerable problems of governance (Holbrook, 1999). With regards to the judgment of the European Court in the Finci–Sejdić case,⁵ the violation of Article 14 of the European Convention on Human Rights is evident. Despite the judgment and wider public debate on amendments to the Constitution, no agreement has been reached yet. Today, BiH operates as a completely unfinished political project with a very poor future (M. Thompson, interview, 8. 12. 2016). As assistance for technical support, a team of international and domestic experts can be required for preparing starting points for amendments to the Dayton Agreement. The DPWG Project can also suggest an operational plan, which would include the active participation of civil society for Dayton Agreement amendments.

A Renewed Constitutional Structure. A constitutional amendment would be required because of the proven violation of human rights and to simplify the functioning of common authorities. The country and its citizens are not only in a national conflict but the entire community is completely administratively blocked by constitutional incompleteness and weak liabilities to execute the rule of law (F. Štiblar, interview, 27. 9. 2017). Technical support as assistance along the lines of arbitration would be necessary for constitutional amendments, whereby all three nations are jointly organized for writing new amendments in cooperation with international experts.

The Role of the International Community. It will not be able to make any changes without external impulses and assistance from the IC; however, they are urgent and necessary. Disagreements within the IC are often a root of the cause for poor performance in the implementation of the measures (Fierke, 2007). The DPWG Project proposes a significant program for the International Community on how to coordinate initiatives that exercise proposals and projects in the Western Balkans, which lead to common international policies. The deeply polarized Bosnian-Herzegovinian society needs synchronized reforms.

Political Architecture, Entities, Cantons, Municipalities (Serious Rearrangement). The Federation of Bosnia and Herzegovina has 11 Constitutions, one for the Federation and ten for the Cantons. The result is that the Federation has about 155 ministers. They have 13 constitutions together with The Serb Republic and the federal state. The consequences of war are vast; people do not trust each other and are not willing to cooperate with each other (V. Bojičić Đelilović, interview, 21. 4. 2017). Together with a review of the Dayton Agreement and the Constitution, the international group could simultaneously try to propose key changes to attempt a conversion of the existing political architecture of the country. If this structure does not change, Bosnia will be a dead state functionally. The K143.org is a civil society and NGO initiative and a good example and a practical proposal that could make reform progress better within the State.

KOSOVO

The International Community would have to take a different approach regarding technical advice and be able to perform an advisory role in mediation and counselling regarding conflict prevention (Erin, 2015). The International Community should try to manage the conflict

5 In 2009, The European Court of Human Rights in Strasbourg upheld the action of two citizens of BiH, Romas Dervo Sejdić and Judo Jakob Finci, who claimed that the Dayton Constitution violated the citizens' right to be able to vote and be elected to the BiH Presidency. These judgments in BiH have not yet been implemented in practice.

and not only seek to extinguish it (P. Sokolova, interview, 28. 11. 2016). Disagreements will remain in Kosovo but they can be supervised to ensure that they do not break out into violence. In this role, the International Community could with the help of civil society, actively implement conflict prevention and conflict management.

Conflict Management. Throughout history, Albanians have always had a kind of informal local court where severe conflicts between the clans and families were mainly dealt with. A similar form of a reconciliation court in the form of local prominent elders is also present in Serbian society. In this way, the Head of the Serbian Orthodox Church and Muslim religious leaders could also be included in resolving conflicts between the nations. Institutions could have a positive improvement if people trusted them and they have visible evidence showing that they work regularly by putting in an effort for their basic mission. The only possibility for transforming state and society is through the institutions.

Explanation of the Ahtisaari Proposal. The Ahtisaari program and the concept of a new State are required in order to explain it and begin to enforce it through several layers of society. State institutions do not work because people do not understand what their mission is and what their role is in the community. People from Kosovo have never lived in social systems compared to those people who are writing the new rules for Kosovo. What can truly improve the situation is active legal and expert assistance for the people (Borzel, 2011; Z. Živković, interview, 11. 11. 2016). Significant progress has been made in South Africa with such education on peace in tackling day-to-day conflicts because of prolonged racial segregation (Webel & Galtung, 2007).

Many times, peace agreements, international agreements and other such important documents are superficial or have too much detail. They administratively regulate every element regardless of whether this is even possible to implement in real life (N. Berishaj, interview, 25. 2. 2017). The adopted action plan for the country does not even take into account that the majority of Albanians and the State implement it purely in their own way. The Serbs have been rejecting more or less every proposal and as a result nothing in the State functions properly. With the interpretation of the essential issues about what the Ahtisaari proposal introduces to the new country, technical support as an assistance activity would include more regular functioning and in particular, an easier understanding of the proposal for ordinary citizens. EULEX is a guarantee for the most important functioning of democracy in the country. The EULEX mission will remain as long as the Kosovo State is unable to guarantee reliable and trustful operation (S. Bianchini, interview, 28. 4. 2017).

MACEDONIA

Many multi-ethnic countries in the EU have serious problems and Macedonia is no exception. The social contract of the community should govern internal relations between Albanians and Macedonians so it can avoid federalization. It is obvious that recipes and instructions from offices in Brussels do not work. *“If no one has found a smart answer about what to do in Belgium, which has been without a government and operational policies for a long time, how can one expect a magic wand to be waved in the Balkans where everything is put into place and order is restored overnight”* (E. Busek, interview, 13. 10. 2016).

The Name of the State. According to the best experts on the situation in the region, the name of the country today is a problem but it can become a bigger problem in the future. Influential Macedonian and Greek politicians are in conflict over the name and these issues are used for domestic political prestige. There are complicated problems when the status is unsolvable (L. Danailov Frčkoski, interview, 10. 12. 2016). The threat of a referendum

concerning the determination of the name before anything is agreed to or resolved makes everything just worse. It would be necessary to re-launch the initiative by the International Community and explain how Matthew Nimetz's proposal can be a very good opportunity in finding a solution for the name issue regarding Macedonia. So far, this proposal has been the best by far and has taken into account the wishes of the original Greek name as well as the fear of Macedonia. Nimetz's proposal has been proposed as an equation with several unknowns by a good compromise between the Macedonian language, country identity, multi-ethnicity and international recognition. The proposal itself is simply good enough and it is reasonable to re-prioritize all the initiatives. The Macedonian and Greek governments agreed that the future name of the state should be the Republic of Northern Macedonia at the last negotiations in June 2018. The agreement contains gradual steps in changing the Macedonian Constitution and later its ratification in the Macedonian and Greek parliaments. However, the political situation in Greece and opposition within Greek society of any mention of the name Macedonia outside of Greece gives the impression that this proposal will be very difficult to resolve before it is officially confirmed. There is also strong opposition to the proposal of a new name by the opposition in Macedonia. Greece explicitly stated in the negotiations that it would give its consent for the admittance of The Republic of Northern Macedonia into NATO only after ratification by the Greek parliament (Smith, 2018). The Lake Prespa accord was signed on June 17, 2018 at Lake Prespa by the Foreign Ministers of Greece and Macedonia in the presence of both Prime Ministers and international mediators. Now this agreement awaits the difficult path of ratification and constitutional amendments in Macedonia. The International Community should intensify talks for further developments in the country. The International Community may bring up new issues that are unofficial but regarding the content all these initiatives should be precise in preparing Macedonia in fulfilling and meeting all the conditions in becoming an EU member (Jeleva, 2012). The International Community has to explain to Macedonian politicians that not many initiatives, human potential and means exist, so any rejection of International Community endeavours is not such a smart position for future relations. Resistance to such efforts from the International Community may produce a negative image for both parties vis-à-vis the wider International Community (European society, USA, Russia, Turkey and China). Greece should take the chance to reconsider its position concerning the unresolved problems with its neighbours, in particularly the acceptance of the verdict of the International Court of Justice on December 5, 2011 concerning the Interim Accord of 1995⁶ (International Court of Justice, 2011).

The Role of Civil Society. Dealing with the recession and financial problems should be a priority for the country. Many people are unemployed and there is considerable poverty. Dreaming of vast foreign investments is unrealistic and Macedonians should rely primarily on themselves and on the traditional connectivity within the region. Radical measures by policy are not expected and it would be a very good time to increase the role of NGOs in interregional integration (European Commission, 2015a). Other states in the Western Balkans are more or less stagnating and declining under the weight of the situation; therefore, the need for such integration is also increasing (B. Vankovska, interview, 13. 11. 2017). With regional co-operation, Macedonia may exercise and implement the desired reforms step-by-step. The role of civil society and NGOs is an important element in solving daily and frequent misunderstandings and should be given a bigger role. NGOs can become an

6 Greece rejected Macedonia's admission into NATO because of the unresolved disagreement over the name of the state and the court ruled that the Greek action was incorrect and unjustified.

interpreter and an informal arbiter in resolving wider regional challenges and the creator of inter-regional and international integration. The transfer of activities from many official institutions in everyday management to civil society could be made as a decisive step from the present situation where political parties rule all aspects of society. It may take into account the tradition of co-operation where minorities or nations can be the creator of new regional policy and economics (S. Ordanoski, interview, 16. 2. 2017).

MONTENEGRO

When EU politicians talk about Montenegro in Brussels or visit the country, their conversations are full of superlatives. This is proof of successful Montenegrin political marketing and its constant image polishing within the International Community. The proposed reforms and democratization of society are accepted as a slogan and from the outside it is viewed as operating without major problems. The state is governed by some families and tribal cronyism; there is no secret that corruption is certainly nothing smaller or larger than in other Balkan countries (F. Štiblar, interview, 27. 9. 2016). By some logic, the country will become an EU member sooner or later. When and how the Brussels administration and Montenegrin politicians will meet and find the right date is still questionable at the moment. This means that they have been taking a very slow course of action (S. Šelo Šabić, interview, 26. 1. 2017).

Good Promotion of a Positive Image of the Country in the Balkans. In the coming years, Montenegro could become a model on how to successfully lobby and promote a positive image within the EU. In this process, the EU can take into account all regional characteristics, which are important in establishing the mechanisms necessary to bring any new country into European structures. The policies should open initiatives and support for the operation of civil society organizations. Since there is a critical attitude from NGOs towards these governmental policies, they are very reluctant in carrying them out. The Montenegrin community is small and the adoption of reforms for EU enlargement should not be a big problem. Since the administration is relatively small and inexperienced and the conditions for EU membership are extensive, external assistance in meeting the requirements will be a very important element of international cooperation within the region. Furthermore, they have to support the functioning of civil society much more. With such an initiative, the State would be even more persuasive in becoming the next member of the EU (Emini, 2016; European Commission, 2015b).

Democracy is not only the Convention of a Few Families. Due to the serious problems that the official policies have with the concept of democracy and democratic governance, the EU needs to find ways to help civil society strengthen its role within concrete tasks of the accession negotiations with the EU. Important steps must be made in the reform of public administration and amending legislation, which must specifically depoliticize employment in public administration. This is especially true for the judicial branch in order to prevent it from being completely politicized, where prosecutors and judges often only act on the advice of the authorities (L. Altmann, interview, 13.1. 2017).

SERBIA

The EU writes rather precise obligations and declarations directed to association, conditions and requirements for further reforms. Prior to joining the EU, Serbia must really put a lot of work into the process and the country needs to adapt to EU standards and ensure that the

conditions will be satisfactorily met (Hayden, 2013). There was no major problem in granting candidate status to Serbia although normalization of relations with Kosovo remains a major problem and possibly the last barrier for achieving membership approval. Recommendations by the EU to Serbia include judicial reform and the rule of law, fighting corruption in politics and organized crime, establishing independence for key state institutions, the protection of minorities, freedom for the media, a competitive business environment and stable relations with neighbouring countries. At a quick glance, there is nothing that cannot be achieved and completed within reasonable time (Z. Živković, interview, 11. 11. 2016).

The EU: A Common Goal for the Majority of Serbs. Expecting complete harmony for the objectives regarding EU accession is impossible and unrealistic. There is a need for national consensus about the EU and Serbia's future as a new member. Even a current look at the secessionist aspirations of various regions within Western European countries shows that the EU is not a common kind of glue but it is a combined interest. It is reasonable that Serbs see their future within this interest (N. Arbatova, interview, 24. 12. 2016). At least most of the political groups and civil society organizations in Serbia could be unified under the real objective of "Serbia has lost its future in the war and now she can recover in peace." In doing so, it could build up all democratic institutions within the country in cooperation with civil society and through dialogue it could reach a consensus on the essential objectives. The slogan "All Serbs in one State" can be achieved through membership in the EU. During the break-up of Yugoslavia, the desire for the Serbs to all live in a common wider Serbian State provoked a bloody maelstrom of war, which caused destruction, huge numbers of war victims and a sea of war criminals for the Serbs (Thompson, 2000). A vast number of educated and skilled people have left Serbia and due to their new lives abroad, it is an illusion to expect that they will return. However, they may be included in the general plan of building a better image for Serbia around the world and provide the necessary conditions for EU membership. A new EU paradigm is meant for wider participation in establishing key institutions in a democratic state and the enforcement of civil society institutions (Grizold, 2001). In doing so, the principles for EU membership negotiations should be respected by all: by Serbs in their homeland and those living abroad (B. Šuklje, interview, 28. 2. 2017).

Regional Cooperation. Regional cooperation during the transition period is very important for the country. This should be really necessary in order to regulate the consequences of previous wars, in particularly the task of returning refugees and helping to ensure property rights and personal documents. Concrete tasks include regional approaches in creating a missing persons register and a common start in making arrangements regarding the processing of war crimes. In the meantime, Serbia may try to gain the benefits of free trade and investment and form a special economic status for cooperation with the EU under international agreements and other agreements within the region during the EU accession process, which will certainly not be a short one (Rupnik, 2011). Serbia must accept that Kosovo will no longer be under the rule and authority of Belgrade, which means that Belgrade must operate in different directions to get the most out of this situation for its co-nationals in Kosovo.

DISCUSSION

In February 2018, the European Commission adopted a special strategy for the Western Balkans and is an important step forward, given the long period of stoppages. This strategy contains all those elements that enable EU candidate countries to identify key objectives and requirements of the EU. In particular, it underlines and emphasizes that candidate

countries must carry out their tasks themselves and take into account all recommendations and instructions and meet the expectations. If we compare our findings with the adopted strategy, we can say that there is no difference in the essential elements such as human rights, the rule of law, the economy and regional integration. Some experts who were advisers in the development of the EC strategy were also part of our research interviews. In areas where our views diverge there is certainly excessive optimism from the EC side that these processes will take place quite spontaneously, smoothly and quickly. Conflicts in the region are generated by nationalist policies, which are used for all possible leverages of power. As a result, we are more critical of this problem in our paper because this is a major obstacle in that everything is changing very slowly in the region; at least in the area of meeting EU criteria or future members. Therefore, we believe that it is necessary to meaningfully use the EC strategy as a kind of pressure on future candidates to implement reforms by themselves in accordance with social and political changes. This type of transformation of societies comparable to EU standards will surely have more weight and will certainly be more easily accepted and understood by the inhabitants of individual countries (European Commission, 2018).

Careful analyses from various experts, some of whom we have met during our research and the very results of our research show a great deal of ambition regarding the reform processes in the region in the past and a significant amount of disappointment in terms of performance and achievement. Real estimates suggest that given the efforts put into place much more could have been created and at the same time, the newly emerging problems have made these modest achievements even more vulnerable and fragile and do not give assurance to the sustainability of the stability of the situation. The methods of introducing reforms were incomplete experiments, which excluded entire groups within the societies. When introducing reforms, the EU circumvented the involvement of civil society, NGOs and even parliaments. By excluding the parliaments, NGOs and civil society, there was no pressure on policies regarding the non-implementation of reforms. However, this trend of excluding stakeholders and the legislative body has proved to be a completely erroneous attitude. In the past, the International Community expected the following from the region: (a) the adoption of key constitutional reforms for the democratization of society; (b) a strict commitment to the rule of law; (c) the construction of functioning state institutions; (d) socio-economic reforms and welfare for the welfare state; (e) cooperation with international financial institutions; and (f) the elimination of nationalist interests as primary leverage for local politicians. As a result, most of this did not occur but if it did occur it was carried out only to benefit the political elites.

There is no single opinion within the EU on the Western Balkans and some do not even consider it important enough to maintain any closer links with the region. Therefore, the process of agreement on the future of the region should include several parallel approaches, which should be mutually harmonized in order to prevent new conflicts and reduce the potential for failure when implementing reforms. It is necessary to establish preventive action, which should be formed as key points in order to limit conflicts to minimal repetition. As part of this agreement, it will be necessary to clarify whether countries within the region are candidates for EU membership or if it is only a process of endless political tension similar to the one being carried out in talks with Turkey regarding EU membership. As a result, it is genuinely being set up for an uncertain future due to the latest changes and in fact it is unrealistic. The EU has mechanisms in place for co-operating with neighbouring countries

and US assistance has been crucial for inter-war and post-war cooperation. If Russia and Turkey are willing to join with constructive proposals, then international cooperation should not be a problem at least with key foundations for peace processes in the region. The last decade within the region has seen a transitional vacuum of values and nothing significantly positive has happened. However, when the elites feel threatened they still produce external enemies of threat to their nation. As a result, certainly no international mechanism works anymore.

At the International Community level, it is necessary to achieve a minimal common denominator, which will enable the region to be reformed. Firstly, the International Community could recruit more competent people or at least a larger number than they have recruited until now since only a few individuals with true knowledge of the situation preserve its reputation (E. Petrič, interview, 8. 9. 2016). For the societies, this creates a feeling that Europe or the International Community unconditionally supports their autocratic power and as a result, common citizens do not have any chance in changing anything (S. Bianchini, interview, interview, 28. 4. 2017). Security for citizens cannot be the subject of some current superficial conditions adapted to arbitrariness. It starts with individuals, their civil rights, their role in society and their participation within the regional framework.

Without this basic mechanism, any good initiative is condemned to long-term and problematic vegetation. To create a watertight plan of how to get real structural reforms for an international paternalistic attitude towards the region is not easy. Democracy is the basis and everything else is built on top of it. The legal and social state, the open borders for people, the economy, the culture, transport and knowledge can be the common denominators needed to start a new cycle of attempts for change. It is impossible to compare the development of democratization and the transition of the Baltic States with the Western Balkans or to put the development of Lithuania and Bosnia and Herzegovina in the same mould. It is also impossible to compare the division of Czechoslovakia into two countries and compare it with Serbia and Kosovo. Not only the war, but many other factors were very different. Therefore, the International Community must at least be a little more innovative and must not copy EU approximation models in the same way.

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ECONOMIC SECURITY AND ECONOMIC SECURITY INDEX AS A MEASURE OF ECONOMIC SECURITY

Snezhana Mojsoska¹, Nikola Dujovski²

ABSTRACT

Along with the process of increased mobility of people and resources across national boundaries, the emergence of globalization and the new technological advances, new forms of security also appeared. *Economic security*, as a blend of economy and security, has recently become a very important dimension of sciences such as economics, social science, and political science. As objective of this paper is to analyse the term economic security through its definition and factors. As a new term economic security is measured by the economic security index. In the paper, the factors that determine economic security index will be set. In order to explain the importance of the security index, economic security indexes worldwide will be shown comparatively. In the conclusion, remarks of the need of economic security and the economic security index will be given.

Keywords: economy, economic security, defining, economic security index, determinants

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INTRODUCTION

The process of globalization, technological advances and increased mobility of people and resources across national borders contributed for the emergence of new forms of the so-called non-traditional forms of security; economic stability is one of them. Many scientists make an integrated relation between security and the economy since 1940s such as Earle (1943), Hirschman (1945) and Viner (1948).

The relevance of the paper appries from the theoretical aspects of problems of economic security. There are two aspects: the economic security of the state (as a political creation) and the economic aspect of the national security. Thus, economic issues became an inevitable part of the notion of national security. In some countries, the primary question is the question of safe delivery of raw materials, but also, safety of the means for their delivery such as: gas pipelines, oil pipelines, and in recent times, of the waterworks as well. In other countries, in the first plan is the protection from economic espionage, whereas in third countries economic sovereignty is what is primary. On this basis, it is clear that the interests are dictated by the priorities of the national and the state security.

In the history, the concept of security implied physical protection of the state territory from external armed attacks. Even though this aspect is still present in most of the countries, the understanding of the concept of security evolved into new directions and contents mostly in small, sparsely populated and rich developed countries. In this relation, it is significant to mention that in the 18th century, in Great Britain, the standing that the security of the country is inextricable from the economic welfare, above all the trade, started to prevail.

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The main research question in this paper is the concept of economic security through its definition, as well as the means by which economic security is measured. Several methods will be applied in the elaboration of this paper. Mainly, it will be used the theoretical method and the method of analysis and observation. We will use data from published books and papers, reports, articles, etc. found in the libraries or in the internet. In the conclusion, as a final part of the paper, the importance of the economic security and its measurement will be sublimed.

ECONOMIC SECURITY

Economic security, as a link between economy and security, has recently become more than an important dimension of the sciences such as political economy and the science of security. The line between studying security and the issue of economic order became very thin. This is the main reason why several scientists emphasized the importance of studying both sciences together.

The non-traditional forms of security, such as social and economic security, are of a great importance unlike the traditional security normatives (for example military security), as the threats of this type could not be noticed at first sight. Some authors argue that globalization is one of the sources of this problem, because it enables the world integration of social, economic, and political aspect, which by itself entails a significant change in the scope of economic security.

The conjunction of economics and security, or *economic security*, has more recently become an increasingly important dimension of both international political economy and security studies, driven not only by academics in the field but also by institutional shifts in the global power. The line between the study of security and the question of economic order has become far less evident, as more and more scholars have highlighted the importance of studying the two aspects together. And yet, for the most part, the work in this field focuses on the state as the referent object; only then does economic security come to figure. 'If the state is taken as the referent object, *then* economic security becomes part of the national security agenda', says Buzan (2007), adding that 'the idea of economic security becomes awkwardly entangled with a range of highly politicized debates about employment, income distribution and welfare.' For this reason, Buzan (2007) suggests, the conflation of social and national security can be electorally persuasive. The suggestion is that there is much more at stake here than the question of electoral gains. At stake are the far more substantive political gains by the state from the idea of security. If, as Mick Dillon (1996) suggests, we think of security not as a noun that names something but as a principle of formation, then we can consider security as the principle of formation behind the reordering of the social world. And so, building on arguments I have made elsewhere, I will argue that what is at stake in this principle of formation, is the fabrication of economic order, at the heart of which is the idea of 'economic security' and which can be seen in both its internal/domestic dynamics (social security) and external/international dynamics (national security) (Neocleous, 2000).

According to the International committee of the Red Cross, economic security is defined as the ability of individuals, households, or communities to cover their essential needs sustainably and with dignity. This can vary according to an individual's physical needs, the environment, and the prevailing cultural standards. Food, basic shelter, clothing, and hygiene are qualified as essential needs, as does the related expenditure; the essential assets needed to earn a living and the costs associated with health care and education also qualify (International Committee of the Red Cross, 2015).

In the business dictionary, economic security is a situation of having a stable source of financial income that allows for the on-going maintenance of one's standard of living currently and in the near future (BusinessDictionary, 2018).

Barry (2007) suggests that *economic security* is the most important aspect of the entire aspect of sustainability. Economic security is often defined in general terms as “the degree to which individuals are protected against hardship-causing economic losses”.

Economic security is composed of basic social security defined by access to the basic needs for infrastructure pertaining to health, education, dwelling, information, and social protection, as well as work-related security. Basic security implies to limitation of the influence of the doubts and the risks, which people face every day while providing social environment in which they can belong to numerous communities, they will be given fair possibilities to continue with the careers they had chosen, and develop their capacities through their decent work.

Boštjan Udovič (2006) claims that “economic security, as understood in the liberalist's framework, is economic security of interstate relations (markets) and economic security of individuals. Only individuals with their basic needs and requests can be promoters of common values and cosmopolitanism. Free markets and change are guarantees for economic and political stability and security”.

General conclusion of defining the economic security term is that literature cannot offer unique definition, because it depends of the approach of the authors and studying methods and techniques of the economic security

In continuation, we will consider the seven components of economic security according to the Socio-Economic Security programme. Although all seven components are important, two are of crucial meaning for basic security. These two components are the income security and the representation security. According ILO, seven important components are the following³:

- Income security denotes adequate actual, perceived and expected income, either earned or in the form of social security and other benefits. It encompasses the level of income (absolute and relative to needs), assurance of receipt, and expectation of current and future income, both during working life and in old age or disability retirement. Classic income security protection mechanisms include a minimum wage machinery, wage indexation, comprehensive social security, and progressive taxation.
- Representation security refers to both individual representation and collective representation. Individual representation is about individual rights enshrined in laws as well as the individuals' access to institutions. Collective representation means the right of any individual or group to be represented by a body that can bargain on their behalf and which is sufficiently large, sufficiently independent and sufficiently competent to do so. Independent trade unions with the right to collectively bargain over wages, benefits, and working conditions as well as to monitor working practices and strike have been typical forms of granting representation security.
- Labour market security arises when there are ample opportunities for adequate income-earning activities. It has a structural component, in that it represents the types and quantity of opportunities. Furthermore, it has a cognitive side, as it also features expectations that opportunities are or will become adequate. Policies aimed at enhancing this form of security have included full-employment oriented macro-economic policies, the creation of employment agencies, and other placing services.

3 International Labour Organization.

- Employment security is protection against loss of income-earning work. For wage and salary workers, employment security exists in organizations and countries, in which there is strong protection against unfair or arbitrary dismissal and where workers can redress unfair dismissal. For the self-employed, it means protection against sudden loss of independent work, and/or business failure. Typical forms of enhancing employment security have been protection against arbitrary dismissal, regulations on hiring and firing, and imposition of costs on employers for failing to adhere to rules.
- Job security signifies the presence of niches in organizations and across labour markets allowing the workers some control over the content of a job and the opportunity to build a career. Whereas employment security refers to the opportunity of a worker to continue working in an enterprise, job security refers to the worker's ability to pursue a line of work in conjunction with his or her interests, training and skills. Protection mechanisms have consisted of barriers to skill dilution such as craft boundaries, job qualifications, restrictive practices, craft unions, etc.
- Work security denotes working conditions in organizations that are safe and promote workers' wellbeing. Classic "occupational health and safety" provisions shielding workers from occupational hazards, diseases, and injuries are an integral part. Work security goes beyond this, though, in addressing the modern scourges of stress, overwork, absenteeism, and harassment. Protection devices for work security include provisions and insurance against accidents and illness at work, and limits on working time.
- Skill reproduction security denotes workers' access to basic education as well as vocational training to develop capacities and acquire the qualifications needed for socially and economically valuable occupations. Ways to further skill reproduction security include policies to generate widespread opportunities to gain and retain skills through education, apprenticeships, and employment training. (International Labour Organisation [ILO], n.d.).

Some authors (Udovič, 2006) set three Divisions on economic security factors. The economic security is the complex idea that could be analysed on the three main levels: (a) micro level - person or household perspective; (b) mezzo level - enterprise or regional perspective; and (c) macro level - countries or groups of countries (Wysokinska-Senkus & Raczkowski, 2013).

Boštjan Udovič (2006) proposes to identify how economic security is guaranteed and discover the ways for avoiding economic insecurity. The critical factors at the three major levels have to be identified: macro, mezzo, and micro. The critical factors shown in Table 1 are basically the indicators of the economic security growth. The identification of critical factors allows assigning metrics that could be monitored and programmed.

Table 1: *Division of economic security factors*

Macro factors	Mezzo factors	Micro factors
<p>Crucial factors State, interstate relations, world</p> <ul style="list-style-type: none"> • Stability of the state markets, • Free trade, • Competition, • Sustainable development, • GDP growth, • Productivity, • Low inflation rates, • Low unemployment rates, • Stable exchange rates, • Balance of payments equilibrium, • Indebtedness, • Stable “endowment” with production factors (oil, gas ...), • Avoiding and reacting to speculative attacks, • Solving problems connected with drugs using, trafficking and criminal groups. 	<p>Enterprises, firms, business associations</p> <ul style="list-style-type: none"> • Stability of state macroeconomic environment, • Innovation, new inventions, • Marketing, • Solvency and financial discipline, • Flexibility, • Stable “endowment” with production factors, • Technology diffusion, • Flexibility of administration, • Stable exchange rates, • Lean production, • Ethical dilemmas, • Knowledge, • Minimising black market production. 	<p>Individual persons, families, societies</p> <p>Stability of state macroeconomic environment</p> <ul style="list-style-type: none"> • Food, water, shelter stability, • Lodging, • Job security, stability, • Stable and “fair” wages, • Trust in institutions, • Minimising (absolute and relative) poverty, • Minimising social exclusion (maximise individual reputation), • Education, • Minimising phobias and variousisms, • Degethoising, free movement of individuals, • Avoiding the “magic circle” of living standards and employment.

Source: Udovič, 2006

DETERMINANTS AND MEASUREMENT OF THE ECONOMIC SECURITY INDEX

There are many reasons for the concern about the global trends which influence economic security, and relatively a small amount of information about the real models and trends. None of the statistical measures of the complex phenomenon can be implicitly satisfactory, neither conceptually nor empirically. In this case, that framework rests on the standpoint that the seven forms of economic security, which are work-related, embrace a whole sequence of forms of economic security, and that the high values of security in all seven aspects would imply a good work.

One of the reproofs of the broadly-used Human Development Index (HDI) of UNDP is that its standpoints are out of the structures and the law. In this aspect, the procedure, which will be considered further in the paper, implies a three-layered approach which is intended to identify the political measures of involvement of a certain form of security (indicators of inputs), in order to identify measures of the mechanisms or processes which were created for conduction of the obligation (process indicators) as well as to identify measures of the situation in relation to that form of security (indicators of outputs). Thus, the positive outcome in a certain period can be instable, if the international conventions were not ratified in the country, if the principles were not adopted in its constitution, or if institutions for sustenance or promotion of that outcome do not exist.

If the conceptualization of the social-economic security or *human security* is difficult, then its measuring is even more difficult. The aim is to plan measures for security at national level by completing estimation and comparing the levels of security, observing the changeable patterns, and observing and estimation of the influence of social and economic policies.

In order to achieve this, we would have to rely on the proxy measures of performance. In this regard, there must be a clear distinction between an index and an indicator. For each complex phenomenon, we can choose separate indicators of dedication or achievement. The empiric analysis depends on the indicators. But, they have their limitations. The indicators can be “ad hoc”, and almost always they affect only part of the situation.

ESI is a complex measure of the target phenomenon which consists of a combination of a selected group of indicators. The nature of the index is inclined to make the results controversial. They combine several related phenomena, so it is a challenge to achieve appropriate balance among the indicators.

For acceptance of the different dimensions of any form of security, three types of indicators are developed (Kucera, 2001):

- *Inputs indicators* are the national and international instruments and regulations necessary for protection of the workers. They are identified, for example, as existence of basic laws or ratified conventions of International labour organisation for work-related hazards, partial firing, the right to organization, etc.;
- *Process indicators* are the mechanisms or the resources through which these “input” principles and regulations are implemented. Examples of this are the level of public expenses of a certain form of security, existence of labour inspectors, and existence of tripartite boards related to labour; and
- *Indicators of the outcomes* are the elements, which provide an estimation of whether the *indicators of input* and the *process indicators* are efficient, especially in the securing of protection to the workers. For example, the indicators of the outcomes will estimate the percentage of efficiently protected worker, participation into collective contracts and gaining of beneficiaries or pensions.

One of the key principles for the choice of indicators is the availability and the credibility of the data. Every indicator should be reasonable, transparent, proxy for a well-defined phenomenon, and it should have appropriate clear meaning. Also, every indicator should be stable, eligible for statistic validation, measurable and comparable in different countries and communities.

The heterogeneity of the national situations led to the development of two indexes, one for the industrialized countries (IC), and one for the “less developed countries” (NPC). One of the reasons is the difference in the availability of the data in both groups of countries. The indexes of the first group have the tendency of being more complete because a broader spectrum and a more refined multitude of indicators are available. In some cases, the index for NPC, because of the limitation of the data, include attributed values for certain variables obtained in the application of techniques about disappeared values.

In the recent years, there has been proliferation of the index of performances, of which many experts try to identify “good practices” and “good performers”.

Here, economic security is accomplished by combining of the normalized values of the seven socio-economic security indexes in order to achieve a composite measure specified as Economic Security Index - ESI. ESI is defines as a weighted average of the results of the seven forms of security in which the double weight is given to the income security and

the representation security. As the basic security is of crucial meaning for a real freedom of choice, thus is the representative security of crucial meaning for the endangered countries to retain income security.

The idea of economic security is that people have a necessity to combine forms of social and security work relations, which tends to develop. In a certain sense, economic security is an abstract means, although in essence, as it is defined, it includes legal and institutional measures of protection, which make it a very real phenomenon.

A group of authors from Federal Reserve Bank of San Francisco analyses the ESI. The Economic Security Index (ESI) is a new measure of economic security designed to foster research and policy analysis. Using a simple definition of economic security and measured using U.S. panel economic data, the ESI provides a new perspective on the dimensions, distribution, and development of American economic security. The ESI is an annual index that represents the share of individuals who experience at least a 25 percent decline in their inflation-adjusted "available household income" from one year to the next (except when entering retirement) and who lack an adequate financial safety net to replace this lost income until it returns to its original level (Hacker et al., 2012). The ESI provides a picture of three important features of the American unstable economic circumstances: the probability of large household income declines, the possibility of large medical-out-of-pocket (MOOP) spending shocks, and the capacity of households to buffer these economic events by spending down liquid financial wealth. These (along with retirement) are the economic risks that Americans are most worried about in the survey context, and they are also the risks that individuals believe are most beyond individual control (Rehm, Hacker, & Schlesinger, 2012).

Though the ESI was constructed to provide a reliable indicator of economic security consistent with the twin goals of rigor and accessibility, it is by no means an exhaustive measure, and further research is needed to augment and complement it. For example, while the ESI accounts for medical spending, it does not capture other expenses that might be considered nondiscretionary, such as the expenses required to earn income through working (including child-care costs). Examining their impact on fluctuations in available household income would be a natural extension of the ESI.

Similarly, the ESI also does not capture changes in the risk that individuals will lack adequate retirement income (though other measures of this risk exist and suggest it has increased over time). The main conceptual obstacle to the incorporation of this risk into the ESI is the need to measure the risk of inadequate retirement income on a comparable basis or scale with the risk of large short-term losses in the available income. It is worth noting, however, that the ESI's treatment of earmarked retirement wealth as unavailable for buffering current income losses incorporates the idea that individuals need to save for retirement and that using retirement savings for current consumption jeopardizes future security.

The ESI measure has several limitations in means that those who go without necessary medical care or insurance may look more secure than they really are. The ESI incorporates buffers in two ways: (a) by adopting as broad as possible a definition of income, and (b) by focusing on individuals' *household* income, adjusted for household size. Briefly, the measure of income used for the ESI includes earned income, property and asset income, cash transfer payments (including private transfers, such as gifts), private pension payments, unemployment benefits, lump-sum and one-time payments, and regular salary or other income from a self-owned business (Kezdi & Sevak, 2004).

ESI of a certain country points out to the degree of economic security of the country, in a relative sense. The high score indicates that a certain country provides stronger security than the one with a low score. But, a high score does not necessarily mean that the country provides a strong environment of economic security, but only that it is better than the results of many other countries. It is a relative measure, not an absolute one.

According to ILO, the Economic Security Index (ESI) has been calculated for over 90 countries (covering 86% of the world's population). This is based on seven forms of work-related security, taking account of policies, institutions, and outcomes in each case. The results of ESI, by definition, are limited to values between 0 and 1. The control of the distribution of these results indicates that the countries are reasonably close to normal distribution (Figure 1).

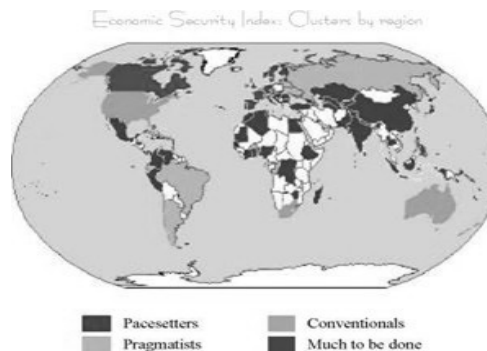


Figure 1: *Economic Security Index*

Source: ILO, n.d.

There are few analyses and measurement of the economic security index. According to the Socio-economic Security Programme at national levels of economic security, countries are divided into four clusters - Pacesetters (with good policies, good institutions, and good outcomes), Pragmatists (good outcomes in spite of less impressive policies or institutions), Conventional (seemingly good policies and institutions but with less impressive outcomes) and Much-to-be-Done countries (weak or non-existent policies and institutions, and poor outcomes). The report shows that about 73% of all workers live in circumstances of economic insecurity, while only 8% live in “pacesetter” countries, i.e., in societies providing favourable economic security (ILO, n.d.).

Many rich countries could achieve a better economic security for their citizens, since some lower-income countries achieve higher levels than some of the rich countries. Indeed, the International Labour Organisation analysis finds that the global distribution of economic security does not correspond to the global distribution of income, and that South and South-East Asia have greater shares of economic security.

CONCLUSION

The national economy deals with numerous activities that include the production and distribution of goods and the provision of services essential for the lives of people and the functioning of society and the state.

Economic security is the protection from the economic potential of physical danger, and each means the absence of threats that can jeopardize stability and economic independence. Economic stability becomes an important segment of every national security. But, there is small number of researches in the part of economic security. One of the basic problems is

the different approach of measuring and the very necessity of measuring. Many countries in the world do not measure their economic security at all. Measuring of economic security is represented by the economic security index, which contains different determinants for different countries. This is why the world needs implementation of the measures and mechanisms for strengthening of the economic security. The measures and mechanisms of economic policy must be conceived in a way that would obstruct the external as well as the internal factors in their intention to threaten economic security of the country. That would be accomplished through detection of the factors and installation of unified indicators for measuring of economic security.

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SECURITY RISKS ASSESSMENT AND SECURITY POLICY IN THE REPUBLIC OF MACEDONIA

Saše Gerasimoski¹, Marjan Nikolovski², Marjan Gjurovski³

ABSTRACT

This paper is aimed to show the importance of quality risk assessment for leading successful security policy within the security institutions in Republic of Macedonia. Primarily, we rely on data gathered from our survey conducted with members of different security institutions in Republic of Macedonia from public, state and private security. The paper tries to highlight how the contemporary security risks are defined, perceived and what is the awareness within the security institutions of the need for scientifically based security risk assessment. The limitations of the paper could be seen in the fact that although quite relevant opinions are being surveyed, the wider generalizations could not be possible without wider research of the public opinion. The originality lies in researching the nexus between risk assessment and security policy and on the need for scientifically based approach on risk assessment as crucial precondition for making successful security policy.

Keywords: risk assessment, security policy, security institutions, Republic of Macedonia

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INTRODUCTION

Risks have always intrigued human curiosity, from the dawn of humanity till nowadays. Peter Bernstein rightly remarks that “*all human history is in fact history of risk and that the very idea of mastery of risk defined the boundary between past and modern times*” (Bernstein, 1996: 1). The concept of risk, usually understood in security terms as “*security risk*”, and defined as “*probable, expected event, possible danger that could cause some detrimental consequences to values*”, has become central notion in social and security sciences in the last few decades (Giddens, 1990: 30; Lupton, 1999: 8; Spaseski, Nikolovski, & Gerasimoski, 2010: 179). Security as instrumental and one of the most important values is mostly related with security risks and various ways of dealing with them. The era that we are living today could be even named, without much exaggeration, as an era of uncertainty and risk society (Bauman, 2016; Gerasimoski, Nikolovski, & Gjurovski, 2017). The concept of risk is understood as means through which people understand and deal with the dangers and uncertainty during the course of the life (Georgieva, 2006: 83).

It is almost unimaginable that a sound scientific research about risks and security risks in particular, could be done without taking into consideration and implementing the theoretical knowledge provided by Ulrich Beck, Anthony Giddens and Zygmunt Bauman. Their insightful and influential findings are unavoidable for everyone who is to carry out any kind of research that includes risks, their character, their aetiology and phenomenology, and in security terms, their prevention, assessment and treatment. Ulrich Beck’s and Anthony

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Giddens' theories of risk belong to the group of theoretical orientations known as reflexivity risk theories. This group of risk theories consider the processes of reflexive modernization, individualization and institutional reexamination as processes that try to reveal the character of the risk in the nowadays society and to obtain ways of dealing with it. Apart from this group of risk theories, there are also two other groups of risk theories: rationalistic theories and social and cultural constructivist theories (Gerasimoski, Mojsoska, & Trajkovska, 2013).

The point of reflexive modernization, according to the founder of this coinage, the German sociologist Ulrich Beck in its brilliant book *The Risk Society: Towards a New Modernity* Beck, 2001 is consisted in the development of the character of the risks and their manifestation in what he calls the second or new modernity, and that is in fact the era of "the risk society that increases our sensitivity and ability of thinking and changing the societal conditions of existence" (Bruce & Yearley, 2006: 256). He considers the risk as very ambivalent concept (Yates, 2001). Modern society has become a risk society in the sense that it is increasingly occupied with debating, preventing and managing risks that it itself has produced (Beck, 2006). In the era of industrial society and first modernity, the solid structure of the society contained the logic of production and distribution of the goods. Here, we have a domination of the so called external risks, i.e., risks that above all, come from the nature and known societal reality. As the modernity progresses, thus the character of the risks changes, meaning that from external they are becoming more and more fabricated, new and more numerous, diversified, unpredictable and all-present (Giddens, 2002: 24; Godard et al., 2002). In that way, the risks and living with them becomes one of the fundamental determinants of the second modernity and so called reflexive modernization, in which the previous logic of production and distribution of goods has been substituted with production and distribution of risks, dangers and evils (Beck, 2001: 31; Maršal, 2004: 453-454). Or as Ulrich Beck brilliantly concluded: *we are suffering from the consequences of the victory of modernity* (Beck, 2003: 99).

One of the most influential social thinkers of our time is surely the renowned British sociologist and philosopher Zygmunt Bauman. His contributions to theoretical study of contemporary risks must be viewed within his broader theories of liquid modernity and living in an age of uncertainty. Thus, his ideas about risks and security risks in particular, have much in common and complement with theoretical understanding of risks by Beck and Giddens, but, also, in some important aspects differ from them. Bauman remarks, we are now living on a "quick sands" (Bauman, 2000: 2). This is an era where postmodern societal relations have created such uncertainties where "risks and fears became privatized" (Bauman, 1992: 18; Bauman, 2005: 345). Nothing is stable or sure, and it is changing with every passing day. No one seems to be in control. This instability comes mainly from the basic forces of societal change that are found in societal relations shaped within globalization and postmodernization processes.

RELATEDNESS BETWEEN SECURITY RISK ASSESSMENT AND SECURITY POLICY

Security risk assessment is considered to be of vital importance in dealing with contemporary security risks, threats and endangerments. The security policy accentuates the need for quality security risk analysis as crucial precondition for bringing right decisions concerning the treatment of various and more dangerous forms of security risks. The security risk assessment nowadays is also more important compared to security assessment of threats and endangerments. This is due to the fact that contemporary security risks must be effectively assessed if we want to avoid the highly detrimental consequences that they could inflict to people, property or other phenomena.

The security risks assessment represents a phase within the process of security risks management, but also the assessment is one of the most significant documents that are being prepared in the overall process (Milosavljević, 2012: 141). Therefore, it is of crucial importance for the further security risks forecast and at the same time it is basis on which the best possible decisions considering the treatment of security risks have to be brought. The security risks assessment and security risks forecast fall into the risk analysis phase, which includes a multitude of procedures that determine the risk factors, their significance, probability, the possible consequences, the criticality and the vulnerability of the value that should be protected against the possible security risks. The final result of the security risks assessment is the determination of the size of the risk (risk level, risk index), which further serves as basis on which the most appropriate ways of treatment are later proposed, brought and implemented. This treatment implies implementation of different security measures and activities that can vary depending on the risk level, i.e. from security measures and activities applied in acceptable risk level (security risks which could be kept) to security measures and activities applied to unacceptable risk level (security risks which have to be treated with immediate security measures and activities). Usually, we speak about five different ways of security treatment according to the risk level, from acceptable to unacceptable (retention, transfer, sharing, reduction and avoidance) (Keković, Bakreski, Stefanovski & Pavlović, 2016; Vogan, 2014).

The word assessment itself, and the procedure for assessing security risks can sometimes be unclear because the word assessment can refer to determining the character and constituent elements of the risk (risk factors) as the basis for scientific prediction (forecast) of security risks in some near future, and may also mean a prediction process, i.e. forecasting their manifestation in the future. It is also within the spirit of Macedonian language, which we took as relevant for our research, where, besides as a process of assessment or evaluation or a result from it, the assessment is also understood as an opinion or judgment for an occurrence or event of reality (Murgoski, 2005: 659). So, the assessment may have the significance of the risk factor assessment, but also the prediction. However, within the spirit of science of risk management, we will consider the assessment as a procedure within the security risks analysis phase which aims to determine the nature and content of risks in terms of risk factors, as well as to determine the size (level, index) of risk by analysing the risk dimensions (probability, criticality, vulnerability and consequences of risks and security risks in relation to the established objectives and values of the entity). Here we distinguish the scientific risks assessment from the scientific risks prediction (forecast), under which we consider the procedure of the risk forecast, which together with the security risks assessment constitute the phase of the security risks analysis. This could be better seen in our Figure 1.

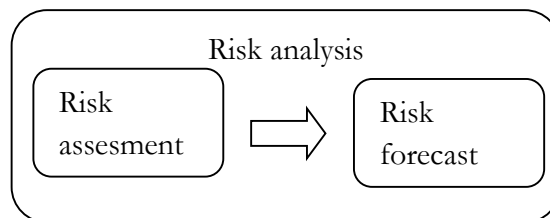


Figure 1: *Relatedness between security risk assessment and security risk forecast as part of the security risk analysis*

Based on the above, we should define the security risks assessment as a procedure within the risks analysis phase, where by using the appropriate risk assessment methods we determine the risk factors and the size of risks (level, index), which serves as basis for further forecasting and treatment of security risks. It is a process of assessing security-related risks from internal and external threats to an entity, its assets or personnel (ASIS International, 2003: 5). Security risk assessment is part of the security assessment which implies full analytical description and account of conditions and factors that stabilize or destabilize security state as well as organization and capability of the subjects of the security system to guarantee favourable security state (Spaseski, Aslimoski, & Gerasimoski, 2017: 116). Quantitative, qualitative and combined (qualitative-quantitative) methods can be used as methods for security risks assessment. Their application often involves the development of matrices of variables of risk assessment (usually containing a set of probable outcomes obtained by multiplying probability and detriment), which in fact represents the crossing of risk variables, and thus makes easier the determination of the security risk size (level, index) (Starčević, Ilić, & Paunović-Pfaf, 2010: 14).

Considering the paper limitations regarding the maximum length of the paper on one, and the importance of scientifically based methodology for risk assessment on the other, we could mention that in Republic of Macedonia, according to the authors' knowledge, there are institutions, mostly from the private security sector (both from contract and in-house security) that have been using this kind of scientific methodology. Methods of risk assessment come from different areas in which a need for risk management exists, but most of the methods derive from the science of health and safety at work, military industry and more recently, from computer security. Amongst the methods used in Republic of Macedonia we could mention the General method for risk assessment by Keković et al. (2016), the Kinney and the AUVA method. The first two methods are qualitative, and the last one is considered quantitative (Dorevski, 2013; Gerasimoski, 2016; Gemović, 2011; Keković, Glišić, & Komazec, 2010; Kinney & Wiruth, 1976). What is really interesting, is that except for the AUVA method, which is used for assessing the risks related with health and life of employees within the legal entities, the usage of other two methods (General method of Keković and Kinney method), which are used both for property as well as persons' security risk assessments, has been really small in state and public security institutions (Dorevski, 2013). That was actually confirmed by the results from the survey explained further in the paper.

The importance of the nexus between security risk assessment and security policy can be summarized in the following:

- scientifically based security risks assessment is considered as the most vital precondition for leading quality security policy;
- the security risks assessment should determine the most important risk factors, risk level (size, index) and ways of security treatment;
- security risk assessment is crucial for determining the state of security and further for bringing sound decisions concerning the security policy;
- the security risk assessment is the basis of contemporary security prevention policy; and
- although the implementation of scientifically based methods of security risk assessment is not without weaknesses, it is considered far more objective and useful when compared with security risks assessment based only on one's personal experience.

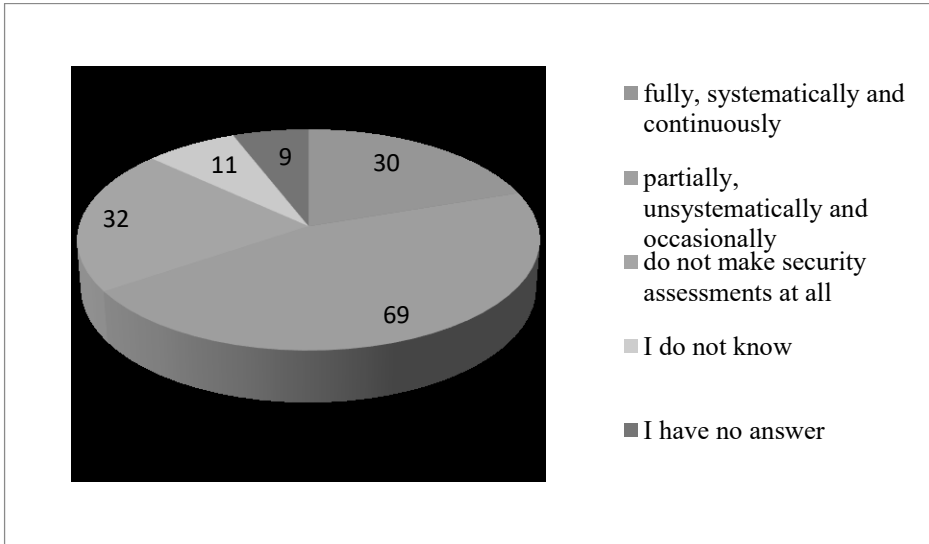
A SURVEY OF SECURITY RISKS ASSESSMENT AS PRECONDITION FOR SUCCESSFUL SECURITY POLICY IN REPUBLIC OF MACEDONIA

In the course of 2017 a team of researchers from the Faculty of Security in Skopje consisted of the authors of this paper, conducted a research titled *A Research on Security Risks in Republic of Macedonia*. The research was empirical and basically consisted of survey with representatives of security institutions in Republic of Macedonia from public, state and private security sectors. Territorially, the respondents were from different cities within the country: Skopje, Kumanovo, Bitola, Vinica, Kičevo, Kratovo, Ohrid and Struga. The sample consisted of 151 respondents from security institutions whose competence was security and more specifically security risks, from the following security institutions: (a) The Cabinet of the President of Republic of Macedonia; (b) Intelligence Agency; (c) Ministry of Defence; (d) Ministry of Internal Affairs (Security and Counter-Intelligence Directorate, Public Security Bureau, Criminal Police and Uniformed Police); and (e) The Chamber of the Republic of Macedonia for Private Security.

The questionnaire itself was semi-structured and consisted of open and closed questions. It contained 12 questions, and basic biographical data. The questions were structured to give answers to following issues: defining and understanding the notion of risk; ways of acquiring knowledge about risks; assessing the vulnerability of society to the types of risks; assessing the type of society we are living in terms of risks; listing the most significant security risks and their gradation according to the importance from the most important to the less important; the intensity of the influence of the risks on the personal safety as well as the security of the vital interests of the state; investigation of the reasons for the current security risks in the Republic of Macedonia; assessment of the quality in the creation and implementation of the security policy; the existence and the quality of the applied methodology and the assessment of security risks (in particular the existence of a scientifically based methodology for assessing security risks); the treatment of security risks and the application of various security strategies in dealing with and managing security risks.

For the purposes of this paper, we have selected and analysed the answers from questions no. 9 and no. 10 from the survey questionnaire. In the lines that follow, we will present the results obtained from the answers on these questions, with necessary interpretation, cross-reference with some answers on other related questions and comments.

According to the question no. 9 from the questionnaire, the respondents were asked to answer the following closed question: "According to your observations, the security policy holders in Republic of Macedonia (public, state and private) carry out security risk assessments: (a) fully, systematically and continuously, (b) partially, unsystematically and occasionally, (c) do not make security assessments at all, (d) I do not know, and (e) I have no answer". The criteria used for option a) were: the security risk assessment which was done in detail for the priority risks, on a routine basis (every day). The criteria used for option (b) were: the security risk assessment which wasn't done in detail, even for the priority risks, and wasn't done on a routine basis, but occasionally (for instance once in a period of time: weekly, monthly or yearly). The respondents could choose only one of the possible answers. The results obtained can be seen on our Graph 1.



Graph 1: *Carrying out of security risks assessments within the security institutions in Republic of Macedonia*

Interpretation and comment. As we can see from the Graph 1, convincing majority of respondents, even 69 out of 151 or 46 % answered that security risks assessments have been done partially, unsystematically and occasionally, 32 respondents or 21% answered that they did not make security risks assessments at all, while 30 respondents or 20% said that security risks assessments have been fully, systematically and continuously done. The distribution of answers shows that we have pretty unsatisfactory state in terms of carrying out of the necessary security risks assessments within the security institutions in Republic of Macedonia. Only small number of all security institutions (public, state and private as already mentioned above), one fifth of them, claim that they carry out proper security risks assessments, meaning that they've been doing this on a routine basis, fully, systematically and continuously. What is really concerning and even disturbing is the fact that a high 21% of all security institutions do not make security risk assessments at all, and when combined with majority of 46% of all security institutions which claim that security risks assessments have been done partially, unsystematically and occasionally, we get a clearer picture that most of security institutions are not considering security risks assessments as something crucial for their work and not paying the necessary attention. Since detail, full, on time and routine security risks assessment is vital precondition for successful prevention and sound security policy, we can see why the security institutions in Republic of Macedonia show constant deficit and unsatisfactory level of prevention of different security risks, threats and endangerments. This can be evidently observed in official statistical data, where security risks related with some criminal activities are constantly rising (such as crimes against persons and property), which we believe that, in significant part, could be due to poor risk assessment, which further study in this field could reveal in the future. All of this shows failure of prevention and security policy in all security sectors (state /Intelligence Agency and Ministry of Defence/, public /Ministry of Internal Affairs/ and especially private /The Chamber of the Republic of Macedonia for Private Security/) and in dealing with some major security

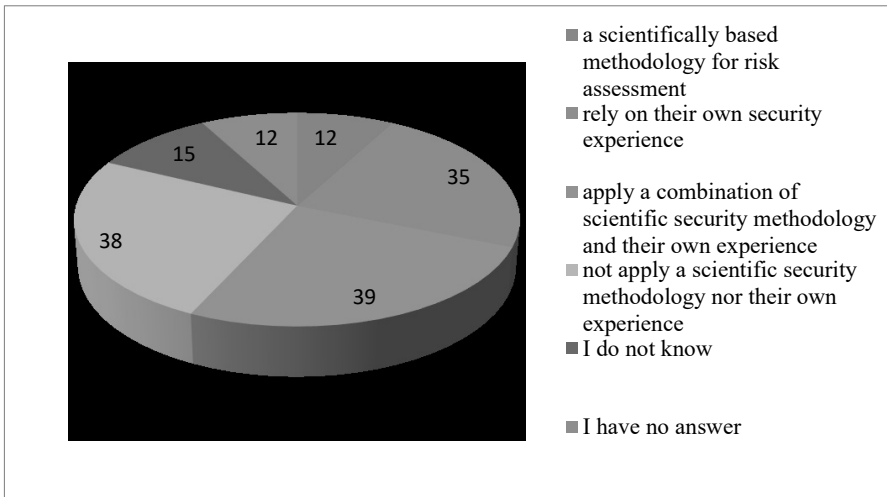
risks, such as organized crime and corruption where state and public security institutions show unsatisfactory prevention performances and results. For instance, although the official data in the previous years show tendency of decline in number of felonies, which is by itself very puzzling and controversial for many domestic scholars and experts, nevertheless is still very high, so that the reported felonies for 2016 reached 21 089. In our opinion, without further reference to neighbouring countries or wider in Europe, we believe that this number is pretty high for a country with a population of 2 million like Republic of Macedonia (Državen zavod za statistika na Republika Makedonija, 2017: 12). In addition, we should add that there are some expert opinions who believe that this number is far from being real, and that there are deficiencies in the system of reporting and recording of felonies (Rečkoska, 2017).

Furthermore, when results from the answers on this question are compared and crossed with the answers on other questions from the questionnaire, we get interesting findings. For example, concerning the question no. 4 from the questionnaire, which was aimed to determine the most significant security risks, the respondents answered that terrorism, distorted system of societal values, inappropriate security policy, corruption and danger from interethnic conflict were deemed as most significant, starting from terrorism as most significant and ending with danger from interethnic conflict as least significant. We can see that inappropriate security policy is very high on the list and it occupies 3-rd place by significance. This also urges security experts within the security system to devote in dealing with this kind of security risk as manufactured, to use security risk assessment and to try to implement modern scientific methodology in order to improve their work, thus reducing the possible negative impact of this risk. This methodology, allows for the security institutions to have the risks properly detected, singled out, assessed, and, if needed, even scientifically forecasted. By using them, the security institutions could have more precise ground on which they could base their decisions on security measures and activities of treatment they could undertake. It could save them a lot of time, money and could eliminate the always present uncertainty and subjectivity of the security assessments made solely or predominantly on human experience.

Also, almost all the most important security risks are manufactured by its nature, which means that they were produced by inadequate human decisions, so that the most successful way of dealing with them and treatment has to be looked within improvement in the process of security risk assessment and management. The final result of this process should bring improvement of the decision-making process and thus reduction or even elimination of some manufactured security risks. As we already mentioned, inadequate security policy was determined amongst the five most important security risks. Since this is typical manufactured risk, we strongly believe that implementation of the scientifically based security risk assessment (preferably by using General method of risk assessment, Kinney and AUYA methods), could help significantly reduce the possibility of occurrence of this kind of manufactured risks and could help more easy detection, prioritization, assessment and treatment of other manufactured risks (such as crime, corruption etc.) (Nikolovski, Gerasimoski & Gjurovski, 2018).

According to the question no. 10 from the questionnaire, the respondents were asked to answer the following closed question: "According to your perceptions, the security policy holders in Republic of Macedonia (public, state and private) for the purpose of security risks assessments apply: (a) a scientifically based methodology for risk assessment, (b) rely on their own security experience, (c) apply a combination of scientific security methodology

and their own experience, (d) do not apply a scientific security methodology nor their own experience, (e) I do not know, and (f) I have no answer". The respondents on this question could also choose only one of the offered answers. The questionnaire didn't include further explanations on the meaning of scientifically based methodology for risk assessment, since the researchers started from the assumption that the security institutions, as highly expert institutions in the field of security, should possess not only knowledge on these methods, but also, should know how to implement them. The results obtained can be seen on our Graph 2.



Graph 2: Usage of scientific methodology vs. own security experience for security risks assessments within the security institutions in Republic of Macedonia

Interpretation and comment. According to results obtained from this question, the distribution of first three answers is pretty equal compared to that of the previous question. Thus, 39 respondents out of 151 or 26% answered that security institutions apply a combination of scientific methodology and their own experience when carrying out security risks assessments, 38 respondents or 25% said that they did not apply a scientific security methodology nor their own experience in carrying out security risks assessment (which presumably means that this procedure is either unknown to them or they are not interested in carrying it out) and 35 respondents or 23% replied that they rely on their own security experience in order to perform security risks assessments. What is interesting here is very low number of answers related to usage of scientifically based methodology for carrying out of security risks assessments, and that is only 12 answers or 8% of all answers. It means that number of security institutions in Republic of Macedonia that use scientifically based security risks assessments, in our opinion and considering the importance of risk assessment for the security institutions, is unacceptably low, even when combining the two answers (the security institutions that use scientifically based security risks assessments and those that use combination of scientifically based and security risks assessment based on their own security experience, which combined together gives us a number of 51 answers out of 151 or 34%, which is about one third of all security institutions).

We can say that the security institutions in Republic of Macedonia generally do not apply contemporary and scientifically based security risks assessments, which could be attributed

to various reasons that we can enumerate here only on grounds of assumptions that should be further researched. Amongst the reasons could be: unawareness of the existence of scientifically based methodology (which was only assumed at the beginning of the study, but was clearly shown with the answers obtained); exaggerated belief and reliance on advantages of security experience rather than on science; higher costs related to implementation of scientifically based methodology for security risks assessments when compared with reliance on own security experience; widespread belief that most of the risks are manufactured and that they need an array of other approaches to be dealt with except the rationalistic ones based on scientific knowledge of risk management etc.; belief that contemporary risks can be most successfully dealt with based on person's own experience, or the so called theses of *privatization of risks* or belief that *everyone is true risk expert*, etc. (Adams, 1995: 1; Mojanoski, Dimovski, Gjurovski, & Ilijevski, 2015: 123).

It is evident that there is a substantial lack of awareness of the need for scientifically based security risk assessments as well as their implementation within the security institutions in Republic of Macedonia. Therefore, the security institutions should turn more to scientific institutions and gain the necessary scientific and expert knowledge to implement some of the scientific methods for risk assessment. For instance, the security institutions could take advantage of implementation of Kinney, AUVA, PILZ, Guardmaster, BG, FINE and other methods of security risk assessment (Gemović, 2011; Keković et al., 2010; Gerasimoski, 2016). Some of the methods, such as Kinney method, have proven to be relatively easy to use, do not require too much resources and previous expertise and provide relatively useful and objective security risk assessment that could be of valuable use when designing measures and activities of security treatment for persons, property and phenomena under risk (Dorevski, 2013; Stanković & Stanković, 2013). Although most of the scientific methods for risk assessment are based on theory of probability and are not freed of subjectivity, they are indeed useful orientation and tool that significantly eases and makes risk assessment more precise, allowing for making optimal choice of security treatment measures and activities, financing of security programs and leading successful security policy in general (Mojanoski, 2013). The very calculability of risk enables us to use quantitative and semi-quantitative methodologies for risk assessment, something which is made possible by the very nature of risk as probability phenomenon (Ilić, 2012: 35).

Having all this finding of our research, we can give some recommendations to security institutions in Republic of Macedonia on how to improve their risk assessment and security policy. The recommendations could be summed up in the following:

- quality security risk assessment has proved to be vital and indispensable for prevention security policies elsewhere, so they have to be leading principle in leading successful security policy within security institutions;
- it is of crucial importance for the overall process of decision making and leading successful security policy that the security institutions carry out security risk assessments on a routine bases, which means that security risk assessment should be done fully, systematically and continuously;
- there's an obvious need within security institutions to raise their level of awareness for usage of scientifically based risk assessment and to reduce their reliance on their own security experience when making risk assessments;
- although the most important security risks which security institutions face are manufactured and could not be entirely dealt with using scientific and rationalistic risk assessment approach, nevertheless, the usage of scientifically based risk assessment is a vital tool that could help in determining the risk factors, level of risk, ways of treatment and cost-benefit analysis when making security policy decisions; and

- security institutions from different security sectors (state, public and private) should bear in mind and implement various scientifically based methods in security risk assessments, such as Kinney, AUVA, Guardmaster, PILZ, FINE etc., which proved to be relatively easy to use, do not require much resources and provide good ratio of costs vs. effects.

CONCLUSION

The paper elaborates the importance of quality risk assessment for leading successful security policy within the security institutions in Republic of Macedonia. Based on the survey research that the authors of the paper have done with representatives of state, public and private security institutions in Republic of Macedonia, the authors present a number of findings, out of which two are the most important: relatively low level of carrying out the security risk assessments on regular basis and unsatisfactory level of usage of scientifically based security risk assessments when compared with reliance on own security experience when carrying out risk assessment. Although the most important security risks that security institutions are facing with are manufactured, the scientifically based risk assessment could serve as useful tool in determining risk factors, risk levels, ways of treatment as well as making sound security policy decisions. The recommendations call for full, systematic and continuous usage of scientifically based methodology of security risks assessment, suggesting some of the various methods that have proven to be successful and that could guarantee quality improvement in security policy of Macedonian security institutions.

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FEAR OF TERRORISM – AN EMERGING RESEARCH AGENDA IN BIH

Mile Šikman¹, Velibor Lalić²

ABSTRACT

One of the major features of the phenomenon of terrorism is to intimidate and instill fear in people. These effects are achieved by brutality and the scale of violence which cause anxiety and terror. The fear of terrorism is an important research subject because psychological effects considerably outweigh its physical effects. There is an abundance of papers published in the literature in Bosnia and Herzegovina (BiH) dealing with terrorism. However, there is a lack of research into the fear of terrorism. This paper presents findings from a questionnaire administered to the academic experts in terrorism and members of law enforcement agencies. The aim of the paper is to examine the attitudes based on the participants' professional experience regarding public fear of terrorism and to assess the justification for conducting, and the methodology of, research into the fear of terrorism.

Keywords: terrorism, Bosnia and Herzegovina, fear, risk, victims

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INTRODUCTION

Causing fear is one of the major features of the phenomenon of terrorism. This effect is achieved by brutality, quantity, and type of violence, which cause anxiety and horror on the one hand, while on the other hand terrorism gives an impression of terrorist organizations as being “powerful and strong”, thus proving the authorities’ “inability” to protect its citizens. Thus, “pressure” is created on government bodies, all for the purpose of achieving the terrorist goals. The psychological effects of terrorism considerably outweigh its physical effects, that is, the victim in this case is not limited to the immediate victim of a terrorist attack. Fear is one of the constitutive features of the phenomenon of terrorism. Despite various interpretations and definitions of terrorism, there is a consensus regarding the element of fear (Schmid & Jongman, 1988). Fear is immanent in the phenomenon of terrorism; it is its essence and dominant consequence. Terrorism is a global problem³ and research into the fear of terrorism is important to gain a deeper understanding of the concept. The entire Western Balkans region may be deemed vulnerable to radicalization and recruitment to terrorism. The United Nations Office of Counter-Terrorism emphasizes that radicalization and recruitment of foreign terrorist fighters have recently reached alarming levels (United Nations Office of Counter-Terrorism, 2017: 108). According to Europol report (Europol, 2017: 5), the conflict in Syria has had an enormous resonance in Albania, BiH, Kosovo, the Former Yugoslav Republic of Macedonia, and Serbia. The estimates demonstrate that

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3 According to the Global Terrorism Index, there has been an increase in the number of countries affected by terrorism over the last years. In 2015, terrorist attacks were carried out in 65 countries, while in 2016 terrorist attacks occurred in 77 countries (Institute for Economics & Peace, 2017: 2). In 2016, 142 terrorist attacks were either carried out or prevented in the European Union. In 2014, 226 terrorist attacks were carried out and 211 attacks in 2015 (Europol, 2017: 11).

more than 800 foreign terrorist fighters from the Western Balkans region traveled to Syria to join the terrorist organization. Some parts of the Western Balkans are particularly prone to radical Islamist ideology promoted by radical preachers or Salafi groups, questioning the traditional dominance of moderate Islam in the region. According to Europol, until recently, the region was considered to be the main hotspots for radicalization, recruitment of foreign terrorist fighters traveling to Syria as well as a well-established and recognized travel route to and from conflict zones in the Middle East (Europol, 2017: 5). BiH, one of the states formed after the breakup of the Socialist Federative Republic of Yugoslavia (SFRY), is facing the problem of terrorism. Thus, in the period 1992-1995, foreign terrorist fighters guided by the ideology of global jihad participated in the civil war (Schindler, 2007). During the first two decades following the Bosnian war, several terrorist attacks were carried out, while in recent years the focus of attention has shifted to the citizens of BiH traveling to Syria and Iraq to fight. According to Global Terrorist Index, the number of Bosnian citizens that have gone to Syria and Iraq estimated to around 300 (Institute for Economics & Peace, 2015: 47). The return of these fighters to BiH and the further process of radicalization are some of the issues that intensify the fear of terrorism. The topic of terrorism is very current in BiH (Azinović & Jusić, 2016) and has attracted a large amount of media coverage. The problem of terrorism in BiH polarizes the public and by analyzing the content of the media, it is possible to determine a deep polarization of the media space along ethnic lines (Bogdanić, 2009; Cvjetičanin, Sali-Terzić, & Dekić, 2010: 16; Turčilo & Buljubašić, 2014) and quite different perceptions of the problem of terrorism. They range from indifferent attitudes, denial, and minimization, to oversimplifying the problem of individual media coverage and statements made by officials (Aljazeera Balkans, 2016a). Researchers have explored the fear of crime for well over 40 years, so the conceptualization of this notion is thoroughly addressed in the literature. The fear of crime is defined as a construct including emotion (fear of crime), likelihood of risk (perceived risk), and precautionary behaviors (constrained behaviors) (Rader, 2017). As far as research into the fear of terrorism is concerned, it would not attract substantial interest from scholars until many years later, after the September 11 attacks in the United States in 2001 and the declaration of a worldwide war on terror (Aly, 2010; Aly & Green, 2009; Lerner, Gonzales, Small, & Fischhoff, 2003; Marshall, Bryant, Amsel, Suh, Cook, & Neria, 2007; Nellis & Savage, 2012). The review of the literature on terrorism in the languages of the South Slavic peoples, that is, in the languages of the former SFRY, demonstrates that no research into the fear of terrorism has so far been conducted. Also, there is a small number of papers dealing with the fear of crime in the former Yugoslav republics (Đurić & Popović-Čitić, 2012; Ljubičić & Dragišić Labaš, 2010; Meško, Fallshore, Muratbegović, & Fields, 2008). Since no previous research into the fear of terrorism has so far been conducted, meaning we could not use any earlier model as a basis of our study, our research is primarily exploratory in nature. The aim of this paper is to explore the fear of terrorism in BiH perceived by domestic counterterrorism experts. The respondents were asked to express their opinion on the extent to which the fear of terrorism is present in the public and whether there is justification for conducting research pertaining to this issue. The lack of previous research into the fear of terrorism in BiH and the South Eastern European region prevents us from conducting a comparative evaluation of our research findings. The research findings may be the starting point of further, more complex, research that would include ethnic, regional, and other socio-demographic indicators related to the fear of terrorism in BiH.

TERRORISM IN BOSNIA AND HERZEGOVINA

BiH was one of the six republics of the SFRY, which became independent following the breakup of SFRY⁴. The dissolution of the former state was followed by armed conflicts, which peaked in the territory of Bosnia and Herzegovina during the period 1992-1995.⁵ It is precisely the beginning of these armed conflicts in BiH that may be linked to terrorism, which was then “imported” to the country based on the ideology of the global jihadist movement⁶. Twenty years later, a reversed paradigm occurred when BiH became a country from which fighters led by the same ideology traveled to other countries in the world to participate in armed conflicts. The war in BiH significantly influenced the spread of the ideology of the global jihad (Kohlmann, 2004). Following the end of the war in Afghanistan (1979-1989), BiH was the first country to which Islamist fighters were “imported” with the mission to fulfill Jihad obligations, who would later participate in armed conflicts in Somalia (1993, 2014), Chechnya (1994, 2009), again Afghanistan (2001-2014), Yemen, Indonesia, the Philippines (since 2000), and Syria and Iraq (2012) (Hegghammer, 2011: 53; Schmid, 2015: 3; Šikman, 2018: 119). Prior to this period, the mujahedeen in Afghanistan had defeated rival fractions, while their predecessors headed for “the new hotspots where Islam was threatened, the one in Bosnia and Herzegovina” (Azinović, 2007: 40). With the arrival of the mujahedeen in BiH, the training camps for domicile population were established in which, in addition to military training, religious indoctrination was given a great importance. In 1993, the mujahedeen became part of the 3rd Corps of the Army of BiH, under whose command they had participated in armed conflicts⁷ (International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 [ICTY], 2006; ICTY, 2008). There is no accurate data on the number of mujahedeen who participated in the war in BiH and estimates vary. According to Kohlmann (2004: XII) the number of mujahedeen amounted to about 5,000. The arrival of mujahedeen at the Bosnian front had changed the character of the war: the Bosnian war was driven by radical Islam coupled with the ideology of jihad (Guskova, 2013). Additionally, their inhumane and cruel treatment of war prisoners, which included torture, degrading acts, and ritual decapitation, and all the atrocities committed by them were recorded on a videotape. Following the signing the Dayton Peace Agreement (The Office of the High Representative [OHR], 1995), a large number of mujahedeen left BiH, while a number of them remained in the country, where they obtained the citizenship and started families with domicile women. They established

4 The dissolution of the SFRY began in 1991 when Slovenia and Macedonia declared their independence; Croatia and Bosnia and Herzegovina followed in 1992, and in 2003, the Federative Republic of Yugoslavia ceased to exist.

5 All three ethnic groups in Bosnia and Herzegovina took part in the conflict, which fought one another at different times during the war. The war officially ended with the signing of the Dayton Peace Agreement on November 21 1995 under which Bosnia and Herzegovina was divided into two entities and the Brcko District.

6 The global jihadist movement consists of organizations, regional and local cells, and sometimes individuals, who advocate the radical ideology of jihad or holy war (Gunaratana & Orega, 2015: 1). It is believed that the movement, which was based on the idea of pan-Islamism, originated in the 1980s and it has “produced” foreign fighters who still operate today in a somewhat altered form of Al Qaeda (Hegghammer, 2011: 56).

7 This has been confirmed by the judgments of the International Tribunal for War Crimes committed in the former Yugoslavia (Hague Tribunal) in Case No. IT-01-47-T of 15 March 2006 and Case No.: IT-04-83- T of 8 September 2009, containing a special chapter which describes “Mujahedeen” (pp. 124-258) and “Mujahedeen forces” (pp. 51-62) (ICTY, 2006; ICTY, 2008).

closed religious unions, the so-called quasi jamaats,⁸ mainly in isolated areas, where they practiced a stricter version of salafism than the one professed in Saudi Arabia, the home of Salafism (Bećirević, 2016: 36). A number of them do not advocate violence and simply want to live their lives according to their interpretation of Islam (Bećirević, 2016: 39), while others, according to the BiH Ministry of Security (2010), have focused their activities on spreading radical religious ideology and recruiting new members (Ministry of Security of BiH, 2017: 30). This view may be corroborated by the fact that all the terrorist acts having occurred in Bosnia and Herzegovina since 1997 are linked to the activities committed by members these communities (Bećirević, 2016: 18). The following attacks have been carried out: the terrorist attack in Mostar (1997), the planning of terrorist attacks by the so-called “Algerian groups” (2001), a triple murder motivated by religious-ideological initiatives in Konjic (2002), the planning of terrorist attacks in Sarajevo (2005), or in BiH (2007, 2008), the terrorist attack on the police station in Bugojno (2010), the activation of an explosive device in Zenica (2011), the terrorist attack on the US Embassy building in Sarajevo (2011), the terrorist attack on the police station in Zvornik (2015), the killing of two members of the Armed Forces of BiH (2015), including the dismantling of an explosive device at the police station in Zavidovići (2015) (Šikman, 2018: 124). For some of the cases referred to in this paper, it was determined by the Court of Bosnia and Herzegovina that the perpetrators who committed these criminal offenses acted on grounds of “ethnic and religious extremism and radicalism” (Court of Bosnia and Herzegovina, 2011) and in accordance with the idea that a “Sharia state governed by Sharia law should be violently established in BiH” (Court of Bosnia and Herzegovina, 2013), and such behavior is reflected in disobeying the Constitution and laws of BiH along with the institutions responsible for the implementation of these laws (Court of Bosnia and Herzegovina, 2011). Finally, BiH became the country of origin of the ideology of the global jihadist movement, since its citizens are involved in jihad in Syria and Iraq, fighting on the side of terrorist organizations, such as the Islamic state of Iraq and the Levant (ISIL) and al-Nusra Front (Šikman, 2018: 124). Some of them took their families with them to Syria and Iraq, others were killed in armed conflicts, whereas some returned to their home country (Azinović & Jusić, 2016). Some of them were convicted of joining ISIL and received very low sentences (up to one year in prison), but most of them were released from prison in 2017. According to the assessments of the BiH Ministry of Security (2017: 30), fighters returning home from the Syrian and Iraqi battlefields still pose a significant and long-term security threat to BiH and the region, including the member states of the European Union (Europol, 2017: 33). Not only is such a threat completely justified, but it also creates fear among the citizens for several reasons. First, it is about individuals with experience in handling firearms and explosives which they have acquired over the course of armed conflicts in Syria and Iraq. Second, the level of their radicalism has remained high, meaning that these individuals have the power to continue spreading radical ideology and to recruit new supporters. Foreign fighters returning from war zones often use media to promote their agenda, which fuels the fear of terrorism and cause alarm among the citizens. Being faced with the problem of terrorism, BiH has taken certain steps to suppress it. Thus, as a member of the international coalition against terrorism, BiH participates in the work of international organizations regarding this issue, accepts international documents, and so on. Nevertheless, these efforts are mostly reflected in criminal legislation, which is characterized by extremely light punishments. On the other hand, there is an evident absence of serious

8 According to the data available in BiH, there are 22 quasi jamaats which refuse to integrate into the Islamic Community (Aljazeera Balkans, 2016b).

and systematic measures to deradicalize members of the Wahhabi/Selafi community and solve the problem in this way. This attitude is best corroborated by the fact that many people after serving their prison sentence for terrorism continued with the same ideology and further terrorist activities, while others continued to radicalize the prison population itself⁹.

METHODOLOGY

For the purpose of this paper, we used, as a methodological model, an investigation into the fear of crime in the cities of the former Yugoslav republics (Đurić & Popović-Čitić, 2012), having adjusted the instrument to our research object. We proceeded from the fact that terrorism is a form of criminal behavior, regardless of its specificity in relation to other types of crime. Considering terrorism in BiH, experts in terrorism often make public statements regarding this issue. Therefore, the aim of our research is to address the views of experts in terrorism, both academics and practitioners employed in law enforcement agencies dealing with the suppression of terrorism. Due to the lack of previous research into the fear of terrorism, we conducted a pilot study and more qualitative research with in-depth interviews needs to be carried out in the future.

For the purpose of this research, a questionnaire comprising five groups of statements was designed (with a total of 22 statements). The first group of statements refers to the respondents' attitudes toward general issues related to terrorism in BiH and the prevalence of the fear of terrorism in relation to other types of crime, while the second, third and fourth group of statements relate to affective, cognitive, and behavioral aspects of the fear of terrorism. The fifth group of statements refers to the justification for investigating the fear of terrorism in BiH. For the operationalization of affective, cognitive, and behavioral dimensions, we used the existing definitions in literature (Đurić & Popović-Čitić, 2012). Đurić and Popović-Čitić (2012) define the affective dimension as an individual sense of being threatened in certain situations. The authors refer to previous research which, according to the affective dimension of crime, dominantly emphasizes the emotional reactions of an individual to possible victimization (Beaulieu, Dubé, Bergeron, & Cousineau, 2007), the connection between the intensity of emotions and fear of crime (Jackson, 2005), including the correlation of hypothetical situations of vulnerability to crime and the level of fear of crime (Ferguson & Mindel, 2007). Đurić and Popović-Čitić (2012) view the cognitive or evaluative dimension as the probability of victimization in a certain period, that is, the subjective examination of the personal risk of victimization in the environment, referring to previous studies addressing this issue (Gabriel & Greve, 2003; Ljubičić & Dragišić-Labaš, 2010), including the severity of the consequences of potential victimization (Jackson, 2005). Regarding the behavioral dimension of the fear of crime, Đurić and Popović-Čitić (2012) consider behavior in terms of using security measures to protect themselves from criminal offenses. Regarding this segment, the authors started with the previous research into the fear of crime, which implies taking individual proactive measures to avoid potential victimization (Beaulieu, Dubé, Bergeron, & Cousineau, 2007; Gabriel & Greve, 2003). The respondents were asked to express their agreement or disagreement to the specified statements using Likert's five-point scale, where (1) represents the lowest level of non-agreement (I strongly

⁹ Thus, according to available information, one of the Wahhabi leaders, while serving the seven-year prison sentence, recruited 30 inmates who, in accordance with the Wahhabi movement's rules, changed their physical appearance, shortened their trousers and grew their beards, and now express their religious needs in the form of everyday prayers and teachings unrecognized by the Islamic Community of BiH (Nezavisne novine, 2017).

disagree) and (5) the highest level of agreement with the specified statement (I strongly agree). A total of 15 experts in terrorism suppression participated as respondents in the survey.¹⁰ The sample consisted of six university experts in terrorism and nine experts, that is, practitioners, employed in law enforcement agencies at the entity and state level (Ministry of the Interior of the Republika Srpska, cantonal ministries of the interior, SIPA,¹¹ OSA¹²), a total of 9 respondents. The respondents' years of experience in the area of terrorism range from 5 to 25 years. When compiling the sample, we took into account the uniform organizational and territorial representation of the respondents, meaning the respondents were representatives of institutions at the BiH level, as well as the Republika Srpska and Federation of Bosnia and Herzegovina entities. Also, when selecting the respondents from the academic community, we took into account geographical equilibrium, so the representatives of the academic community from the universities in Banja Luka, Sarajevo and Mostar were included in the research. The criterion for the selection of respondents within the academic community was their scientific references in the area of terrorism, while for practitioners the criterion was the position at the organization and years of experience in the prevention and suppression of terrorism. After having selected the potential respondents, they were contacted by telephone and asked to complete a questionnaire sent to them by e-mail. The analysis of data collected by the survey was based on the application of the descriptive statistics method.

FINDINGS AND DISCUSSION

GENERAL CLAIMS ON TERRORISM IN BIH

Statement 1: BiH is affected by terrorism. The highest percentage of respondents (40%) agreed that BiH is affected by terrorism, while 27% strongly agreed. Of the total number of the respondents, 20% neither agreed nor disagreed with the statement, while 13% of the respondents disagreed. Attitudes regarding the presence of terrorism in BiH vary. Although the majority of the respondents believe that BiH is facing the problem of terrorism, the percentage of respondents with opposite views is alarming and they believe that the problem of terrorism is not expressed or it does not exist. In the public discourse, opinions on the problem of terrorism in BiH are different. As it has already been stated, the views range from over exaggeration to denial of the phenomenon. Our research findings are somewhat similar to that of other studies, meaning opinions are mixed on this issue. It should be noted that this group of respondents consist of experts studying the phenomenon of terrorism either as academics or members of law enforcement agencies. They have theoretical knowledge and practical experience regarding the phenomenon of terrorism, unlike other citizens who do not have professional knowledge. Terrorist acts have occurred in BiH and the problem of persons returning from the battlefields in Syria is very current, thereby the views of experts who deny the problem of terrorism in BiH are questionable.

Statement 2: Terrorism poses a threat to security, peace, and stability in BiH. The majority of respondents (47%) strongly agreed that terrorism poses a threat to security, peace and

10 According to generally accepted views, the optimal expert team consists of 10-15 domain experts. In discussing the formation of an expert team, Ratko Zelenika (2000: 39), among other things, argues that "If one takes into account the average error of an expert team and the average degree of reliability of an individual expert in such a team along with the results confirmed by this method in practice, the optimal number of experts in a team should be 10-15 experts".

11 State Investigation and Protection Agency

12 Intelligence-Security Agency

stability in BiH, while 27% agreed with this statement. Only a small number of respondents (20%) had a neutral attitude toward this issue, that is, they neither agreed nor disagreed. Only 7% of respondents disagreed that terrorism poses a threat to security, peace, and stability in BiH. It should be noted that none of the respondents strongly disagreed with this statement. The analysis of the responses to this statement indicates that the majority of respondents think that terrorism in BiH poses a serious security problem that can negatively affect peace and stability in BiH.

Statement 3: In relation to other forms of crime such as organized crime, corruption, major crimes, terrorism poses a major security problem in Bosnia and Herzegovina. The highest percentage of respondents disagreed with this statement. The large majority of respondents (60%) disagreed, while 13% of strongly disagreed. Only 7% of respondents neither agreed nor disagreed with this statement. Only a minority of the total number of respondents believe that terrorism poses a higher security problem than other forms of crime. In this respect, 7% of respondents agreed and 13% of respondents strongly agreed that terrorism is a major security problem in BiH. Considering the overall responses, we may conclude that the majority of respondents do not think that terrorism in BiH presents a major security problem in relation to organized crime, corruption, and major crimes in BiH, while a small number of respondents held an opposite view. These attitudes are somewhat contradictory to the aforementioned opinions, because the respondents stated that terrorism is considered a problem for the peace and stability of BiH, which cannot be said about other forms of threats, such as organized crime, corruption, or general major crimes.

Statement 4: Bosnia and Herzegovina responds properly to terrorism. The majority of respondents (53%) agreed that BiH responds properly to the problem of terrorism. However, none of the respondents strongly agreed with this statement. 13% of respondents neither agreed nor disagreed with this statement, while 33% of respondents disagreed that BiH responds properly to terrorism in BiH. It is also important to note that none of the respondents disagreed with the above-mentioned statement. From what has been said above we may conclude that the dominant opinions of the respondents are that BiH adequately counter terrorism, although a significant, but a smaller number of them held an opposite view.

Statement 5: Citizens acquire information on terrorism. Regarding this statement, the majority of respondents indicate that citizens often acquire information on terrorism through the media.

AFFECTIVE OR EMOTIONAL DIMENSION OF THE FEAR OF TERRORISM

Statement 1: The citizens of BiH fear terrorism. Regarding the affective or emotional dimension of terrorism, the starting point is whether the citizens of BiH fear terrorism. The highest percentage of respondents (53%) agreed with this statement while 7% strongly agreed. Other 7% of respondents held a neutral view, that is, they neither agreed nor disagreed, 27% disagree, and 7% strongly disagree with this statement. Based on the findings, we may conclude that the majority of the respondents believe that the fear of terrorism is present with the BiH citizens, although there are views that there is no fear of terrorism in BiH. Such distribution of respondents is expected given the previously mentioned polarization regarding the problems of terrorism in BiH.

Statement 2: the terrorist acts carried out so far in BiH have created fear of terrorism among the general public. Regarding this statement, the prevailing attitude is that the terrorist acts carried out in BiH have created a sense of fear of terrorism among the public. The largest percentage of

respondents (47%) agreed, while 20% of respondents strongly agreed with this statement. The findings indicate that neutral attitudes (20%) are present as well as a several attitudes denying such a statement. In this regard, 7% of respondents disagreed, while 6% strongly disagreed with this statement. The survey findings corroborate the statement that the terrorist acts carried out so far in BiH have a negative impact on the perceptions of security and that they incited fear of terrorism in the citizens.

Statement 3: There is fear in the public in BiH of future terrorist acts. The vast majority of respondents believe that there is fear in the public of BiH about future terrorist acts. The highest percentage of respondents (40%) agreed with this statement, while 7% of respondents strongly agreed. However, the respondents' attitudes are mixed. In this regard, 33% of respondents neither agreed nor disagreed, 13% disagreed, while 7% strongly disagreed. Based on the survey findings, we may conclude that the acts committed by the terrorists have influenced the perceptions and anticipation of future terrorist acts, creating a sense of fear among the citizens. This perception has been expected, given that one of the key features of terrorism is the impact on citizens to achieve the set goals.

Statement 4: Fear of terrorism is justified considering the existing situation in BiH. 47% of the respondents agreed with this statement and 7% strongly agreed. While more than 50% of the respondents believe that the situation regarding the terrorist threats in BiH is such as to generate justifiable fear, 26% of respondents strongly disagreed with this statement, 13% disagreed, while 7% neither agreed nor disagreed. Although most of the respondents believe that the fear of terrorism is justified considering the existing situation in BiH, our findings indicate that attitudes toward this issue are somewhat different.

Statement 5: The government response to terrorism increases the fear of terrorism in BiH. Terrorism creates fear by its violent approach, but giving great importance to countering terrorism by government authorities and can negatively affect the citizens' perceptions of terrorism and intensify the fear of it. The survey findings demonstrate different attitudes toward this statement. The highest percentage of respondents disagrees with this statement, 27% strongly disagree, while 13% generally disagree, 27% neither agree nor disagree, 20% generally agree, with 13% of respondents who strongly agree.

COGNITIVE DIMENSION OF THE FEAR OF TERRORISM

Rating question 1: Based on your personal assessments, how high is the level of the terrorist threat in BiH? Regarding the level of the threat, the highest percentage of respondents (57%) chose Level 3 (on a scale of 1-5) of the terrorist threat in BiH, which is referred to as the middle level of threat. A small percentage of respondents (27%) chose Level 4, while only 7% of respondents believe that the level of terrorist threat is high in BiH (Level1), and the same percentage of respondents (7%) believe that the level is very high. Only 6% of respondents think that the level of terrorist threat is very low.

Statement 2: The likelihood of a terrorist attack. The respondents were asked to rate the likelihood of a terrorist attack on individual objects of the attack. The members of the military and the police were specified by the respondents as the possible object of the terrorist attack. Such an attitude may be explained by the terrorist attacks in BiH where the members of the police and the army were targeted. The next possible objects of the attack are diplomatic missions, which has already occurred in BiH. Respondents listed a high level of threat, followed by public places, manifestations, government institutions, while educational institutions were listed by respondents as the lowest level of threat.

Statement 3: Extremism and radicalization of certain social groups increase the terrorism threat level in BiH. The highest percentage of respondents (60%) strongly agreed that extremism and radicalization increase the terrorism threat level in BiH, while 27% generally agree. None of the respondents strongly disagreed with this statement.

Statement 4: A potential terrorist attack in Bosnia and Herzegovina would lead to destabilization and increase ethnic tensions. 40% of respondents strongly agreed with this statement, 40% agreed, 7% neither agreed nor disagreed, 13% disagreed, while none of the respondents strongly disagreed with the statement. The findings indicate that potential terrorist attacks in BiH would worsen the security situation and result in an increase in ethnic tensions.

BEHAVIORAL DIMENSION OF THE FEAR OF TERRORISM

Statement 1: The fear of terrorism in Bosnia and Herzegovina has changed the habits and behavior of people. The majority of respondents (74%) mainly disagreed that the fear of terrorism has changed the habits and behavior of people, 13% strongly disagree, while 13% neither agree nor disagree. From the above we may conclude that the respondents' attitudes toward the fear of terrorism did not significantly affect the habits and behavior of the citizens of BiH.

Statement 2: Citizens avoid crowded places due to the fear of terrorism. The answers to this statement are very similar to the previous statement that terrorism has not changed the habits and behavior of people. This is also the case with the claim that citizens avoiding crowded places due to a fear of terrorism. Of the total number of respondents, 40% strongly disagree, 47% disagree, 7% neither agree nor disagree, while only 6% of respondents agree. None of the respondents strongly agreed with this statement. We may conclude that on the basis of the survey findings that citizens do not avoid crowded places due to the fear of terrorism.

Statement 3: Due to the fear of terrorism, citizens avoid contact with radicalized individuals and groups. The large majority of respondents (66%) agreed that citizens avoid contact with radicalized individuals and groups due to the fear of terrorism, 27% of the respondents neither agreed nor disagreed, while 7% strongly disagreed. None of the respondents disagreed or strongly agreed with this statement. There are radical Islamist groups in BiH, the so-called quasi jamaat, which are beyond the jurisdiction and control of the Islamic Community of BiH. Although it is evident from the respondents' views that the citizens of BiH have not significantly changed their habits and behavior, the views on this issue indicate that a significant percentage of respondents still believe that citizens avoid contact with these groups and that the reason for such behavior is the fear of these radical groups and their activities. There is no real explanation for the mixed views on the issue of habits and behavior, considering that all terrorist attacks are connected with the actions of the quasi jamaats in BiH.

Statement 4: Due to the fear of terrorism, citizens avoid traveling to countries with high threat of terrorism. The views on this issue are mixed. The large majority of respondents (40%) agreed with the statement, while 7% neither agreed nor disagreed. However, 27% of respondents disagreed, while other 27% agreed with the above statement. Thus, we may conclude that, according to a portion of the respondents, the citizens of BiH avoid traveling to countries with high threat of terrorism due to the fear of terrorism.

RESEARCH INTO THE FEAR OF TERRORISM

Statement 1: Research into the fear of terrorism in BiH is useful and needed. 67% of respondents strongly agreed with this statement, while 27% agreed. Only 6% of respondents disagreed

with the statement. We may conclude that the respondents' attitudes confirm that research into the fear of terrorism is useful and needed.

Statement 2: Research into the fear of terrorism may contribute to a better understanding of the phenomenon of terrorism in BiH. Respondents' attitudes toward this issue are very similar to the attitudes regarding the previous statement; therefore, we may conclude that research into the fear of terrorism may contribute to a better understanding of this phenomenon in BiH.

Statement 3: Developing a methodology and conducting longitudinal research into the fear of terrorism in BiH would contribute to developing a comprehensive action plan for countering terrorism. Similarly to the previous statements, the high percentage of respondents (60%) strongly agreed with this statement, while 40% agreed. The investigation of fear of terrorism would contribute to developing a comprehensive action plan for countering terrorism.

Statement 4: Research into the fear of terrorism would further increase the level of fear in citizens. The highest percentage of the respondents (53%) strongly disagreed that research into the fear of terrorism would further increase the level of fear in citizens, while 27% disagree. We may, therefore, conclude that research into the fear of terrorism would not increase the level of fear of terrorism in citizens.

The research findings indicate that there is agreement about certain issues but also disagreement about important issues. There is general consensus that the media plays a pivotal role in informing the public about terrorism and terrorist threats. There is also agreement about radicalization and extremism as factors increasing the level of terrorist threats in BiH. There is agreement among respondents that terrorism in BiH has not affected the citizens' daily habits and that research into the fear of terrorism is useful and may contribute to a better understanding of the phenomenon of terrorism. Additionally, there is some disagreement about key issues, primarily whether BiH has been affected by terrorism, whether it represents a serious security threat, and how BiH responds to terrorism. Also, there is some disagreement about the fear of terrorism in the BiH public and its justification.

CONCLUSION

In this pilot study, we have considered how domestic experts in the field of countering terrorism perceived the problem of the fear of terrorism. Terrorism is an important topic in BiH, both in the professional circles and the public. BiH has faced specific terrorist attacks along with the problem of BiH citizens traveling to Syria and Iraq to fight. The research findings demonstrate that the experts agree about some issues but strongly disagree about key issues.

Based on the views of the large majority of respondents, the survey findings indicate that BiH is facing the problem of terrorism and that the fear of terrorism is present. Terrorism poses a threat to peace and stability in BiH. However, although, according to the majority of respondents, BiH is facing the problem, terrorism does not present a major security problem in relation to other forms of crime, especially organized crime, which is to a certain extent contradictory to previously stated findings. In fact, this distribution of respondents is expected. This thesis is based on the fact that the BiH society is deeply divided over many issues, which does not make this an exception. This leads us to conclude that such a serious problem is actually politicized, giving rise to biased and unprofessional debates.

Regarding the affective or emotional dimension of the fear of terrorism, the survey findings demonstrate that fear is present in the general public and that terrorist acts have intensified the existing fear of terrorism and the fear of possible new terrorist attacks.

Regarding the cognitive dimension of the fear of terrorism and the likelihood of victimization and consequences, the research findings indicate a moderate level of the likelihood of terrorist attacks in BiH, and that members of military and police along with diplomatic missions are at the highest level of risk. According to the respondents' views, new terrorist acts would lead to the deterioration of the security situation the security situation and an increase in ethnic tensions in BiH. Regarding the behavioral dimension of fear of terrorism, we may, based on the research findings, conclude that terrorism in BiH has not affected the habits and behavior of the people, although certain level of fear exists in the citizens of BiH when traveling to countries where terrorist attacks have been carried out. There are radical Islamic groups in BiH, but citizens generally avoid these groups.

The findings demonstrate that an investigation into fear is needed to gain a better understanding of this phenomenon in BiH and undertake appropriate measures to counter it. In fact, understanding fear of terrorism may, on the one hand, contribute to overcoming, that is, neutralizing the negative effects of terrorism and understanding this phenomenon, on the other.

In the future, qualitative research should be carried out with in-depth interviews with experts along with quantitative research that would include ethnic, regional and other socio-demographic indicators related to the fear of terrorism in BiH. These research findings should contribute to a better understanding of the fear of terrorism and help to develop more effective policies for the prevention of terrorism in BiH.

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PROSECUTING FOREIGN FIGHTERS: CHALLENGES OF JUDICIAL PROFESSIONAL IN BOSNIA AND HERZEGOVINA

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ABSTRACT

Legislation in Bosnia and Herzegovina (B&H) criminalizes various offenses related to terrorism and foreign fighting. As a part of global action against terrorism and a way to address the foreign fighter phenomenon, the Criminal Code of Bosnia and Herzegovina was amended in 2014; according to which also the establishment of, or association with, foreign fighting forces are criminalized. Departures of Bosnia and Herzegovina citizens to Syria for the purpose of foreign fighting began in 2012. Thus, one of the problems prosecutors are facing when indicting foreign fighters is the principle of “*nullum crimen, nulla poena sine lege*” (no crime, no punishment without law). This article will analyze problems Bosnia and Herzegovina prosecutors face in cases of foreign fighters, as well as prosecutorial successes. Indeed, despite many challenges, prosecutors in Bosnia and Herzegovina have been pioneers in the region when it comes to successfully prosecuting foreign fighters.

Keywords: foreign fighters, prosecution, jurisprudence, trial, court decision

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INTRODUCTION

The first departures of Bosnian-Herzegovinian citizens to battlefields in Syria and Iraq were recorded in the spring of 2012. At that time, departures to fight in foreign wars were not criminalized. According to Azinović and Bećirević (2017) in total, over 240 Bosnian adults are believed to have departed for Syria and Iraq between 2012 and 2017, 172 men, 58 women and 57 children. Officials report that 53 Bosnian men (including 4 foreign citizens of Bosnian origin), as well as 3 women and 4 children, have subsequently left Syria and Iraq, but 10 have returned to countries other than Bosnia and Herzegovina.³ However, Syria and Iraq are not the only battlefields that attracted some Bosnia and Herzegovina citizens. According to the last official estimate at least seven Bosnia and Herzegovina citizens went to that battlefield having joined pro-Russian military formations (Žurnal.ba, 2017). Yet, according to media reports only one individual is being officially investigated in relation to fighting in Ukraine (Avaz.ba, 2017). It is important to mention that officials interviewed for this article were cooperative when discussing the foreign fighters phenomenon associated with Syria and Iraq, and rather un-cooperative on the issue of the same phenomenon associated with Ukraine. Also, as one of the problems in investigating and prosecuting individuals who fought in Ukraine, interviewees stated the lack of cooperation of Republika Srpska Ministry of the Police on this issue, as well as their unwillingness to investigate those who work on recruitment of new fighters in Republika Srpska, the majority Serbian entity in Bosnia and

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3 These figures were provided to the authors by police sources and security officials interviewed for the research.

Herzegovina.⁴ This is also the main reason this article deals only with the prosecution of individuals who fought in Syria and Iraq.

In addition to the main features of the foreign fighters phenomenon, both general and those that are specific to Bosnia and Herzegovina, this article lists the actual problems in prosecuting the Bosnian-Herzegovinian citizens who joined the terrorist formations in Iraq and Syria, along with the necessary normative analysis of substantive provisions as well as procedural criminal law provisions. As it will be obvious from the court cases, processing foreign fighters in Bosnia and Herzegovina is mostly reduced to criminal prosecution and punishment of individuals who joined the foreign paramilitary, that is, terrorist formations in Iraq and Syria, thereby, practically to the mere repairing of consequences. The main cause - individuals and organized groups who used the distorted religious interpretations, radicalized, incited and finally organized departures to foreign battlefields are still, one way or another, far from justice or just mildly punished. The evidence of financing networks of all the mentioned activities is especially limited; although, without these networks, there would not be any departures to foreign battlefields or would occur on a significantly smaller scale. It seems, however, that this is not only the case with the criminal judiciary in Bosnia and Herzegovina, but also in developed Western democracies.

PHENOMENOLOGY OF FOREIGN FIGHTERS IN BOSNIA AND HERZEGOVINA

Foreign fighters are not a recent phenomenon, in literature they are most often mentioned in relation to the Spanish Civil War in the 1930s, Arab-Israeli Wars, Afghanistan in the 1980s, as well as Chechnya and other places (Hegghammer, 2010; Malet, 2013; Williams, 2011). The war in Bosnia and Herzegovina (1992-1995) also attracted foreign fighters who joined different sides. Estimates on numbers vary, from 500 to 5000, while most agree that it was between 1000 and 2000 (Galperin Donnelly, Sanderson, & Fellman, 2016). The mentioned figures, however, do not only refer to foreign fighters of Muslim origin, but also to other volunteers who during the 1992-1995 war fought on the side of Bosnian Serbs and Bosnian Croats.

Some foreign *mujahedeen* who fought on the side of Bosnian Muslims, remained in the country after the end of the war and are widely believed to have been responsible for efforts to spread Salafism among the Bosnian Muslim population. This ultra-conservative Islamic doctrine had been unknown to Bosnian Muslims – who have historically followed the Hanafi legal tradition (*fiqh*) and have practiced an inclusive and open interpretation of Islam that is rich in local tradition, tolerant of other communities, and compatible with liberal Western values. Thus, the ultraconservative message of Salafism was never expected to take hold in Bosnia and Herzegovina; and certainly, it was not foreseen that the ideology would spread among the Bosnian population even after most of the foreign *mujahideen* had left the country. Still a small number of Bosnian Muslims have accepted Salafism, and the majority of them, while adhering to ultra-conservative lifestyles are peaceful and are not deemed a security threat. Even though most Salafis do not present a security threat, it has been shown that foreign fighters for the conflict in Syria and Iraq are recruited from the Salafi community (Bećirević, 2016).

According to Beslin & Ignjatijevic (2017) Western Balkan countries primarily identify and categorize Islamist foreign fighters as terrorists whereas Ukrainian fighters remain just

4 Based on interviews with security officials, conducted in March and April 2018.

“ordinary extremists”. One should, however, have in mind, as Hegghammer (2010) stated, that Muslim foreign fighters are significantly larger in numbers and more involved in different conflicts around the world than foreign fighters of different ideological orientations, and in that sense, are an especially significant threat to modern international security. One should also take into consideration the fears of Western, particularly European governments that the returning ISIL foreign fighters, “who are battle hardened, skilled in handling arms and explosives, and ideologically radicalized, pose a clear and present threat to national and international security.” (Azinović & Bećirević, 2017). Yet according to a study conducted by the Center for the Analysis of Terrorism (2017), which examined terrorist activities occurring between 2013 and 2016, only “3 out of 100 returnees have been involved in actual terrorist attacks in the West”. An examination of the profiles of individuals involved in terrorist attacks in the West points to the individuals best described as failed unaccomplished or frustrated foreign fighters—those who desired to travel to Syria and Iraq but who were unable or failed to do so” (Byman, 2017; Lister, 2015; Van Zuijdewijn, 2017).

In Bosnia and Herzegovina there were no incidents related to the returned foreign fighters, yet significant attention is paid to this issue in the Bosnia and Herzegovina security community. Besides retribution-focused approaches, international community projects are focused on discussing possible appropriate modes for the returnees social re-inclusion. The politics of the penitentiary system in its present condition can hardly respond to this request, as there is minimal success in the re-socialization of perpetrators of general crime; not to mention foreign fighters who are already by their status characterized by an extremely high level of indoctrination with radical ideologies.

LEGAL FRAMEWORK AND CRIMINALIZATION

The criminalization of foreign fighters as a special criminal offense related to terrorism was accomplished in 2014 through amendment 47/14 to the Criminal Code of Bosnia and Herzegovina introducing the incrimination, “Unlawful forming and joining to foreign paramilitary or para-police formations” (Criminal Code of Bosnia and Herzegovina, 2015). It was a quick response by Bosnia and Herzegovina legislation to the obligations under Resolution 2178 of the Security Council of 24.08.2014, which, among other things, referred to the implementation of legislation to ensure the processing of: (a) foreign terrorist fighters, (b) those who willfully fund or receive funds to finance the travel of foreign terrorist fighters and (c) those who willfully facilitate the travel of foreign terrorist fighters (United Nations Security Council, 2015).

The same Resolution also defined foreign terrorist fighters as individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict. (United Nations Security Council, 2015). In our article, we will keep the term foreign fighters as it is broader in meaning and, essentially, follows the incrimination, “Unlawful forming and joining to foreign paramilitary or para-police formations”, which in its legal meaning, it is significant to note, does not include the characteristics of terrorism. In other words, a foreign fighter is not necessarily a foreign terrorist fighter except in circumstances when his belonging to a designated terrorist formation is proven beyond any doubt.

The legal description of Article 162b (paragraph 1. to 4.) criminalizes several types of offense. Primarily, incriminating is “...organizing, managing, training, supplying or recruiting of individuals or group of people with the purpose of association in any way with foreign

military, foreign paramilitary or foreign para-police formation active outside of B&H against the Law on Defense of B&H or the Law on Service in Armed Forces of Bosnia and Herzegovina...” (Criminal Code of Bosnia and Herzegovina, 2015).

Furthermore, incrimination is joining in any form a foreign military, foreign paramilitary or foreign para-police formation (Criminal Code of Bosnia and Herzegovina, 2015).

This criminal offense is also perpetrated by “whoever procures or renders operable the means, removes obstacles, creates plans or makes arrangements with others or recruits another person or undertakes any other action creating the conditions for direct perpetration of this criminal offense...” (Criminal Code of Bosnia and Herzegovina, 2015).

Finally, one of the types of this criminal offense is also perpetrated by “whoever publicly, by way of public media, distributes or in any other way conveys a message to the public, which has the purpose of inciting another person to perpetrate this criminal offense...” (Criminal Code of Bosnia and Herzegovina, 2015).

The prescribed punishments for each of these types of offenses are different and range from not less than 5 years of imprisonment for the offense of paragraph 1, which is the most severe penalty; not less than 3 years for the offense of paragraph 2; a term between 1 and 10 years of imprisonment for the offense of paragraph 3; and between 3 months and 3 years of imprisonment for the offense of paragraph 4, as the mildest prison sentence.

Criminal Code of Bosnia and Herzegovina (2015) also authorize a possible softer punishment of imprisonment for a term of 6 months to 3 years, and even the release of individuals who expose the group and prevent the perpetration of the criminal offense or expose a criminal group prior to the perpetration of the criminal offense (Article 162b, paragraph 5). Such a measure in fact stimulates early detection of a foreign fighters group and the prevention of criminal offense committed by such a group.

Finally, provisions of the Criminal Code of Bosnia and Herzegovina (2015) also include that the provisions of Article 162b shall not be applicable to persons who have acquired in a lawful manner citizenship of a foreign country recognized by Bosnia and Herzegovina and in whose army or military formation they serve, or they serve in the military formations under control of governments internationally recognized by the UN, established on the basis of law.

Basically, we can discuss four types of this criminal offense, including the joining into a foreign military, foreign paramilitary or foreign para-police formation, which we usually describe as foreign fighters, which is only one of the forms of the offenses - and understandably not the most severe one. It seems that legal description of this criminal offense is quite comprehensive, but, on the other hand, the request for incorporation of a larger number of incriminating acts constituting the criminal offense leads to the fact that it is very complex to prove and to adequately prosecute it. In addition to the above mentioned, it is very difficult to have an objective position on what the legislator was guided by in differentiating more serious and milder forms of this criminal offense. An averagely reasonable person can wonder why public incitement of another person to join any foreign military, foreign paramilitary or foreign para-police formation is a significantly milder form of criminal offense, judging by the rendered punishment sentence (hypothetically, for such charges sentence can only be 3 months in prison), although such a form of prohibited behavior in the context of a criminal offense of terrorism or related to terrorism, abuse and manipulation with religion can have and had enormous consequences in the fight against terrorism not only in Bosnia and Herzegovina but also abroad. Unfortunately, public radicalization, including through the use of internet and various social media, nowadays

assessed as one of the most important tools in spreading extremist ideologies does not seem to pose an important social threat in the eyes of the Bosnian-Herzegovinian legislator. A similar remark can be said about recruitment of individuals to join foreign military, foreign paramilitary or foreign para-police formations. We think that this is especially difficult and one of the main preconditions of association, but yet the legislator dictated a less severe punishment than, for example, for equipping or mobilizing individuals to become foreign fighters. Not to mention that there is no provision of more severe punishment in the cases of recruiting and inciting children, that is minors, who, due to their psycho-physical age and immaturity, are especially vulnerable and exposed to different forms of radicalization and as such targeted by radicals. Finally, we can ask the question why identical punishment prescribed by law should be given to both a member of a terrorist group as a foreign fighter (Article 202d, paragraph 2) and to someone who is a member of a foreign military, foreign paramilitary or foreign para-police formation as a foreign fighter without terrorist characteristics (Article 162b, paragraph 2). These are some of the remarks we present. At the same time, they are a problem for judicial officials when adequately processing this type of criminal offense. They refer to specific legal definition of foreign fighters and substantive criminal law. On the other hand, there are many problems related to proving such cases and procedural criminal law itself; problems which are not specific only to foreign fighters but also to other criminal offenses which we will talk about in our next presentation.

Here we would like to add that, in addition to the mentioned incrimination, the Criminal Code of Bosnia and Herzegovina (2015) includes many other incriminations used by the Prosecutor's Office of Bosnia and Herzegovina in processing foreign fighters including: public incitement to terrorist activities (Article 202a), recruitment for terrorist activities (Article 202b) and organizing a terrorist group (Article 202d). The mentioned incriminations are harsher by their legal nature, because they also incorporate the features of terrorism and thereby require more severe punishment. As we will see further in the presentation, most foreign fighters in Bosnia and Herzegovina were prosecuted on the grounds of the mentioned incriminations, and only few of them (5 cases in total) on the grounds of incrimination in 162b.

FOREIGN FIGHTER TRIALS AND CHALLENGES

As of 2017, 23 persons were tried before the Court of Bosnia and Herzegovina in a total of 14 cases involving Bosnian-Herzegovinian citizens as foreign fighters on the battlefields in Syria and Iraq, or Bosnian-Herzegovinian citizens who organized, recruited for and publicly incited to terrorist activities and are directly linked with foreign fighters (Table 1).

Table 1: *Number of court cases and prosecuted foreign fighters as of 2017*

Cases in total:	Prosecuted foreign fighters in total:
14	23

Source: Bosnia and Herzegovina Court Content Management System (CMS), 2018

The common characteristic of all these cases was largely based on charges of other criminal acts of terrorism or related to terrorism, and not the criminal offense of Article 162b, then difficulties arose to prove these criminal offenses and finally apply penal policy for the criminal offense of joining foreign military, foreign paramilitary or foreign para-police formations. The prosecuting of foreign fighters and terrorism in general was one

of the most demanding challenges appearing in the Bosnian-Herzegovinian judiciary, both on the side of the Prosecutor's Office, which had to adequately corroborate charges, which meant providing adequate and sufficient evidence material, and on the side of the Court whose function is reflected in making a just, legal and fair decision.

ISSUES RELATED TO FOREIGN FIGHTER LEGAL QUALIFICATIONS

The issue of legal qualification of charges in the foreign fighters' cases, because of the fact that criminalization of this activity was made only in 2014, while the first Bosnian-Herzegovinian citizens started coming to Syria and Iraq back in 2012, is the first problem the judiciary was faced with in processing this type of criminal offense. According to our analysis, out of 14 processed cases, only 5 are based on charges of Article 162b. The remaining 9 are based on the charges of organizing a terrorist group (Article 202d.), and/or recruitment for terrorist activities (Article 202b.), and/or public incitement to terrorist activities (Article 202a.), as well as some other related criminal offenses such as illegal possession of arms and similar.

One of the most obvious examples is the case of the Court of Bosnia and Herzegovina (2016), which in its indictment contained the most serious charges in the group of foreign fighters cases, and which was not grounded on charges related to Article 162b, but charges of other criminal acts of terrorism related to the Criminal Code of Bosnia and Herzegovina as follows: Public incitement to terrorist activities (Article 202a.), Recruitment for terrorist activities (Article 202b.) and Organizing a Terrorist Group (Article 202d.). The factual description of the indictment in this case referred to the charges that, *"During 2013 and 2014, the defendant H.B, as a member of Salafi community in B&H organized on the territory of B&H, outside of official institutions of the Islamic Community of B&H, in several towns ... for promoting and spreading Islamic radicalism in B&H, consciously, from the position of a religious authority in the so-called Salafi community publicly performed activities characterized as criminal offenses – public incitement to terrorist activities, recruitment for terrorist activities and organizing a terrorist group ... In that respect, at public gatherings of members of Salafi community, he held his speeches published on YouTube and conveyed messages to the public aimed at inciting members of the so called Salafi community to join the organized terrorist group ISIS in the so called Islamic State, and to participate as members of that group in the activities organized by the terrorist organization ISIS (which was proclaimed as a terrorist organization by the UN) ... and after such public incitement by the defendant H. B, a larger number of members of the so called Salafi community in B&H – citizens of B&H left B&H. E.P, S.B, A.C, I.M, A.A, M.Š. et. al. who attended the public lectures of H. B. were killed as members of the terrorist organization, while the others still take part in the activities of the terrorist organization they joined, thereby posing a threat to Bosnia and Herzegovina in the way that they are trained and prepared for conducting terrorist activities upon their return to Bosnia and Herzegovina,* (Prosecutor office of Bosnia and Herzegovina, 2014). Hence, these were the charges with factual relation to public incitement, recruitment and organizing of foreign fighters, although the indictment was based on completely different grounds. The timing of the indictment coincided with the adoption of the amendments to the Criminal Code of Bosnia and Herzegovina in 2014. However, because it was not possible to prosecute the defendant for his activities in 2013 and 2014 on the grounds of foreign fighters, because the provisions were not in force then, which is the results of the principle *nullum crimen nulla poena sine lege*, it was done on other grounds to include the facts of his activities. Probably, in addition to this principle, the reason why the prosecutor opted for the charges according to these legal qualifications, is the fact that more severe punishment

is implemented for these qualifications. Legally, there was no obstacle for such a decision by the prosecutor. In clear foreign fighters' cases, the legal qualification organizing a terrorist group (Article 202d) in the sense of belonging to a terrorist group, was used to a larger degree than the legal qualification from Article 162b. Particularly, because the qualification from Article 162b only came into force in 2014, legally, there was no risk of the defense referring to the accusation of an act that was not criminal at the time it was committed. Still, although the use of this legal qualification enabled more serious punishment, as we will see later, the difference in foreign fighters' cases was not emphasized.

ISSUES RELATED TO EVIDENCE

Code of Criminal Procedure of Bosnia and Herzegovina (2013) belongs to the system of Civil Law, yet with elements of Common law, that is, the adversarial system. This is especially obvious in the provisions on direct and cross-examination, as well as the possibility to interrogate a defendant in their capacity as a witness, which is one of the options provided by the criminal procedural legislation in Bosnia and Herzegovina. Regarding their legal nature, problems with proving in foreign fighters' cases can be divided in to the ones referring to public calling, inciting, organizing of foreign fighters and, in general, all other activities related to this criminal offense, but not the mere joining in paramilitary formations, and the ones referring to joining or association with paramilitary formations. The differences are multiple, noting that only very few cases referred to the former, and most cases were basically in reference to prosecuting associations with paramilitary formations.

In regard to public calling, inciting and organizing foreign fighters, one of the most important defense arguments was based on the allegations that this was "... a trial to faith and interpretation of religion ...". As a response to this defense allegation, the Appeals Court held, "Namehly, during the first instance procedure, it was clearly proven that the actions of the individual, that is, the defendant who interpreted religious teachings, and openly misused certain quotations from the Holly Book concept, skillfully using language formulations, had a clear and unambiguous intention to directly and suggestively incite and recruit others, as well as create and strengthen their decision to join terrorist organizations of ISIS in Syria and Iraq. Hence, it is beyond doubt that the court trial which was initiated and is led at the moment is a trial to the defendant B, and not religion, religious beliefs or different religious movements, as the defense appealed" (Court of Bosnia and Herzegovina, 2016). We have to say that the observation of the court in this case was decisive also for all *pro futuro* cases of a similar nature in which the defense and defendant might appeal to freedom of religion and present such cases as trials of the religion they belong to. Salafism in Bosnia and Herzegovina is not punishable, and belonging to the Salafi community does not mean a criminal offense per se, as the defense tried hard to prove in this case. How high the level of abuse of religion is, we can see in an excerpt from evidence material from the prosecution, various "khutbahs" with which the defendant targeted especially young people to go to the battlefields in Syria and Iraq, such as, "*Who fights there ... young men at their best age fight there ... Brother from Sarajevo (Š.M.) died as a shahid and not as a coward...*" "*This is preparation for introducing Islamic Law in the whole country, and it will start from Sham. The best armies will gather there. The best shahids will die there.*" (Court of Bosnia and Herzegovina, 2015).

Unlike the previous case, in the cases in which the fact of membership in paramilitary, that is, terrorist formations was to be proven, the biggest problem was to prove the fact that the defendant actually went to Syria or Iraq, and that as a member of ISIS formation he took part in the armed conflicts there. Digital evidence and statements of main witnesses proved to be of the utmost importance in such cases. In quite a number of cases, the evidence

of a digital nature, such as Viber communication, YouTube clips, Facebook profiles were presented together with material evidence such as photographs and similar, to prove beyond doubt the participation of the defendants in foreign fighters' formations and stay on the territories of Syria and Iraq. When proving the fact of their stay in Syria in several cases, the testimonies of main witnesses who themselves took part in fights on the battlefields in Syria and Iraq were used, former fighters themselves who turned witnesses for the prosecution against their fellow combatants, were used.

Special investigative measures implemented in the criminal justice system in Bosnia and Herzegovina in 2003 had an important role in processing foreign fighters. These are the measures which are in fact directed to the collecting of evidence in cases of terrorism, organized crime, corruption and other serious criminal offenses. Hence, the activities that are extremely difficult to prove in the everyday practice of the law enforcement agencies and judiciary. They are: (a) surveillance and technical recordings of telecommunications; (b) access to computer systems and computerized data processing; (c) surveillance and technical recordings of premises; (d) covert following and technical recording of individuals, transport means and objects; (e) use of undercover investigators and informants; (f) simulated and supervised purchase of objects and simulated bribery and (g) supervised transport and delivery of objects of criminal offense (Code of Criminal Procedure of Bosnia and Herzegovina, 2013). Their application proved to be unavoidable also in the foreign fighters' cases. In court documents and material evidence, it can be seen that practically there is no case in which some of these activities were not undertaken. This only contributes to the need of their further improvement not only in cases of this type but in general when collecting evidence and processing serious criminal acts.

ISSUES RELATED TO PUNISHMENT

Based on our analysis of Court decisions all pronounced sentences in foreign fighters' cases are imprisonment for a term between 1 and 7 years. Out of a total of 14 cases, the 8 of them which were related to joining terrorist formations were finalized with plea bargains, each with a one-year imprisonment sentence. Only in one case of joining a terrorist formation, the Court pronounced a four-year punishment, and the longest sentence of 7 years in prison was pronounced in another case of a criminal offense of inciting, recruiting and organizing a terrorist group. Although the legal minimum of Article 162b, paragraph 2, as well as the one of Article 202d, paragraph 2 is not less than 3 years, such mild punishments are undoubtedly a result of plea bargains allowing the prosecutor in Bosnia and Herzegovina to propose a sentence under the legally defined minimum or even replace a more serious punishment with a milder one, for example – to substitute an imprisonment sentence by a fine.

The issue of penal policy in one state is not just a legal issue and as such is not only in the lawyer's domain. It always depends on how a society in its entirety observe the punishment and what is considered to be the purpose of the punishment. Are the prevailing elements of the punishment, retribution, prevention, re-socialization or something else? However, we will agree that the punishments in these cases are more than lenient. Especially, when one has in mind that the Criminal Code of Bosnia and Herzegovina (2015) in Article 42a, para. 1 allows the possibility of substituting an imprisonment sentence of up to one year with a fine. In other words, the possibility is given to each foreign fighter sentenced to one year in prison to substitute their punishment with a fine in the amount of about 18,500.00 EUR. In some cases such a substitution did occur. However, even if there is no such substitution, the institute of parole (conditional release) upon serving one-half or even just one-third of the

sentence will enable these perpetrators to leave the penitentiary institutions quickly. Now, we ask what is the purpose of such punishment to the persons who were completely aware of their actions and decisions, and in the name of radical ideology departed to another continent, took weapons ready to take lives of the others and joined terrorist organizations to achieve the goals of terrorism which are, in the simplest explanation, an absolute negation of all the rights and freedoms a human being can have? We are completely aware that in some cases the absence of a clear evidence was the main reason for such light punishment. This is basically the only objection we have related the work of judges and prosecutors today, because even in circumstances when the prosecutor and the defendant agree on a plea bargain and the respective punishment, it is not binding for the court. Hence, we can hold both prosecutors and judges equally responsible for such light punishments.

OUTCOMES AND STILL OPEN QUESTIONS

Judging by the court files considered in the article, it is not an easy task to prosecute foreign fighters at all. A special burden is on the Prosecutor's Office which, along with the general legal principle on burden of proof on the side of prosecutor, as we saw, quite often had qualitatively and quantitatively insufficient evidence substratum to adequately process these cases. Especially related to the fact that the defendant belonged to designated terrorist or paramilitary/para-police formations. Still none of the indicted cases, except the one case of a co-suspect against whom charges were early dismissed, were finalized with a release or another procedural solution, such as a dismissal of charges, which could be viewed as a defeat for the Prosecutor's Office. These are encouraging facts. On the other hand, penal policy in these cases is not encouraging. Especially fearsome is the fact that even in the cases in which it was proven beyond reasonable doubt that the defendant had belonged to terrorist formations in Syria and Iraq, it cannot be seen in the court files what he was doing there. Did he commit any crimes and if so, what kind? We can only speculate what individuals were doing there and, in turn, how lucky they are with the light punishments received for belonging to a foreign fighters formations. Now, after all, the fact that foreign fighters had such easy access to the battlefields in Syria and Iraq not only to go there, but also to come back from there and go again is quite disturbing. All these circumstances should improve the knowledge and experiences of the intelligence–security and police agencies in Bosnia and Herzegovina and also their international cooperation in order to prevent such cases *pro futuro* on some other battlefields. We live in a complex world and something like this should not be dismissed.

Finally, there is the pending issue of the overall low number of prosecuted foreign fighters. If one takes into consideration estimates about the number of Bosnia and Herzegovina citizens on battlefields in Syria and Iraq and estimates on the number of returnees from the beginning of this article, the number of the prosecuted does not exceed 10% of the estimated number of participants, or 50% of the estimated number of returnees. All these facts are quite concerning. In countries which respect the rule of law, indictments can be based exclusively on founded arguments, that is, evidence. However, it seems that it was not possible to provide more indictments in these cases. We note, however, that the subject of this study was only those cases completed by the Court of Bosnia and Herzegovina with valid decisions and not the cases, which are still going on or are in the phase of investigation.

At this moment, criminal legislation in Bosnia and Herzegovina does not practice any kind of specific post-penal measures targeted at the de-radicalization of former Bosnia and Herzegovina foreign fighters prosecuted by the judiciary who are already released or will be

released in the near future. Nor are there any specific criminal legislation security measures undertaken along with the penalty or after release from prison, which would be designated for the needs of de-radicalization and social re-inclusion. These are still problems inadequately addressed in Bosnia and Herzegovina society by criminal legislation. Yet, there are some promising examples. At present, there is a pending procedure to change the provisions on special investigative measures, according to which the period of investigations of terrorism or criminal acts related to terrorism is extended from 6 to 9 months. Our opinion is that this change will improve the investigations of this and similar criminal acts and result in better quality evidence. Still, there is an option that the mentioned measures can exclusively be declared by pretrial judges only, although, in our opinion, such a possibility should also be given to prosecutor in the instances of risking a postponement. Such or a similar solutions, which already exists in different legal systems, even in our closest neighborhood would greatly contribute to the quality of evidence on the prosecution side. For example, both Croatia and Serbia legislation, authorize prosecutor in specific circumstances to declare some of those measures. In Croatia, if there is a risk of a postponement, prosecutor has been authorized to pronounce almost all of special investigative measures for the duration of 24 hours (Code of Criminal Procedure of Croatia, 2017). In Serbia one special investigative measure is under complete authority of prosecutor with no need for the authorization by the court (Code of Criminal procedure of Serbia, 2014).

CONCLUSION

As already stated at the beginning of this article, it is very difficult to avoid the impression that in legal fight against foreign fighters and terrorism in general in Bosnia and Herzegovina, legal regulations still do not contribute to the efficiency of the fight and have no far-reaching positive effects in the prevention of such forms of criminal behavior. The problems existing in the legal qualifications of this type of criminal offenses, in evidence mechanisms and in penal policies, which we presented in this article, contribute to that. They are, first of all, a consequence of the inappropriate arrangements regarding substantive and procedural criminal law. Such arrangements should be changed and there are already some steps in this direction. We have mentioned the current work on the amendments in criminal procedural legislation which will lead to a wider and more efficient application of special investigative measures in the fight against foreign fighters and terrorism in general. In addition, the possibility of a limitation on legal provisions regarding court leniency towards punishments for certain criminal offenses should be considered. Such arrangements for example exist in entity legislation, such as the Criminal Code of the Republic of Srpska, which prevents the lessening of a punishment, among other offenses, also for the criminal offense of terrorism. It should be noted that these problems increased due to objective circumstances too such as the inadequacy of not only Bosnia and Herzegovina but also much more superior security and legal systems to predict the scope of such a terrorist organization presented in the form of ISIS and prepare their national legislations accordingly. It should however be noted that there are certain omissions, primarily regarding penal policy, which, as we already established, are extremely soft in these cases, and in that sense, adequate changes to the law have to be provided, especially in the context of substituting the imprisonment sentence of up to 1 year with a fine. In such criminal offenses, it is very difficult to justify such a substitution from any point of view. On the other hand, using the appropriate mechanisms, with full respect to the professional independence of prosecutors and, even more so, judges, a balanced penal system should be established corresponding to European and world standards. However,

Bosnia and Herzegovina and its judiciary continue this battle. Unfortunately, each new case is a new challenge and experience for the police agencies and the judiciary in their fight against terrorism, and thereby, also more knowledge and professional capacities, which will finally lead to a European judicial system in its full meaning. There is no doubt that the judiciary of Bosnia and Herzegovina, in spite of its problems, is on that track.

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COMPARISON OF COUNTER-TERRORISM LEGISLATION CHANGES IN SELECTED EUROPEAN COUNTRIES SINCE 2015

Jan Břeň¹, Tomáš Zeman²

ABSTRACT

The paper³ discusses amended legislation of counter-terrorism issues in the selected countries in Europe. Current terrorism activities in Europe led to a change of anti-terror laws in European countries as an adequate response to the level of danger in the region. The aim of this article is a basic description of the revised legislation and comparison of legal instruments which are related to the fight against terrorism in selected countries. An overview of the present state of affairs points to the significant impact of the legal changes in its impact on criminal law, constitution, police and intelligence competencies and security measures in individual countries is included in this paper.

Keywords: countries, counter-terrorism, law, legislation, security, terrorism

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INTRODUCTION

International terrorism is one of the examples of transnational crime in our millennium, one of the global problems of humanity and one of the global threats to humanity. It also represents one of the most serious attacks on democracy and the rule of law, i.e. on the principles common to the member states of the European Union. International terrorism becomes increasingly dangerous, and states should take appropriate measures to combat it. Effective means which are available to combat terrorism must have a criminal law character (criminalization of terrorist acts and their criminal prosecution, crime prevention) and also character of criminal proceedings (means of seeking, investigating, proving terrorist acts in criminal proceedings). Criminal law instruments are only a part of the overall counter-terrorism legislation. Terrorist attacks in Europe, along with mass migration to European countries, have prompted a strong debate across the European Union countries whether they should strengthen laws and other measures related to terrorism.

The paper focuses on the comparison of legal standards and other related instruments in selected countries of Western Europe (France, Germany, United Kingdom, and Belgium) with countries of the Visegrad Group (V4) which represents Central Europe (the Czech Republic, Poland, Slovakia and Hungary). These countries have amended the relevant legislation since 2015. The nature of these laws should not only be a preventive measure against potential terrorist activities but also as a legislative regulation against the threats posed by mass migration. The infiltration of terrorists into migratory waves is undoubtedly one of the greatest threats that can seriously disrupt the security of the state.

Table 1 shows the development of terrorist attacks in individual countries from 2010 to 2016 according to the Global Terrorism Database (Global Terrorism Database, 2018).

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Table 1: *Development of terrorist attacks in selected European countries from 2010 to 2016*

	2010	2011	2012	2013	2014	2015	2016
Czech Republic	0	0	0	1	3	4	1
Slovakia	0	0	0	0	0	0	1
Poland	0	0	0	0	0	0	1
Hungary	0	0	0	0	1	0	1
Germany	0	1	1	0	11	54	37
France	3	6	65	8	13	34	19
United Kingdom	36	23	24	67	62	56	67
Belgium	0	0	1	0	1	0	4

Source: Global Terrorism Database, 2018

The number of terrorist attacks in countries of Western Europe is much higher than terrorist attacks in countries of the Visegrad group. Based on the above development of terrorist attack (Table 1), the available legal norms, conceptual and strategic documents, criminal codes, and expert articles dealing with the legal issues of terrorism were analyzed to provide a comprehensive overview of the changed status of the legal environment related to the threat of terrorism in selected European Western and Central countries.

Terrorism remains one of the fundamental security challenges of today's world also with organized crime, extremism, national and social conflicts, the integration of migrants into majority society and economic risks.

METHODS

The subject of the legal instruments analysis of concerning the fight against terrorism in selected European countries are significant information sources, legal regulations, constitutional laws, strategic documents, concepts, databases and news portals. The method of synthesis, comparison and description is used in processing the acquired knowledge, which is used together with the method of induction and deduction in defining the overview of the current legal environment of the fight against terrorism and the formulation of results and conclusion.

For comparison European Western countries with the highest value of the terrorism index were selected (according to Global Terrorism Index, which provides a comprehensive summary of key global trends and patterns in the field of terrorism to produce an assessment of the impact of terrorism in individual countries). The countries with the highest value of this index in Western Europe are: France (index 5.96/10), Great Britain (5.1/10), Germany (4.92/10) and Belgium (4.66/10) (Institute for economics & peace, 2017). In addition, the Visegrad Group was selected for comparison of approaches to legal and security changes with European Western countries.

RESULTS AND DISCUSSION

This chapter describes major changes in counter-terrorism legal framework in the Czech Republic, Slovakia, Poland, Hungary, Germany, France, United Kingdom and Belgium.

CZECH REPUBLIC

The Czech Republic, together with other member states of the Visegrad Group, amended the anti-terrorism legislation in 2016. Amendment of Criminal Code (Trestní zákoník České

republiky, 2009) was adopted based on terrorist attacks in the countries of the European Union from previous years and the current security threats stemming from the migration crisis. Another important incentive to amend the law was the requirements of international organizations. In the absence of sanctions for the promotion of terrorism, the Financial Action Task Force will invite the member states and associated states to assess financial relations with V4 countries as risky. As a result, these sanctions would mean limiting and blocking domestic trade of domestic companies (Novotná, 2016).

At present, the Criminal Code of the Czech Republic, which defines and regulates the concept of terrorism from the point of view of criminal law, is the legislative center of gravity in the fight against terrorism in the Czech Republic. Other key documents are The Security Strategy of the Czech republic 2015 (Bezpečnostní strategie České republiky 2015, 2015) and The Strategy of the Czech republic for the fight against terrorism from 2013 (Strategie České republiky pro boj proti terorismu od roku 2013, 2013).

The amendment to the Criminal Code has been in force since 1 January 2017. The promotion and supporting of terrorism, the financing of terrorism, the threat of terrorist offenses and the participation in terrorist group have been added to the current offense “the terrorist attack” (Trestní zákoník České republiky, 2009).

„Citizen who publicly encourages a terrorist act will be punished of up to ten years by prison. The above rate applies to the public approval of terrorist activities or publicizing their offenders. A criminal offense may be initiated against a person who provides others with information or training to produce and use explosives, weapons, dangerous substances or other techniques and techniques for the purpose of terrorist activities (imprisonment for up to twelve years). The financial or material support of a terrorist group and its members shall be punishable by imprisonment for up to fifteen years or, in addition to such punishment, by the forfeiture of property. The imprisonment for threatening the commission of a terrorist offense is set at a rate of up to fifteen years” (Trestní zákoník České republiky, 2009).

The Criminal Code newly contains a definition of the term terrorist group: *„A terrorist group is a community of at least three criminally responsible individuals, which has a more permanent character, there is a division of activity between its individual members, activity is characterized by planning, coordination and it is aimed at committing a crime of treason committed in the form of a terrorist attack...”* (Trestní zákoník České republiky, 2009).

The Security Strategy of the Czech Republic 2015 is an integral part of the Czech Republic’s security policy, which followed by other concepts and strategies. It is a comprehensive document that contains chapters closely related to the issue of counter-terrorism.

The Strategy of the Czech Republic for Combating Terrorism is conceived as a document of a general nature which reflects the interests and basic principles of the fight against terrorism in the Czech Republic.

The Strategy of the Czech Republic for Combating Terrorism contains:

- improving communication and cooperation between actors involved in the fight against terrorism and improving the conditions for the performance of their activities;
- a security research, education and public information in relation to specific aspects of the fight against terrorism;
- prevention of radicalization in society and the fight against recruitment into terrorist structures;
- legislative and international-contractual issues (Strategie České republiky pro boj proti terorismu od roku 2013, 2013).

The last point of the above list also refers to the fact that in the criminal law of the Czech Republic, not only the area of protection against terrorism, but also compensation and assistance to the victims of terrorism is adequately enshrined. Furthermore, the protection of witnesses and other persons involved in terrorism-related cases. The European Union in the fight against terrorism requires the law on the introduction of criminal liability of legal persons into the legal order of the member states. In the Czech Republic, this law came into force on 1 January 2012 (*Zákon o trestní odpovědnosti právnických osob a řízení proti nim*, 2011).

Since 1 January 2017, The Center for Counter Terrorism and Hybrid Threats has been established in the Czech Republic. The activity of this center, due to the Ministry of the Interior's responsibility, is to monitor the threats connected directly with the internal security of the state, which implies a broad range of threats and potential incidents in the field of terrorism. (*Centrum proti terorismu a hybridním hrozbám*, 2018).

The Czech Republic is currently a part of thirteen international anti-terrorist instruments. A list of these ratified contracts is available in the strategy discussed above (*The Strategy of the Czech Republic for Combating Terrorism from 2013*, 2013).

SLOVAKIA

Slovakia, as the Czech Republic, responded to the current security situation in Europe by amending anti-terrorist legal norms. The specific changes concern the Criminal Code and the Constitution (*Trestný zákon Slovenskej republiky*, 2005; *Ústava Slovenskej republiky*, 1992). The new legislation creates a framework for the fight against terrorism, which currently reflects development trends, not only in prevention. The aim of the amendment is to create legal prerequisites in the field of information gathering, to extend the possibilities of using preventive measures and to change the incurring of criminal liability in the case of prosecution of terrorist offenses (*Ministerstvo vnútra Slovenskej republiky*, 2016).

An important legal regulation in this area is an intervention in the Constitution of the Slovak Republic. The Constitution extends the period by which a person suspected of committing a terrorist offense can be detained from 48 to 96 hours. Due to the severity and nature of terrorist activities, the previous deadline was inadequate to clarify the case and to justify the necessary evidences by the law enforcement authorities (*Ústava Slovenskej republiky*, 1992).

The legal basis for counter-terrorism is the Criminal Code. The formulation of new criminal offenses is almost identical to that of the Czech Republic due to the requirements of the above-mentioned international organizations. The amendment to this Code came into force on January 1, 2016. Legislation has taken place not only in the Criminal Code but also in other laws: *Police Corps Act* (*Zákon o Policajnom zbore*, 1993), *Witness Protection Act* (*Zákon o ochrane svedka*, 1998), etc.

Overview of major changes (*Ministerstvo vnútra Slovenskej republiky*, 2016):

- expansion of the reasons for securing a person who is located in the place of a terrorist attack or where a terrorist attack has already taken place (the length of the security is extended from 24 to 48 hours in these cases);
- newly defined and formulated authorization to stop and inspect the means of transport (specifically to add prohibited articles and dangerous substances which may be the reason for the inspection);
- witness protection is guaranteed for all witnesses to terrorist offenses;
- customs offices will, if necessary, perform the police tasks based on government decisions;

- managing Interpol database information;
- the period for detaining an unusual business transaction is extended from 48 to 120 hours;
- modification of location data provision for searches of missing persons.

The National Action Plan to Combat Terrorism for the years 2015-2018 (Národný akčný plan boja proti terorizmu na roky 2015-2018, 2015) is a part of the Slovak Republic's security policy. This plan is structured like the Czech counter-terrorism strategy, although it is not so extensive. The content of this plan deals with the analysis and evaluation of the security situation in the European Union and the current situation of the fight against terrorism in Slovakia.

POLAND

Poland adopted amendments to anti-terrorism laws in mid-2016. This legislation has prompted a wide-ranging debate across the whole Poland. According to the non-governmental organizations there, these laws contain certain measures that are inconsistent with the Polish Constitution and the European Convention for the Protection of Human Rights. The Polish Government argues with the need to adopt these regulations to improve the current security of the situation in the country (Panoptykon foundation, 2016a). The most controversial changes concern the following areas: limited freedom of assembly, limited freedom of communication, unrestricted access to databases from the government's internal security agency, "all foreigners are suspected", blocking the Internet at the request of The Internal Security Agency (Panoptykon foundation, 2016b).

The designated competent government authorities may prohibit public gatherings and protests because of the potential terrorist attack on the site. However, the Polish legislation vaguely defines the term terrorist attack. Non-government organizations are concerned that the new legal provision may be used to silence the protesting public without threatening a terrorist attack (Panoptykon foundation, 2016a).

The law establishes the obligation to register all prepaid phone cards (registration on citizen's card). However, according to the experts, this law will not be effective in the fight against terrorism and organized crime (the law can easily be circumvented, especially among foreigners). However, this legislation, based on the concerns of the professional public, restricts the rights of journalists who want to protect their resources and the rights of citizens. There are legitimate reasons to protect their privacy. The Internal Security Agency has unlimited access to all databases (social security database, fingerprint database, etc.) without any control and surveillance mechanism (Panoptykon foundation, 2016b).

The current standard of protection set for a foreign national subject to Polish jurisdiction will be reduced. Telephone calls to foreigners can be intercepted by the police without a court order. Also, the police can check fingerprints at any time and without a specific suspicion. Poland is a relatively homogeneous state, which creates a large risk of discrimination based on skin color, nationality or ethnic origin. This legal measure is aimed only at foreigners. But every Polish citizen may be affected by this law if he/she communicates by telephone with a person of another nationality (Panoptykon foundation, 2016a).

The legal regulation allows an immediate blocking of any website at the request of The Internal Security Agency. It is only after five days that the court ascertains whether the blocking of the site is justified (Panoptykon foundation, 2016a).

Similarly, as in the Czech Republic and Slovakia, conceptual and strategic documents for the fight against terrorism are elaborated. This is the Strategy of Development of the National Security System of the Republic of Poland 2022 (2013) and the National Security

Strategy of the Republic of Poland (2014). These documents have a similar content, goals and tasks as the already discussed strategies operating in the Czech Republic and Slovakia.

HUNGARY

The Hungarian government has adopted relevant laws relating to threats of terrorism in 2016. Similarly, as in Poland, the competencies of the security forces there have been greatly increased. Before the amendment, police could watch the Internet and wiretap phone calls only based on the court order with the consent of the Internet and communication service provider. Under the new legislation, the need for a court order will continue, but providers will no longer be able to deny police access to their services (Harper, 2016).

Other measures that can be put in place to protect against terrorism include: curfew, restrictions on the movement of vehicles, banning mass actions, enhanced border protection, stricter control of postal communications (Harper, 2016).

The Hungarian Parliament approved the related normative changes in the constitution, national security and defense. One of the novelties is the possibility to declare the status of a terrorist threat in the event of a terrorist attack. In such case, the consent of two-thirds of the members of the Legislative Assembly is required. In this situation, some laws can be circumvented, and emergency measures introduced for a maximum of fifteen days. The army can be used if the police and national security services are not enough. This provision also relates to the military's right to use weapons if necessary (Aktuálně.cz, 2016).

A new Anti-Terrorist Information and Analytical Center was established in Hungary. It is a nation-wide service. The main tasks of the Center include the assessment of terrorist threats and other security threats. Criminal Code was amended to include criminal liability for a terrorist act. Victims aged between 12 and 14 can also be criminally liable. (Aktuálně.cz, 2016)

The basic strategic document on the state security is Hungary's National Security Strategy (2012). The purpose of this current strategy is to define, based on the values, state interests and security environment analysis, national objectives, tasks and comprehensive government instruments for Hungary to promote its national security interests in the international political and security context.

GERMANY

The German anti-terrorist legislation was amended in mid-2015. The new legislation punishes by the imprisonment of its citizens who undergo training and the preparation of a terrorist act not only in Germany but also abroad. Changes in the law also concern the area of terrorist financing. The new legal provisions do not include the significance of individual financial activities, and all kinds of terrorist financing are placed on an identical level of materiality (Library of Congress, 2015).

Based on the new competencies, the German police no longer need to provide the legal reason for a specific search during searches of persons and property. If there is a suspicion of threatening public safety in a location, the police do not need to state the legal grounds for the search. A significant change in legal standards concerns citizens' passports and passports, which may, regarding the decisions of competent authorities, be further void. They will be replaced by identity cards with limited territorial jurisdiction. The aim of this legal provision is to reduce the number of foreign fighters (Martin, 2017).

In response to the migration crisis, the federal government has introduced controls at its borders, although Germany is a member of the Schengen area, which allows the free movement of goods and persons. This procedure has contradicted the order of European Court of Justice, which has ruled that border controls cannot be used to circumvent the Schengen free travel regulation. Because of the migration crisis, regulations that set stricter conditions for asylum seekers came into force. Unlike many other states, German constitutional law forbids the army to be deployed in the streets of German cities. However, despite many attempts, this provision has not been broken and the army continues to be used in German territory only in cases of natural disasters (Martin, 2017).

No less important part of the amendments to the laws was the modification of the functioning of domestic and foreign intelligence services. The fundamental right to telecommunication secrecy was also restricted - the possibility of interception without a court order in case of emergency. A novelty in the legal regulation is the possibility for the federal police to make audio and video recordings in private flats without informing the person concerned. Changes in the Telecommunications Act are key - buyer prepaid calling cards must provide proof of identity when purchasing. At the same time, telecommunication service providers are required to store phone numbers, names and addresses of the call participants, date of birth of the person, call-to-call address and exact time of the call (Stern, 2016).

Germany has directly in its legal system the Anti-Terror Act (2016) in force since 2006, and the last amendment was in 2017.

FRANCE

The French Government amended the legal framework for terrorism in 2016 to strengthen existing anti-terrorist powers. The amendment includes the possibility of checking a citizen by a competent authority if he was in a foreign territory where terrorist organizations operate. Other significant changes include the possibility for the judicial authorities to allow home searches at any time according to the needs of the police (Act on Reinforcing the Fight against Organized Crime, Terrorism and their Financing, and Improving the Efficiency and Guarantees of Criminal Procedure, 2016), extension of the period restricting the freedom of movement and the prohibition of admission of foreigners who were sentenced for a terrorist offense to the French territory (Act on Measures to Strengthen the Fight against Terrorism, 2016).

The law also allows the collection of information on telephone and e-mail communication of suspects, access of security organizations to information in travel agencies, airlines and shipping companies in case of emergency (Kern, 2017). The amendment to the law allows police authorities to request information by Internet Service Providers about communication without a court order (Act on Measures to Strengthen the Fight against Terrorism, 2016). The competent authoritative authorities may designate individual sites (cathedrals, sporting events, cultural events, etc.) as being at risk. The law allows the police, without giving reasons, to inspect persons and properties in these areas. In addition, these authorities can close places of worships for up to six months if there is a reason to suspect the spread of terrorist ideas. An important interference with citizens' freedoms is the restriction of the movement of people of Islamic faith if there is a presumption of a serious security threat to public order - the Interior Minister approves a domestic jail for a period of three months without a court order, and individuals must report to the local police each day. New laws allow the police to carry out unauthorized identity checks in more than 118 border areas and 373 airports, seaports and train stations (Kern, 2017).

The Criminal Code (Criminal Code of the French Republic, 2011) was also changed, which was amended in 2015. A new criminal offense was established - verbal supporting of terrorist acts. The competent authorities shall take such a change as necessary to reinforce criminal and administrative measures to address terrorist acts (Imbert, 2015).

In 2017, the French president set up a counter-terrorism unit to analyze information collected by the Ministries of the Interior, Defence and Justice. The purpose of this unit is to centralize and facilitate the exchange of information between competent authorities and institutions (Financial Times, 2017).

THE UNITED KINGDOM

The amendment of the British legal regulation of terrorism was quite extensive in previous years. The primary amendments to the legal provision include Terrorist Act (2000), Anti-Terrorism and Security Act (2001), and Counter-Terrorism and Security Act (2015).

Overview of major changes in Counter-Terrorism and Security Act (Government of the United Kingdom, 2015):

- limited mobility of UK citizens in the territory areas of terrorist activities;
- strengthening the competences of the relevant state authorities in monitoring and controlling people posing a potential threat;
- the police may temporarily confiscate the passport of any citizen and alien for the control and lustration of the person;
- fighting against ideologies and ideas that support terrorist activities;
- a British citizen abroad suspected of involvement in terrorist activities may be a subject to a ban on entering the United Kingdom;
- facilitating the access of authorities to criminal proceedings to internet communication;
- the possibility of banning financial transactions of terrorist suspects;
- creation of a program for the protection of persons threatened by a terrorist attack.

Other changes in counter-terrorism measures include the restriction of the freedom and movement of terrorist suspects unless there is any reasonable evidence to prosecute them. An important aspect of the fight against terrorism is the increase in penalties for minor offenses related to terrorism (Travis, 2017).

Controversial factor in the fight against terrorism is the introduction of the so-called "Snooper's charter". Mobile operators and Internet providers must collect data on all network users and phone calls. This sensitive information will be kept for one year. In addition, security forces, espionage agencies and the police will be able to hack off telephones or a computer, both individual citizens and city authorities. However, the bigger threat is a massive data tracking – the government will then be able to see what pages the specific British have visited or which communications software or mobile application they used (Dvořáková, 2016).

The implementation of this law was addressed by the broad and professional public. Opinions are different and some call it a shame for freedom and democracy (Burgess, 2017).

BELGIUM

In 2016, the Belgian Parliament approved the amendments to the Criminal Code (Criminal Code of the Kingdom of Belgium, 1867). The amendment extends the facts of criminal offenses related to terrorism (in particular, the area of foreign fighters). Following this, the Belgian government has created a centralized database of foreign fighters that allows all

law enforcement and intelligence agencies to share the identity of known and suspected foreign fighters (U.S. Department of State, 2016). At the same time, new methods and means for detecting terrorist activities by intelligence services (voice recognition, extension of interception, etc.) were approved (Michel, 2016). Furthermore, there could be a change in the constitution by extending the period of custody of suspects from terrorist acts from 24 hours to 72 hours and 24 hours per 48 hours being suspected of crime - this proposal was not accepted by the Belgian Parliament (Torfs, 2017).

Other major changes include (Belgian League of Human Rights, 2015):

- expanding opportunities for deprivation of citizenship;
- temporary withdrawal of identity card, passport denials;
- house searches for 24 hours a day for terrorist offenses instead of 16 hours a day;
- keeping passenger data from flights and high-speed trains;
- screening of all those preaching hate to place them under house arrest, deprive them of their liberty or to expel them;
- end of the anonymity for pre-paid mobile cards;
- cancelling websites preaching hate;
- an electronic bracelet for people who are registered by the threat analysis services: an adversarial procedure will be introduced to impose electronic control bracelets.

It has also been agreed to engage the army in specific control activities conducted jointly with the Belgian police (Belgian League of Human Rights, 2015). Table 2 gives summary information of this chapter and recapitulates major specific changes in counter-terrorism policy in selected countries of Western and Central Europe since 2015.

Table 2: *Changes in specific areas related to terrorism in selected European countries since 2015*

	changes in laws/ criminal code	changes in constitution	changes in competencies of state authorities/ police/ intelligence	changes in civil liberties	creation of new institutions/ task forces related to terrorism threat
Czech Republic	✓				✓
Slovakia	✓	✓	✓		
Poland	✓	✓	✓	✓	
Hungary	✓	✓	✓	✓	✓
Germany	✓		✓	✓	
France	✓		✓	✓	✓
United Kingdom	✓		✓	✓	
Belgium	✓		✓	✓	

CONCLUSION

Terrorism is currently a major security threat for whole society. The article analyzes changes and new approaches in the legal framework of Western and Central European states in the field of counter-terrorism since 2015.

Based on this analysis, significant findings are newly identified in legal regulations and in other relevant documents to effectively respond to the threat of terrorism and related security risks in the specific country. The declared facts confirm that the amendments concern in the

particular criminal codes, laws related to state security, constitution, competencies of state authorities, citizens' freedoms and the organizational arrangement of the security system.

Although the number of attacks in the Western and Central European countries is substantially different, changes in specific areas of the fight against terrorism are in many aspects identical.

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PEACETIME ACTIVITIES OF THE MILITARY AS A SOURCE OF THREAT TO THE ENVIRONMENT IN CONTEXT OF GREEN CRIMINOLOGY

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ABSTRACT

Purpose of this paper is to raise awareness of peacetime military activities with adverse impact to the environment and to present those in context of green criminology. Thus, our aim is to create a typology of those peacetime military activities that are causing environmental harm. The military with its capacities and as institution legitimated by state, even during peacetime activities, has the potential of causing environmental harm or environmental crime. Since the military is operating in different components of natural environment, we assume that peacetime activities of the military have an adverse effect on land, water and air components. This assumption dictates the need to produce the typology of those peacetime military activities which have harmful effects to the environment. Typology is general since it encapsulates those environmental harmful activities which are evident from different geographical locations worldwide and are commonly find among different states armed forces.

Keywords: environmental crime, green criminology, armed forces, military, environmental harm

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INTRODUCTION

Human awareness of the importance of protecting the environment has contributed to the fact that certain acts against the environment have become criminal or condemned by society. Term of green criminology was widely accepted as it captures issues relating to environmental harms (Lynch in White, 2008b) or environmental crimes (White & Heckenberg, 2014) and evolved in the branch of criminology that deals with the study of crime against the environment and associated phenomena (Sotlar, Tičar, & Tominc, 2010). Broader definition of green criminology refers to study "...of environmental harms, environmental laws and environmental regulations. Within green criminology the three broad approaches to the conceptualisation of environmental harm are environmental justice (main focus is on humans), ecological justice (main focus is on the environment) and species justice (main focus is on animals) " (White, 2009: 14) or stated differently, green criminology deals with environmental harm from the justice point of view (environmental justice, ecological justice, species justice) (White, 2008b).

As defined by White (2009: 12) environmental harm "Refers to wide variety of injuries and degradations linked to use, misuse and poor management of the natural environment, including such things as pollution, toxic waste and killing of plants, soils and animals. Environmental harm can be conceptualised as involving acts and omissions that are both legal and illegal. Defining harm is ultimately about values and priorities and not just the law says it is" The same act in different societies does not necessarily constitute a criminal act. By legal definition criminality is any act prohibited by criminal law, while, by sociological

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definition of criminality, some acts do not constitute a violation of criminal law, but they are so harmful that have the character of a crime (Situ & Emmons, 2000). In this sense, all acts that are otherwise harmful to the environment, are not defined as to be prosecuted by law (Eman, 2008; White, 2009).

From this aspect describing environmental crime fits under broad umbrella of environmental harm or could be defined on continuum from strict to less legal provisions (Bricknell in White & Heckenberg, 2014). Such broad presentation of environmental harm is basis for further analysing peacetime military activities for whom deem to be systemic and legal although environmental harmful. By one definition environmental crime refers to "... environmental harms that are deemed to be illegal according to the law. These include acts or omissions related to illegal taking of flora and fauna, pollution offences and transportation of banned substances such as radioactive materials" (White, 2009: 12) Interestingly one of earlier definitions comes from Pečar (1981: 40) by whom environmental crime is "... every permanent or temporary act or process which has a negative influence on the environment, people's health or natural resources, including; building, changing, abandonment and destruction of buildings; waste processing and elimination of waste; emissions into water, air and soil; transport and handling of dangerous substances; damaging or destructing of natural resources; reduction of biological diversity or reduction of genetic resources; and other activities or interventions, which put the environment at risk." Threats to and destruction of the environment, called environmental crime, are defined as behaviour that is contrary to (criminal) legal protection of the environment (Eman & Meško, 2012: 38).

Although the military conflict does not represent the greatest threat to modern security (Sotlar & Tominc, 2012), states retain the military. Armed forces operate within the defence system (Grizold, 1999). Their task is preferably military defence of the state against the attack of armed forces of other countries. Term military is explained as "Pertaining to armed services of all branches-army, navy, marine corps, air force" (Dupuy, Johnson, & Hayes, 1986: 148) while term armed forces refers to "All military forces of a nation or a group of nations" (Dupuy, Johnson, & Hayes, 1986: 13) or "to those institutions of managed lethal violence that are legitimated by state control" (Dupuy, 1993: 1746). It is more common to use term military when one point at military organisation, its attributes and values and also commonly used as adjective relating to armed forces matters. We use term armed forces as specialized armed formation of the state, organized and prepared for the implementation of the armed struggle (Ratković, 1981: 372) and as they are more directly linked to be perpetrator of environmental harm. As part of a state organization, the armed forces are the main subject to protect of the independence and territorial integrity of the state, a given political and economic system and the implementation of state policy in the war (Grizold, 1999: 44).

The military is in a paradoxical situation in relation to the environment. The task of the military is to ensure the security of the country, and at the same time it is a factor with a major environmental impact. The consequence of the development of military technology is the equipment of modern armed forces with armaments, which has far greater destructive power compared to that of the 20th century. Armed forces perform peacetime activities in all components of the natural environment (air, water, land, higher atmosphere layers and outer space). Question is: "What are the forms of environmental harm caused by peacetime military activities in each component of natural environment that is land, water and air" The sociological definition of criminality is important given the fact that environmental harm, as a result of peacetime operation of the armed forces, is largely not considered criminal. The

armed forces are preparing for the execution of the armed struggle in peacetime. Since the time between wars for a particular country is usually longer compared to the time of war, and because the armed forces are continuously preparing for armed combat in peacetime, it is also expected that the negative impact of peacetime activities on the environment is significant. Important fact is also, as argued by Koniuszewski (2016), that most of military weapons is never used in war but mostly at training during peacetime.

Environmental harm causing by peacetime activities of the armed forces can be determined by analysing the content of the activities of the armed forces. Some forms of environmental pollution caused by armed forces have transnational dimension. Those activities including nuclear tests, nuclear weapons production, weather modification, transportation of banned substances, geo-engineering techniques for military purposes, the militarization of outer space and the military presence in neutral or non-occupied territories (Le Miere & Mazo, 2013).

LITERATURE REVIEW

An overview of the existing literature dictates the need for a more comprehensive analysis and more elaborated typology of the content and dimension of peacetime operation of the military with a negative impact on the environment at a global level. We used the descriptive method by summarizing written and web sources. Although the effects of warfare in the wartime are more apparent, immediate and destructive to the environment (GlobalSecurity, n.d.), the impact of the peacetime activities of the military on the environment is less direct, diverse and often less noticeable and perceived. Most studies focus on the activities of the military with an impact on the environment during the war or in the aftermath of war (Freeland, 2015; Jha, 2014; Lawrence, Stemberger, Zolderdo, Struthers, & Cooke, 2015). Many are the individual studies of the negative impact of the activities of the military on the environment (Kelebemang, et al., 2017; Koniuszewski, 2016; Ramos & De Melo, 2006). As example Koniuszewski (2016), linked the influence of the military activities on environmental degradation even in peacetime. Fewer are studies linking the peacetime activities of the military to environmental crime (Proechel, 2007) or in the context of green criminology. Eman (2012), based on her findings, highlighted options for further research on individual groups of perpetrators of environmental crime. Based on classification of environmental crime by perpetrators, military (with nuclear testing, hazardous waste disposal and military operations) is included in group of environmental crime by government (Situ & Emmons, 2000). White (2008a) recognised that environmental harms linked to military activities demand some type of response and that military decisions regarding environmental risks should not be sealed as “national security” matters (White, 2008a: 64) nor environmental related issues to be labelled with secrecy.

EVIDENCE OF ENVIRONMENTAL HARM CAUSED BY THE MILITARY

There are numerous of cases, supported by results of laboratory analyses (Agency for Toxic Substances and Disease Registry [ATSDR], 2012; Koniuszewski, 2016; Salvi et al., 2015; Santana, 2009; Whittall et al., 2016) of the samples taken from the military area, that certain substances have caused harmful changes in the environment. These substances are product of processes triggered by the armed forces during their activities in a natural environment.

Shooting ranges are that part of the military infrastructure at which the armed forces carry out live fire training and where they conducting weapons tests. Shooting range environments

are exposed to contamination with materials, components of ammunition, and with substances that are the product of detonation of various ammunitions. Explosives used for charges of artillery missiles, rockets, mines, grenades and various types of ammunition are TNT, RDX and Comp B and causes contamination of the environment. Decomposition of explosives residuals in the environment and the products resulting from detonations is the subject of various researches (Edwards, 2006; Katseanes et al., 2017; Sisco, Najarro, Bridge, & Aranda, 2015; ATSD, 2012; Sheild, Lichwa, Colon, Moravcik, & Ray, 2013). The presence of lead, antimony, copper, arsenic, zinc and other toxic substances is particularly problematic in military ranges. Typical signs of poisoning with lead are brain disorders, nervous disorders, effects on the level of mental abilities and reproductive disorders (Koniuszewski, 2016). Ammunition bullets for infantry weapons (rifles, guns, machine guns) are mostly consisting lead (Pb). The lead remaining on the shooting range can contaminate the soil, water and vegetation and has a negative impact on human and animal health (Kelebemang, et al. (2017).

White phosphorus (P4) is used as pyro components of artillery shells and grenades (in a 155 mm shell it can be up to 7.1 kg P4). It has the characteristic that it creates smoke during the ignition, which in tactical situations on the battlefield is used to conceal friendly or mark enemy units. P4 is highly toxic and after ignition it does not burn completely and therefore remains in the environment (Voie, Johnsen, Strømseng, & Longva, 2010). In addition to conventional ammunition, the military uses rocket technology. Rocket propellant contains Perchlorate, which can be found in many locations where the armed forces carry the ignition of explosives. This chemical compound affects the functioning of the thyroid gland. Already in minimum amounts of water and food, can affect the health of the fetus (Hynes, 2011). Micro-level contamination of the environment may occur in cases where there is interaction between the contaminant and the medium such as soil, air or water.

COMPLEX MILITARY INFRASTRUCTURE

Multiplicative environmental impacts come from a more complex military infrastructure, such as active military bases. Modern military bases are designed to accommodate thousands of soldiers with associated infrastructure and military itineraries and, in fact, are actually towns with shops, hospitals, kindergartens and schools. The diameter of such base may be several kilometres and the construction of the base may require a major interference with natural environment. For example, the base of the US Army Fort Brag in North Carolina, for example, had a surface area of 61 square kilometres in 2009, with 50,178 troops and a total of 16,217 civilian employees (Department of Defence [DoD], 2009). A complex military infrastructure includes aviation, land and maritime bases, shooting ranges and polygons, warehouses and hazardous waste landfills. The operation of military bases has an anthropogenic effect on the environment (Lawrence et al., 2015) by waste production, energy and water consumption, transport, training, shooting, etc. For example, the operation of the US military base on Okinawa Island (Japan) is associated with noise, asbestos pollution, air pollution, water and soil, disruption of vegetation growth and health effects (sleep disorders, hair loss, poor quality of life, increased cancer risk, disorders of children in the learning process). So far, Japan and the United States of America have not identified the harmful effect on health by an operating military base (Yasuharu & Barnett, 2017).

The US Environmental Protection Agency has established a record for remediation of contaminated federal sites in the country, including the sites of military bases (Environmental Protection Agency [EPA], 2018a). Proechel (2007) writes about international environmental crime in connection with abandoned US military bases, mainly in Panama and the Philippines,

where high levels of harmful substances (PCB², heavy metals, pesticides etc.) were found in the samples taken. In tackling the consequences of pollution in abandoned military bases by host armed forces on foreign territory, it often leads to avoidance of responsibility due to unclear national legislation or unclear terms of agreements.

Such an integrated approach to the study dictates the need for a more precise analysis of the content of individual peacetime activities of the armed forces with an adverse environmental impact. This will also contribute to understanding the reasons for the persistent existence of social movements for the closure of military bases (Harner, 2015; Jaksetič, 2013) as public opinion is an important factor in achieving changes in the field of environmental protection.

STORAGE, USE AND DISPOSAL OF HAZARDOUS MATERIALS

The armed forces, together with the large-scale military industry, are an enormous consumer of natural raw materials (Hough, 2016) and large producer of wastes. Burger (2013) designated the Defence Ministry as one of the largest contaminants in the United States, which produces annually 750,000 t of hazardous wastes. Sanders (2009) added that the US is the largest single pollutant, which among other factors, contributes to the global ecological crisis. In the process of production, testing and use of armaments, millions of tons of hazardous waste are generated (Goewey in Situ & Emmons, 2000). According the waste producing pressures and based on evident cases, we presume that armed forces could be, by yet unclearly defined links, part of widespread international waste trafficking. That is confirmed by the discovered cases of broken nuclear submarine reactors, found dumping at Barents and Kara Sea by Russian navy, or by destinations in India, Bangladesh, Pakistan or China overflowing by old ships, aircrafts and aircraft carrier from European and United states undergo the process of dismantling (Sonak et al. in Klenovšek & Meško, 2010).

As producing large quantities of environmentally hazardous waste, the armed forces use different ways for waste disposal. One is to bury hazardous waste deep into the ground or dive them into the sea. A special problem is hazardous substances (ammunition, explosives) which, due to expired date of use, are no longer used by the armed forces. At military bases are generated large quantities of different types of waste such as electronic waste, plastics, fuels, oils, chemical substances, pesticides, lubricants, obsolete ammunition and explosives, obsolete ships, aircraft, vehicles etc. At the end of the 1980s, the US Defence Ministry produced a ton of toxic waste per minute, which represents more than five of the largest chemical companies in the United States and is considered the largest individual pollutant in the country (Hynes, 2011). The simplest and cheapest way of waste disposal is burning or burial in the soil. Waste produced by the armed forces often remains in the abandoned military infrastructure, in the open air or in containers which eventually decays. Such dangerous substances slowly penetrate the ground and pollute groundwater. Widespread practice of waste disposal is burning in outdoor fires. The armed forces burn wastes in military bases on improvised fire burners called "burn pits". Plastics, batteries, equipment, medical waste, bio-waste and other substances are burned together. The incineration process can take several days while soldiers and the local population are exposed to toxic smoke generated in this process. The incineration of outdoor waste is associated with the development of cancer and respiratory diseases in subjects exposed to toxic smoke (Mercer, Farley, & Hagopian, 2016; Lustgarten, 2017).

2 PCB (polychlorinated biphenyl) is a chemical based on chlorine. It is used as an electrical insulator, coolant or as an ingredient in copier paper. PCB is harmful to health and causes pollution of the environment.

Armed forces are the subscriber and user of the military industry products. The demands of the armed forces for arms and ammunition make it possible for the existence of a military industry complex and vice versa. The production of weapons, ammunition and equipment also has a negative impact on the environment as it is the case of The Twin City Army Ammunition Plant (Ramsey County, Minnesota, USA) (Minnesota Pollution Control Agency, n.d.) or Badger Army Ammunition Plant (Baraboo, Wisconsin, USA) (Citizens for safe water around Badger, n.d.).

The American Marine Corps Camp Lejeune base (South Carolina, USA) was built in 1941 and is one of the largest marine infantry bases in the US, in terms of area and number of soldiers (Department of Defence, 2009). Many cases of cancer, poisoning and other medical complications at Camp Lejeune are attributed to toxic and carcinogenic chemicals used for the degradation of machine parts and for the chemical purification (Nazaryan, 2014), which the army used massively for many years at the military base (laundry, dry cleaning). Camp Lejeune residents, employees and residents near the base have been drinking contaminated water since 1950, causing a high incidence of cancer, defects in new born babies and embryos (President Cancer's Panel, 2010; U.S. Department of Veterans Affairs, n.d.). Epidemiological case studies have confirmed a partial causal relationship between exposure to TCE (Trichloroethylene), and PCE (Tetrachloroethylene) solvent by the emergence of breast, bladder, kidney, esophagus and lung cancer, while most cases have been classified as the lack of evidence (The National Academies of Science Engineering Medicine, 2009).

PRODUCTION, STORAGE, TESTING AND USE OF MILITARY WEAPONS AND TECHNOLOGY

Armed forces store hazardous materials as weapons and military technology under different conditions. Ensuring proper storage of dangerous materials requires regular and continuous maintenance of the storage facilities and the proper handling of the stored materials. If storage becomes too expensive or it is no longer in the military or political interest of the state, it is likely that the stored articles to become hazardous waste.

A special category is nuclear weapons, its production, testing and storage. The existence and presence of nuclear weapons affects the security balance of the international community. After the Cold War, the United States and then the Soviet Union succeeded in successfully concluding the agreements on the prohibition of nuclear weapons (Arms Control Association [ACA], 1991). Nevertheless, the world today faces at least two security risks. First, the nuclear arsenal of the nuclear powers of the Cold War was not completely destroyed, but at the same time, it is obsolete and represents an ecological threat to the environment (U.S. Congress, 1991). Second, renewed nuclear weapons initiatives (Cunningham, 2016; Panda, 2018; Schneider, 2018), and the harsh rhetoric of the leaders of nuclear superpowers reflects that the achievement of political goals with the nuclear arsenal has not yet been completed (Cunningham, 2017; Nuclear Threat Initiative [NTI], 2018). At the global level, nine countries are equipped with nuclear weapons. The largest arsenal is in the USA (6800 of which 2800 are destined for decommissioning) and Russia (7000 of which 2,700 are destined for decommissioning). The basic building blocks of nuclear fission and thermonuclear weapons are enriched uranium (U-235) and plutonium (Pu-239). Declaratively, the production of these elements is not carried out (except in India, Pakistan, Israel and not confirmed in North Korea). The stocks of manufactured enriched uranium

are only in the US (567.2 tons) and in Russia (679 tons), while the stock of plutonium in the US (87.6 tons) and Russia (128 tons) (Stockholm International Peace Research Institute [SIPRI], 2017).

It is well documented radioactive pollution from production of energy and nuclear materials for armaments (US General Accounting Office in Situ & Emmons, 2000). From 1951 to 1963, the US government tested 126 atomic bombs at the Nevada test sites, which caused contamination of crops, land and water (Gallagher in Situ and Emmons, 2000). Nuclear experiments and production of nuclear fuels, at the time they were carried out, did not represent an environmental problem or environmental crime (Shulman, 1992; Koniuszewski, 2016).

The most direct expression of the threat to the environment is the testing of nuclear weapons that have been carried out by the armed forces of France, the United States, the Soviet Union and Great Britain since the mid-20th century, with the consequences of the local population being affected (Nuclear Files.org, n.d.a). In 1954, the United States activated a 15 Mt hydrogen bomb in the Marshall Islands (Pacific Ocean), where island population was exposed to the effects of nuclear explosions. Years later, there were many cases of thyroid cancer, other forms of cancer and birth defects among the female population (Simons & Maman, 2014). Examples of numerous incidents are highlighted the risk of using nuclear military technology. One of the most acclaimed was the accident in 2000 in the Barents Sea on the Russian nuclear submarine Kursk, after a torpedo explosion took place at a depth of more than 100 meters. Despite the rescue efforts, all 118 seamen on board lost their lives (Budanovic, 2016; Nuclear Files.org, n.d.b).

CONTAMINATED AREAS SANITATION OR BURDENS FROM THE PAST

Special concerns related to environmental harm originate from past periods, and the resolution of which is also the responsibility of the armed forces. Example is the abandoned military infrastructure, such as bases and warehouses. In these areas, hazardous waste is still kept, while the removal of which is costly and technologically demanding. The reason for delaying the solution of the problem can also be the complex political relations between the entities. After the end of the Cold War period and when the political influence of the then Soviet Union had diminished, numerous military bases and infrastructure were abandoned in the Eastern Bloc countries. However, countries avoid taking responsibility for infrastructure rehabilitation. From the time of the existence of the Soviet Union, Russia inherited large quantities of nuclear waste, such as used nuclear submarine fuel. The dismantling of the Soviet Union also halted the transportation of nuclear waste from temporary warehouses to further processing (Walker, 2017). The consequences of wartime military activities also extend into peacetime. It was not until August 9, 2012, that the US and Vietnam defence ministries announced a decision to first clean up the dioxin storage facilities in the Da Nang air base, which was used in the 1962-1972 period in the Vietnam War (GlobalSecurity, n.d.).

A special category posing an immediate threat to the lives of humans and animals are non-exploded ordnances. At the firing ranges and training areas where rehabilitation is not carried out, unexploded assets remains (EPA, 2018b). The cheapest solution is to restrict unauthorized persons access to the area or covering up with soil (Minister in Situ & Emmons, 2000). Even more complicated and costly is the clearing of minefields that remained after the end of the war and pose an immediate threat to humans and animals. In addition, such areas could not be used for agricultural or other purposes. In 2017, 62

countries were contaminated with anti-personnel mines globally. According to estimates for 2016, the extent of contamination with land mines over area of 100 square kilometres, is recorded in at least ten countries which were recently considered as war zones (Landmine & Cluster Munition Monitor, 2017). In 2016, the majority of victims of mines and explosive remains were among the civilian population, of which 42 percent were children. The obstacles in the mine clearance process are the lack of financial resources, the security and political situation, armed conflicts and the absence of specialized structures. Among other countries that are not parties to the Convention are also developed states (The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personal Mines and on Their Destruction, 1999).

NATURAL RESOURCES EXTRACTION

Armed forces can be perpetrator of environmental crime as they could participate in environmental degradation acts (illegal logging, mining, monitoring of oil and water resources, plundering and smuggling of protected species). In doing so, the armed forces can cooperate in such crimes with their acts or omissions (poor border control, transport, protection and control of the area, enforcement etc.). Such a role of the military is of particularly concern because it is participating in causing of environmental harm, and not serve to purpose of defending the state. Such a role of the armed forces is characteristic of countries with weak democracy, with a high level of corruption, less economically developed and those who are ruled by a military junta.

We look for such cases in countries where environmental damage is already recognized, but it is not known what the role of the armed forces is (Clark, 2013). Countries that are reported of human rights violations in relation to environmental protection are also important for our research. In this context, neither developed countries (the threat of indigenous peoples, land disputes, mining) are not excluded (Clark, 2013). In countries with weak democracy, environmental crime can be a mean to strengthening the position of the ruling authorities. In this case, the country's environmental crime is presented as lawful. On the basis of quasi-state democratic institutions, governments financing the political elite and armed forces through profits generated by environmental crime (Stefes & Theodoratos, 2017).

Global Witness (2016) in its report draws attention to the problem of corruption and the exploitation of natural resources (minerals, oil, gas, timber). Often, the armed forces are financed by reselling or cooperating in the sale or distribution of natural assets, the acquisition of which in itself constitutes environmental crime (Bergenas & Knight, 2015). The armed forces cooperate with foreign investment companies in the exploitation of natural resources while profit is shared or they completely control the operation of investment companies.

Less developed countries whose economy is based on the exploitation of natural resources are more prone to the emergence of armed conflicts. The availability of natural resources is an attractive source of financing armed groups. Although less developed countries are often a conglomerate of partnership between armed groups, arms dealers, international organized crime and corrupt governments, the role of state armed forces in this unstable security environment is questionable (Le Billon, Sherman, & Hartwell, 2002). The availability of raw materials and the illegal trading of natural resources are associated with the emergence of armed conflicts (Global Witness in Brisman, South, & White, 2015; Nelleman et al., 2014). A number of armed movements in South Kivu (Eastern Democratic Republic of Congo, DRC) among other illegal activities, deal with coal trade, logging and gold mining (Nelleman,

Henriksen, Raxter, Ash, & Mrema, 2014). Despite the available natural reserves, the civilian population is not involved in earnings and lives in poverty (Adeola, 2013).

Wild animals poaching in Central Africa has gained a massive and international dimension (Cakaj & Lezhnev, 2017). Although the hunting of large animals is limited, it is widespread illegal hunting for many types of wildlife commonly known as “bushmeat”, in which are also involved armed forces (Warchol, 2013). Hunters of wild animals are organized militarily. For this reason, regular armed forces are involved in the suppression of this type of crime. In the prevention of organized hunting of wild animals, enterprising former members of the armed forces of Western countries are involved, which can lead to a different kind of crime such is the phenomenon of organized hunting on peoples (wild hunters) (Burke, 2017).

Market demands generates exploitation of natural resources, armed violence and environmental degradation. The end-user of goods in the whole chain of crime are often known companies in developed countries, which through intermediaries, are the customer of raw materials trafficking. Essential minerals are important for the US economy and its armed forces, while Cakaj and Lezhnev (2017) write on the role played by the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) in promoting the exploitation of natural resources with an adverse impact on the individual, the community and the environment in the exercise of their interests.

HUMAN END ENVIRONMENTAL RIGHTS VIOLATIONS

The armed forces are also involved in cases of violations of fundamental human rights (Universal Declaration of Human Rights, 1948) by carrying out violence against civilians (Amnesty International [AI], 2009). It is expected that the armed forces are involved in violations of rights deriving from eco-justice framework including environmental justice, ecological justice and species justice (White, 2008b). In environmental racism, it is intended to expose marginalized groups on the basis of racial, ethnic or cultural differences to environmental pollution or environmental risks (Adeola, 2013). Williams (2009) writes about the need to define environmental victimization, in cases where victims could not or do not recognize the danger (Ball, 1986; Gallagher, 1993).

The armed forces are a powerful and influential organization that realizes their interests in ways that are at the expense of racially different, poor and marginalized groups. Such an example is the pressure exerted by the US Navy on the population of the island of Vieques (Puerto Rico) by polluting the environment, admiring the territory and restricting the rights of people to participate in environmental issues (Santana, 2009). With strong public opposition it is possible to make military listen to environmental concerns of local population (Salvi et al., 2015; Jontz, 2008; Santana, 2009).

The awareness of the population about the importance of the environment has prompted the creation of an organized environment protection movements (Cable & Benson, 1993). The functioning of non-governmental environmental protection organizations (NGO) can be used to reveal environmental crime. The functioning of NGOs is comparable to the functioning of government agencies and they have the capacity to cooperate with the government in the area of environmental law enforcement (White, 2000). The regulatory theory emphasizes the importance of the “third party” in the process of control and the role of attracting these into government cooperation. Environmental protection organizations represent an opposition to organizations that cause environmental damage. Activists of NGOs and persistent individuals often come into conflict with armed forces. In the case of demonstrations against environmental injustice, the armed forces responding by

suppressing efforts of environmental protection organizations, arresting demonstrators, enforcing violence against individuals or conduct liquidations of environmental activists (Clark, 2013; Watts & Vidal, 2017).

DISCUSSION

Prior developing typology of peacetime military activities with adverse effects to environment we determined operational space in which armed forces are conducted planned and controlled missions and activities. Based on knowledge of modern military technologies and its capabilities, operational nature of modern armed forces and indices of evident environmental harms associated with military, we determined land, water, air, higher atmosphere layers and outer space as military operational spaces. We assumed that environmental harm or environmental crime, caused by peacetime military activities, could appear and be analysed in separate military operational spaces as described above. During study and literature analysing we formed general groups including cases of specific and similar environmental harms associated to peacetime activities of armed forces. Based on reviewed literature we formed six general groups stated as: *a.*) complex military infrastructures and organisation; *b.*) storage, use and disposal of hazardous materials; *c.*) military weapons and technology; *d.*) contaminated areas sanitation; *e.*) natural resources extraction and *f.*) violations of environment related rights.

Peacetime military activities are conducted in operational space related to components of natural environment. It should be considered that components of natural components (land, water and air) are influenced by definite harmful military activities while this influence is not necessary limited to only one natural component. There are no definite limits between certain components due to adverse influence from military activities could affect more than one component. As example, complex military infrastructure and activities such as military bases, shooting ranges, polygons and large scale joined military exercises could have multiplicative adverse effects on land, water and air by producing noise, toxic remnants or hazardous wastes. On the other hand, forms of environmental harm could be similar at different peacetime military activities as, for example, soil degradation could be consequence of long term using and un remediated artillery shooting range, dump sites and weapons production facilities.

The environmental harm caused by peacetime activities of the armed forces could be presented as the sum of environmental harm in individual operational space. Sum could be calculated from two different point of view. First it is the sum of all peacetime military activities occurring in separate operational space as land, water and air. Second is the sum of all peacetime military activities who have multiplicative adverse effects in more than one separate operational space.

CONCLUSIONS AND FUTURE STUDY

The question we tried to answer during study was “What are the forms of environmental harm caused by peacetime military activities in each component of natural environment that is land, water and air” Firstly we stated working definitions on green criminology (Lynch in White, 2008b; Sotlar, Tičar, & Tominc, 2010; White, 2009; White & Heckenberg, 2014), environmental harm (Bricknell in White and Heckenberg, 2014; White, 2009) and environmental crime (Eman & Meško, 2012; Pečar, 1981; White, 2009). We describe term military activities (Dupuy, Johnson, & Hayes, 1986; Grizold, 1999; Ratković, 1981) prior to

be presented from green criminology aspect. Founded by different definitions on research subject we could found and stated environmental harmful peacetime military activities. On some adverse effect of military activities on environment we were assured by results from laboratory analysis (ATSDR, 2012; Salvi et al., 2015; Santana, 2009; Whitall et al., 2016) and there is number of cases describing environmental degradation linked to military activities (Kelebebang, et al., 2017; Koniuszewski, 2016; Ramos & De Melo, 2006), with many of sources on war time military activities related to environment (Freeland, 2015; Jha, 2014; Lawrence et al., 2015). Still rare are researches on peacetime military activities related to environmental crime (Proechel, 2007). Military describing as potential perpetrator of environmental crime is partially included in works of leading authors on green criminology literature (Warchol, 2013; White 2008, 2009, 2010, 2013; Williams, 2009) nor, despite some detailed analysing in literature (Koniuszewski, 2016; Lawrence et al. 2015), we could not find consistent typology capturing peacetime military activities from green criminology aspect. Presented typology of environmental harmful military activities is based on premise of environmental harm definition encapsulating legal and sociological definition of criminality (Eman, 2008; Situ & Emmons 2000; White, 2009) what is important due the fact that ongoing military activities seems to be systemic and legal, yet harmful to environment. Isolated peacetime military activities with detrimental effect on environment could also be analysed from focal considerations, geographical considerations, the environment (locational considerations) and temporal considerations and fits in other categorisations of environmental harm such as coloured environmental issues (brown, green and white) (White in White & Heckenberg, 2014) or as primary and secondary green crimes typology (Carabine et al. in White, 2008).

We presenting the general typology of peacetime activities of the armed forces that cause environmental harm and from legal approach (Eman, 2008; Situ & Emmons, 2000; White, 2009) could be associated with environmental crime. The environment adverse peacetime activities of the armed forces are numerous and diverse. Presented typology is consisted by separate groups of military activities performed at land, water and air component. It not includes analyse of harmful military activities at higher atmosphere layers and outer space. We assume that the peacetime activity of the armed forces (cause) in a given operational space could causes a certain manifestation of environmental harm (consequence) and environmental crime regarding international and national criminal laws. By more detailed research, more peacetime military activities, based on evident cases, could be included in separate group at particular component of natural environment. Need for review of presented typology derive from ongoing process of developing and use of military technology with yet unknown effects on environment. Adverse effects were not publicly known as it was the case on nuclear weapons tests in past century, while today these tests are recognised at least as environmental harms if not criminal (Gallagher, 1993; Koniuszewski, 2016; Nuclear Files. org, n.d.a). From this point of view study of peacetime military activities with adverse effects on environment is needed, as we considered armed forces as organisation legitimated by state control and as society with corporate institutional sense (Dupuy, 1993), with corporation attributes (White, 2008b), as state institution with potential to be involved in state criminal (Green & Ward, 2004; Jeffrey, 2000; Situ & Emmons, 2000) and finally as part of systemic causes of environmental harm (White & Heckenberg, 2014).

Presented typology is general in its nature and unique in its essence. A general conclusion based on the developed typology is that some of the activities of the armed forces with adverse environmental impact are characteristic of both developed and less developed

countries, while certain activities are more characteristic for developed countries (Nazaryan, 2014; Panda, 2018) and others for less developed countries (Nelleman et al., 2014) as is the case in states with nondemocratic regimes with high ratios of corruption (Stefes & Theodoratos, 2017). The proposal for further study is to include in the typology all known peacetime activities of the armed forces with harmful effects on the environment, including the operational space in higher atmosphere layers and outer space as well to determine the link between the activity of the armed forces with adverse environmental impact and economic development of the country.

With the typology we have formulated the basis for classification of peacetime activities of armed forces that have detrimental effects on the environment. Typology is an orientation tool for the work of criminologists, environmentalists and military personnel in identifying or preventing possible forms of environmental harm or environmental crime arising from the process of carrying out peacetime activities of the armed forces and represent basis for further research on environmental crime associated to military.

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SECURITIZATION OF MIGRATION AND MIGRATION POLICY IN THE EUROPEAN UNION

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ABSTRACT

This paper analyzes the internal security aspect and practical application of the EU strategic and regulatory framework in the field of migration and asylum. It evaluates consistency of the security objectives and strategies of individual Member States with regard to standards of fundamental rights protection and declared common goals and values from the beginning of European migration crisis in 2015 until today. The understanding of the referent object is questioned, since the securitization of migration contributes to delegitimization of migrations through the increased public perception of threats. Questions of justification and proportionality of the law enforcement encroachment on particular human rights and freedoms arise. The analysis based on the secondary data collected from the media and the official records of the agencies and bodies of the EU did not provide sufficient evidence on the securitization of migration in the EU.

Keywords: EU internal security, migration, regulatory framework, securitization

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INTRODUCTION

The European Migration Crisis 2015 has illuminated and re-actualized some of important issues in the field of the EU internal security. The intensity and dynamics of migration movements caught both European Union and the Member States unprepared in providing an instantaneous and adequate humanitarian and security response. Mechanisms previously agreed upon on the EU level simply did not work in a foreseen and pre-programmed manner. Reasons for this may lie in the lack of coordination between Member States arising out of different understanding of the ways in which the problem should be addressed. Consequently, coping with this problem required political security decisions to be made almost on a day-to-day basis.

International organization for migration (IOM) (2018) defines a migrant as any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of: the person's legal status, whether the movement is voluntary or involuntary, what the causes for the movement are, or what the length of the stay is. This research is focused primarily on third country nationals who migrate to European Union, especially refugees and asylum seekers.

There is a clear difference in the political stands towards third country immigration between Western and the Central European EU countries. The first have a significant third country immigrant minority (Eurostat, 2017) and the majority of the Jihadist terrorist attacks on the European soil in the last few years were carried out on their territories (Europol, 2015, 2016a, 2017). The official policy of these countries (as of European Union's also) is

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affirmative towards acceptance of immigrants and refugees. The second, Central European countries especially countries of the Višegrad group (Hungary, Poland, Slovakia and Czech Republic, do not have a significant immigrant minority, terrorist attacks are not being carried out on their territory, but have negative attitudes towards migrants and refugees admittance (Karnitschigng, 2017). To some extent, there is defiance towards EU's official migration and asylum policy coming from those countries. However, within the EU countries themselves left wing political options have been traditionally more prone to liberal approach and positive attitudes towards immigration, while right wing, and especially far right wing political parties have been strongly opposed to immigration (Davidov & Senyonov, 2017: 361). In that kind of discourse immigration is likely to be associated with terrorism, the loss of cultural identity, unemployment, etc. In terms of security, the dual concept of a migrant opposes personal security as a referent object to a real and/or perceived threat that emanates from the person itself or from secondary threats that necessarily follow (illegal) migratory movements.

According to Topulli (2016: 86) it is widely accepted in academic literature that migration is securitized. Huysmans (2000: 752) claims that in the Western European setting of economic and financial globalization, the rise of poverty, the deterioration of living conditions in cities, the revival of racist and xenophobic parties and movements, the estrangement of the electorate from the political class, and the rise of multiculturalism, the migration has been increasingly presented as a danger to public order, cultural identity, and domestic and labor market stability; it has been securitized. What does that mean? Copenhagen School introduced the concept of securitization in 1995 by Ole Wæver. It is the process during which a normal or typical political issue is altered by the speech act, and creates new security threats. That is, the moving of an issue from the realm of typical politics to the realm of exception (Themistocleous, 2013: 2). This is the process of presentation of a case, individual or entity as a threat to the referent object, convincing the audience or public opinion for the existential danger thus legitimizing drastic measures taken by the securitizing actor/agent. If the process results effective it may be considered desecuritized. Characteristics of political discourse mainly, in terms of migrants have to do with positive self-presentation, negative presentation of the other, association of migrants and refugees with crime and securitization of migrants and refugees (Topulli, 2016: 87).

By observing securitization as a negative and undesirable phenomenon, especially from a law enforcement point of view, it is obvious that it could easily shift focus (and by that the efforts, resources and potentials) from real security issues towards overelaborate and fabricated ones. Undoubtedly, the migration and asylum policies in the European Union are part of the security area. Consequently, one could rashly conclude that migration is securitized by that mere fact. But, in the light of the European Migration Crisis 2015 and so far unseen massive influx of migrants, one may also wonder whether placing migrations in the security area was justified or not. What are the real security threats that go hand in hand with migratory flows and which are only the perceived ones? As pointed out by Tatalovic, Grizold and Cvrtila (2008: 18) "If the action undertaken in the name of national security brings a violation of human rights and guaranteed freedoms, it cannot be sought in measuring security needs and against these values." So, does the encroachment on migrant's human rights go only so far and to the extent necessary to meet realistic security goals or can we find elements of institutional and cultural racism in dealing with migrants?

METHOD

This research was conducted in two major phases. In the first phase, the secondary data was gathered and analyzed. In the second phase, that data was compared with the previous

theoretical studies to examine to which extent (if at all) they were consistent with the theory of securitization.

GATHERING AND ANALYZING SECONDARY DATA

The authors analyzed and intercompared four types of secondary data: the regulatory framework, the reports on the state of human rights, the public speech and the subjective feelings of security of the EU citizens. The timeframe in which the gathered data was generated was set from January 2015 until March 2018 (except one smaller part of the regulatory framework).

Within the regulatory framework analysis, the authors analyzed documents from the field of EU internal security that regulated migration and asylum and border management. The main points of interest were conditions on which migrants were entering EU as well as them moving freely within the EU.

The state of human rights analysis included official reports issued by the European Union Agency for Fundamental Rights (FRA) related to third country immigrants – asylum seekers on the territory of EU.

The public speech analysis included media statements given by politicians and other relevant speakers about immigrants immediately after terrorist attacks attributed to jihadists in the European Union from 2015 to 2018. Out of 37 terrorist attacks that fell into this group, researches have chosen the sample of seven for further analysis by the criterion of the largest number of victims, and consequently the largest media impact. Those were: The Ile de France attacks, including the Charlie Hebdo shooting that occurred between January 7 and 9, 2015, The November 2015 Paris attacks, that occurred on 13 and 14 November 2015, The 2016 Brussels bombings that occurred on 22 March 2016, The 2016 Nice attacks that occurred on 14 July 2016, The 2016 Berlin attack that occurred on 19 December 2016, The Manchester Arena bombing that occurred on 22 May 2017 and The 2017 Barcelona attacks that occurred on 17 August 2017.

The fourth set of analyzed secondary data was public opinion of the EU citizens on security threats and integration of immigrants in the EU. Public opinion on security threats from March 2015 was compared with the identical survey from 2017.

COMPARING DATA WITH THE THEORY OF SECURITIZATION

The authors compared previously collected and analyzed data to find out how they compared with the Theory of securitization. That meant a comparison of the restrictive provisions of the legislative framework, the official security assessments, the reports on the state of human rights, the negative public speech and the subjective attitudes of EU citizens with the core elements of the theory.

RESULTS

The results of the processed data indicated the existence of inequalities in the rights of migrants relative to the citizens of the European Union within the legislative framework itself. Furthermore, reports on the state of human rights of migrants indicate a substandard level of protection in multiple areas. Political public speaking regarding migrants in some Member States is very negative. Personal attitudes of EU citizens towards migrants and security challenges indicate fear of terrorism and resistance to multiculturalism.

THE REGULATORY FRAMEWORK ANALYSES

The analysis of the regulatory framework has shown that there is inequality in the rights of EU citizens and international protection seekers over multiple fields.

In the areas of asylum, borders and visa, the EU has set up three large-scale IT systems: SIS II - the Schengen Information System - to aid police and border checks, Eurodac - standing for European Dactyloscopy - to support the application of the Dublin Regulation and VIS - the Visa Information System - for visa processing. There are advanced plans to set up three new systems: EES - the Entry-Exit System for registering travel in and out of the EU, ETIAS - the European Travel Information and Authorisation System for conducting pre-border checks for visa-free travelers, ECRIS-TCN - extending the European Criminal Records Information System to third-country nationals (European Union Agency for Fundamental Rights, 2018c: 9)

Most EU-level IT systems include the processing of biometric data. Biometrics allow for the identification of an individual through one or more factors specific to the physical identity of a person i.e. “personal data resulting from specific technical processing relating to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural person” (European Union Agency for Fundamental Rights, 2018c: 25).

Main concerns about biometric and other personal data being stored in large scale IT system are: understanding for persons in question the consequences of that kind of storage, collecting data in a manner that remains respectful of human dignity and unlawful access to stored data including using data for purposes which were not initially envisaged. In addition, endangering the safety persons by sharing biometric data with third countries could represent a problem. FRA confirmed reports on existence of significant amounts of inaccurate data in SIS II and VIS (European Union Agency for Fundamental Rights, 2018c: 96).

Under the provisions of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints (2013), it became mandatory practice to take biometric data from all international protection seekers. Taking the fingerprints of all ten fingers, palms and other biometric data of EU citizens is possible only in exceptional cases of establishing identity or as perpetrators of criminal offenses.

Under the provisions of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (2011), Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.

According to provisions of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (2004) the third-country nationals long-term residents have no right to move within the territory entire EU under the same conditions as EU citizens. They have only right of free movement on the territory of the Member state which granted him/her long term residence status.

THE STATE OF HUMAN RIGHTS ANALYSES

According to November 2016 FRA's "Current migration situation in the EU: hate crime" report (European Union Agency for Fundamental Rights, 2016: 2) the main findings included presence of violence, harassment threats and xenophobic speech targeting asylum seekers and migrants as pervasive and grave across the EU, committed by state authorities, private companies or individuals, or vigilante groups. That included killings, threats and intimidation. In some cases, political actors welcomed the activities of vigilante groups. Most Member States do not collect or publish statistical data on incidents and hate crimes against asylum seekers and migrants. Other groups - including Muslims, especially women and persons with ethnic backgrounds - are specifically targeted as are human rights advocates, 'pro-refugee' politicians and journalists reporting on the issue. There is a perception among practitioners that asylum seekers and migrants have limited access to victim support services.

In the February 2018 report "Migration to the EU: five persistent challenges" FRA (European Union Agency for Fundamental Rights, 2018a) analyzed five areas dealing with human rights of migrants: access to territory, reception conditions, asylum procedures, unaccompanied children and immigration detention. The Report highlights key trends and persistent concerns between October 2016 and December 2017. In the key findings FRA reported difficulties in access to EU territory in almost half of Member States, remaining emergency mode or even stricter border management on internal and external borders, ill-treatment of migrants by border guards, returning of asylum seekers without an opportunity to apply for protection and collective pushbacks at land or sea borders. Also, according to the same report, reception conditions in several EU Member States did not improve. Sexual and gender-based violence in reception centers remains an issue in some EU Member States. Room for improvement in the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers was observed in the majority of EU Member States. There are concerns over the quality of interviews and decision-making in some Member Countries. LGBTI asylum applicants faced credibility doubts. Legal and practical obstacles to accessing legal aid, information and interpretation existed in all EU Member States covered. In many EU Member States reception standards for children remained critical. Asylum-seeking children in several EU Member States had no or limited access to education, and in several Member Countries they were not given the benefit of the doubt concerning their age. Children also face legal and practical barriers to family reunification in several EU Member States. The use of immigration detention increased in certain EU Member States.

In addition, according to March 2018 FRA's "Periodic data collection on the migration situation in the EU" Report (European Union Agency for Fundamental Rights, 2018b) there are many issues within EU countries concerning violation of migrant human rights. For example: the recognition and treatment of victims of torture remained problematic. Deportations to Afghanistan still represent a problem. In many countries there are delays in asylum procedure. Overcrowding and inadequate conditions are issues in many countries.

THE PUBLIC SPEECH ANALYSES

After the Ile de France attacks Hungarian Prime Minister Victor Orban stated on 11 January 2015 that immigration must be stopped. He also stated that Hungary does not want to see a significant minority among themselves that had different cultural characteristics and background (Lawler, Isabelle, Raziye, & Millward, 2015).

In the aftermath of the November 2015 Paris attacks the public speech had somewhat changed. Because one or perhaps two assailants had passed through Greece from Turkey, alongside Syrian refugees fleeing violence in their homeland, the attacks fueled a debate about how to handle the influx of hundreds of thousands of refugees and other migrants propelled by civil war in Syria, Iraq and Libya. While German Chancellor Angela Merkel and the European Commission have been pressing EU partners to ease Berlin's burden by taking in quotas of refugees, Poland for example said the attacks meant it could not now take its share of migrants under the European Union relocation plan (Melander & Pennetier, 2015). French Minister of Interior Bernard Cazeneuve hinted that Abdelhamid Abaaoud could, the mastermind behind November 2015 Paris attacks, had also taken the migrant route to avoid capture. The French and EU intelligence has boosted surveillance of telecommunications communication in "migrant transit camps" and along their routes in hope to make tighter controls at migrant "hotspots" that were due to be set up at entry points into the EU. The Dutch government was considering the creation of a mini-Schengen zone comprised of the Netherlands, Belgium, Luxembourg, Germany and Austria with migrant transit camps set outside these borders. (Lawler, Isabelle, Raziye, & Millward, 2015). The extreme statements came from the far right political spectrum. The founder of France's far-right National Front (FN) Jean Marie Le Pen has urged France to reinstate the death penalty and commit convicted terrorists to the guillotine. He also called for deportation of illegal immigrants and creating 100,000 more places in prison to deter further extremist attacks (Pelissier, 2015). On 19 November 2015, Turkish President Recep Tayyip Erdogan criticized the growing backlash against refugees in the wake of the attacks in Paris. He said that in European countries where Muslims are a minority, an "increasingly prejudiced and exclusionist attitude has been increasing which would only deepen the human crisis." (Sen, 2015). The new Polish minister for European affairs, Konrad Szymanski stated that Poland must retain full control over its borders, asylum and immigration. Viktor Orban, the Hungarian prime minister again strongly opposed to immigration believing that western Europe was reaping what it has sown through a disastrous policy of liberal multiculturalism that would not be repeated in central and eastern Europe. Horst Seehofer, the Bavarian prime minister and leader of Merkel's sister party, the Christian Social Union said that they need to know who is travelling through their country, and that as well as more security measures they need tighter control of the European borders, but also of the national borders (Traynor, 2015).

After the 2016 Brussels bombings on 22 March 2016, Hungary's rightwing government has claimed that there are 900 "no-go zones" in London, Paris, Stockholm and Berlin. The Hungarian Prime Minister, Viktor Orbán, refused to participate in the EU's quota plan to relocate 160,000 migrants across the continent, calling it an abuse of power. He said, "In three years we might not know whether we are in London, Paris or Budapest." (Nolan, 2016).

On 17th of July 2016, three days after the Nice attacks Antal Rogán, Hungarian Minister of the Prime Minister's Cabinet Office, gave an interview to state-run Kossuth Radio in which he pointed out that Europe has to accept the fact that illegal immigration and growing immigration rates go hand in hand with a heightened risk of terrorism. The more immigrants that arrive in Europe, the greater the risk of terrorism (Adam, 2016). Marion Maréchal-Le Pen, the Front National MP for Vaucluse and niece of the party leader Marine Le Pen, said that those responsible were also those who each year allow a number of immigrants equivalent to the size of the city of Bordeaux to legally enter France (Boyle & Morgan, 2016).

In his statement after the December 19th 2016 Berlin attack Richard Walton, a former head of counter-terrorism at the Metropolitan Police, told *The Telegraph*: “Schengen poses a huge risk of terrorism, porous borders across mainland Europe are continuing to be exploited by ISIL (Swinford, 2016). Again, the harshest political criticism came from the far right. The leader of the France’s far- right *Front National* Marine Le Pen demanded the return of national borders. Nigel Farage the former leader of the UK Independence Party also sought to align himself with Schengen critics saying, “If the man shot in Milan is the Berlin killer, Schengen area is proven to be a risk to public safety. It must go.” (Willsher, 2016).

On 25 May 2017, three days after the Manchester Arena Bombing, Bence Tuzson, undersecretary in charge of government communications in the Hungarian prime minister’s office, gave an interview on *Magyar Rádió*’s early morning political program in which he emphasized “the close connection between immigration and terrorism.” He said that Illegal immigration should not be “managed” but stopped (*Hungarian Spectrum*, 2017).

One week after the Barcelona terrorist attack of 17th of August 2017, British Secretary of State for Foreign and Commonwealth Affairs Boris Johnson in his statement after visiting Libya in a way linked terrorism and illegal migrations by saying: „Unless and until this country has a functioning and unifying government, Libyans will continue to suffer grievously. Without a political solution this country will still be the front line – our front line – in the struggle against illegal migration and terror.“ (Swinford, 2017). On 18th August 2017 *Post* (Bault, 2017) reported that Polish Deputy Minister of Defense Michal Dworczyk said, “The terrorist attack in Barcelona is another proof that migration policy and security policy must be conducted in a very thoughtful and responsible way“ He further stated “I hope that these dramatic events will also be an occasion for reflection for certain officials of the European Commission and some EU political leaders, the opportunity to review their ideas on migration policy and forced relocation of people whose identity cannot be established with certainty. In Poland, we do not accept and we will not accept that enclaves take place with people who do not assimilate, who do not want to belong to the society.” Similar statements were given by the Polish Minister of the Interior Mariusz Błaszczak, who referred to immigration as „a clash of civilizations“ and who said “Europe must close its doors”.

THE PUBLIC OPINION ANALYSES

According to Special Eurobarometer 469 Report - Integration of immigrants in the European Union (European Commission, 2018) it is clear that most Europeans are poorly informed about migration. They also exaggerate in the assessment of the number of migrants in their countries. Most think that migration is a problem, not an opportunity. Opinions are divided on whether the countries are making enough efforts to integrate migrants, but most consider that integration requires cooperation between migrants and the state. March 2015 survey on Europeans’ attitudes towards security – Special Eurobarometer 432 (European Commission, 2015a) and June 2017 Europeans’ attitudes towards security - Special Eurobarometer 464b (European Commission, 2017a) showed the increase in perception of terrorism and EU’s external borders as important challenges to internal security of the EU. Therefore, 91% of respondents considered terrorism as an important challenge in 2011, 92% in 2015 and 95% in 2017. In 2015, 81% of respondents perceived the EU’s external borders as an important challenge, which increased to 86% in 2017. In September 2015, immigration was perceived as most important issue facing the EU by 38% of respondents on the EU level. Terrorism was

in the 5th place with 17% of respondents preceded by economic situation, unemployment and the state of Member State's public finances (European Commission, 2015b). In autumn of 2015 immigration was seen as a leading issue by 58% of respondents, and terrorism became issue number two with 25% (European Commission, 2016). Since then, both have kept their positions as perceived as the two most important issues facing the EU (European Commission, 2017b).

DISCUSSION

Analyses of regulatory framework indicated existence of inequality in specific rights between third country citizens and EU citizens. Huysmans (2000: 753), for example, argues that the explicit privileging of nationals of Member States in contrast to third-country nationals and the generally restrictive regulation of migration sustains a wider process of delegitimizing the presence of immigrants, asylum-seekers and refugees and that EU policies support, often indirectly, expressions of welfare chauvinism and the idea of cultural homogeneity as a stabilizing factor. Also reports on human rights show that there is at least an institutional negligence if not even an implicit and intentional parallel policy aimed at depriving the migrants of their rights. Ignoring human rights violations by state institutions or its silent approval could be linked to securitization.

Topulli (2016: 90) wrote:

“Securitization can be considered an alternative and practice of lazy states that refuse to cooperate even when this is imposed in treaties, programs, common policies, etc. that deal with the management of the waves of migrants. It is way easier for the states to invest considerable budget on border control rather than on coordinating work, complying with standards and the human rights framework.”

Still, one should think critically and take into account that the European migration crisis in 2015 brought unprecedented pressure to the EU's external borders. Uncontrolled crossings of state borders brought into question the image of the state's ability to control access to their territories. It could be said that in some states the sovereignty itself has in some way been shaken. States cannot afford to show such weaknesses. So, probably in this case we cannot speak about the state's laziness, but maybe more of the institutional unpreparedness to face such sudden pressures.

Public speech after terrorist attacks has largely failed to link terrorism and migration, although there were exceptions. Among leading politicians, such statements could have been heard from the Hungarian PM and some Polish officials. Negative speech linking migrants and terrorism in the West European political circles came from the far right political options. And it is primarily linked with the fear from the loss of identity. European identity as a cohesive element of European unity was a stumbling block in wide debates long before Migrant Crisis 2015. Ole Wæver (1995: 63) probably gave the best answer to the question how to protect endangered cultural identity, and how cultures were supposed to defend themselves by simply writing: “I would suggest that this will be done with culture. If one's identity seems threatened by internationalization or Europeanization, the answer is a strengthening of existing identities. In this sense, consequently, culture becomes security policy.”

As history has shown many times, human migrations are practically unstoppable. Concerns about the loss of identity have been beside the point because the cultural identity is certainly not a static category, but a living substance that in its development is subjected to constant changes through various (cultural) influences. Europe does not officially call

on its Christianity, but we have to accept the fact that it is a link and a strong feature of a common European identity. Ignoring those who are the most vulnerable in their need for help endangers the survival of that very identity built on the principles of humanity and solidarity. Frčko and Solomun (2016: 550) pointed out that it is a civilizational duty of each individual state, and so the European Union as supranational community of states to provide protection to people fleeing from persecution and suffering.

Regardless of the fears arising from migration and some negative events involving migrants, migrations are not negatively attributed in the majority of media.

The public opinion and attitudes of EU citizens towards migrants are also not positive. The majority of citizens see migrants as a problem. The rising fear of terrorism and ever-increasing perception of security importance of external borders show that the large migratory influx certainly had some impact on forming citizen's attitudes. Migration and terrorism remain to be perceived as two most important issues facing the EU at the moment.

Underneath the daily political and populist debates about threats arising from migration, such as the threat to cultural identity, the labor market, public health and so on, there is a much more realistic threat that is closely related to migration. According to Europol report 9 of 10 migrants are facilitated into EU mostly by criminal networks. According to Europol's 2016 report (Europol, 2016b), illegal business is worth between 3 and 6 billion euros. Perpetrators are associated with drug smuggling, trafficking in human beings, property crime, and document forgery. Payment means vary and include mostly cash but also services, labour or alternative banking systems (Hawala). Ill-treatment of migrants by state authorities does not contribute to the creation of trust that is necessary to face the threat of organized crime or radicalization and terrorist recruitment. The response to the problem of mass migration from the third countries cannot be reduced to the sole function of the law enforcement bodies but demands a broader humanitarian and social engagement and long-term planning. Nevertheless, keeping in mind the fact that some perpetrators of terrorist acts were foreign fighters or were using migrant routes for travelling, law enforcement bodies and security services should focus on gathering, producing and sharing more precise intelligence and risk analysis on perpetrators, thus minimizing encroachment in human rights of the others.

LIMITATIONS OF THE PRESENT RESEARCH

The limitations of this research mostly relate to public speaking analysis. For this purpose, authors used no specialized tools, but publicly available search engines, i.e. advanced Google searches with simple algorithm finding the key words in given time span and selected media. Therefore, no quantitative public speaking analysis has been carried out, but selected examples have been described in the aforementioned manner in order to fundamentally highlight the existence of public speech and classify its actors. Conclusions could be drawn on existence of securitization on a states' level but intensity and magnitude of the phenomena on the EU level couldn't be measured by present methodology. The analysis of the legislative framework has been limited only to the area that regulates large-scale IT systems and the freedom of movement of the persons under international protection.

CONCLUSION AND THE FUTURE PROSPECTS

Even though there are certain elements in the analyzed content that would indicate securitization, the authors did not find enough substantial evidence to support the hypothesis that migration was securitized in the EU as a whole. Violation of human rights, frequent

institutional blind eye on a state level and underprivileged treatment of third country citizens goes in favour of the possibility of existence of securitization. It is sending a clear message of “us” and “them”. But, official policies of the EU and institutional efforts towards protection of those in need speak differently. Another thing that is missing is a speech act. With a few exceptions, countries such as Hungary or Poland, high level politicians do not bring the issue of migration to the realm of exceptional existential threat. Most of the decision makers publicly communicate migration primarily as a humanitarian question. Finally, this research, despite of its aforementioned limitations, may serve as a basis and a direction for wider multidisciplinary or transdisciplinary research of a quantitative type.

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NUCLEAR SECTOR: I HAVE NOTHING IMPORTANT ON MY COMPUTER, OR DO I?

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ABSTRACT

Nuclear sector comprises many sensitive information. Their compromise could affect nuclear safety and the results could be catastrophic for people and the environment. Therefore, this information needs to be protected from cyber-attacks. In recent years, cyber attackers have proven that they are becoming more motivated, have various intentions, capabilities, knowledge, funding and tactics. Do we really know what are they looking for, what information is sensitive, and how to protect? Nuclear security community is not always willing to share information, especially lessons learned. Revealing those could compromise an overall security. Based on the synthesis and best practices, obtained during structured interviews, several of most needed and fairly easy implemented protective measures will be presented. The research is an important contribution to a better understanding cyber security, cyber-attacks and sensitive information in sectors, where facilities are built for a relatively long period of time.

Keywords: nuclear sector, cybersecurity, social engineering, sensitive information, cyber-attack

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INTRODUCTION

The International Atomic Energy Agency (IAEA) has published an implementation guide on how to protect sensitive information, but our research of literature analysis and structured interviews with relevant international nuclear cyber security experts revealed a major deficiency in this area. There is a lack of communication between stakeholders within the country (regulators, nuclear facilities, technical support organizations, 3rd party, etc.) and with international community. A lot of times knowledge and expertise of staff, responsible for cyber security, are not on a sufficient level and they rely on 3rd party support. Quite often cybersecurity culture, including awareness programs, are not in their mature state yet. Three main pillars of information security are protection of confidentiality, integrity and availability of information, many times also referred to as a CIA triad or principle (ISO/IEC, 2013). Each and every one of us has a responsibility for protecting their own private information, and by that, assuring all three main principles of information security are met (CIA - confidentiality, integrity and availability). But with regard to business information, we often ask ourselves, who is responsible for protecting this; is this the individual, or maybe the system administrators, computer security officers, top management, or perhaps all employees? Report of SI-CERT (2016) shows that our private information is constantly under attack and of course no business sector is in any way excluded, and therefore has

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to protect its sensitive information from potential cyber-attacks and loss of CIA. Cyber attackers are motivated by different things, they have different and various intentions, capabilities (skills), knowledge, funding and tactics (Computer security for nuclear security: Final draft implementing guide, 2018). Their primary goal is to gain access to information systems or to compromise sensitive information. By compromising sensitive information, we mean unauthorized disclosure, modification, damage or destruction (Bowen, Hash, & Wilson, 2007). According to Onyeji, Bazilian, and Bronk (2014), cyber attackers are many times ahead of those responsible for protection, and have already performed some major attacks on government, financial, energy, and other sectors all over the globe. Because of its nature, nuclear sector comprises a lot of really sensitive information (Security of nuclear information: Implementing guide, 2015). If this information would get into the wrong hands, results could potentially be catastrophic for people and the environment. Therefore, our primary mission is to protect our sensitive information and keep our information systems as secure as possible.

NUCLEAR SECTOR

Dudenhoeffer, Mrabit, Hilliard, and Rowland (2015) identified that nuclear sector comprises of many different entities and includes national policy makers, legislative bodies, competent authorities, 3rd parties and of course facilities like nuclear power plants (NPP), nuclear and radioactive waste storages, nuclear fuel cycles, nuclear research and research reactors, medical, border monitoring, and others.

In the study by Spirito (2016), because of its nature, a lot of facilities in nuclear sector divide their information systems into two separate infrastructures. One represents a classical IT infrastructure and encompass business systems like e-mail servers, CRMs, printers, domain servers, etc. The second one is oriented more on the operations of the facility and therefore named Operational Technology (OT) infrastructure. OT is a generic term used to describe numerous types of analog and digital devices and computers to monitor, manage, control, manipulate, or influence real world physical processes. Depending on the industry, OT may have different names like ICS, I&C, C&I, SCADA, DCS, etc. and in relation to nuclear security includes Safety Systems, Physical Protection Systems (PPS) and Nuclear Material Accounting and Control (NMAC) (Nuclear security recommendations on physical protection of nuclear material and nuclear facilities (INFCIRC/225/Revision 5): Recommendations, 2011). Several out of many differences between IT and OT infrastructures are described in (Table 1).

Table 1: *Differences between IT an OT*

Area	Information Technology (IT)	Operational Technology (OT)
availability	delays acceptable	24/7
lifetime	3 to 5 years	more than 20 years
upgrades	common	uncommon
antivirus	common and easy to implement	uncommon
3rd party support	common	rare
incident response	procedures in place	uncommon
security/pen testing	common	rare

Note. Several out of many differences between IT and OT infrastructures at nuclear facilities.

Both IT and OT generate a lot sensitive information which represent a high value for the operators of the facilities as well as for other stakeholders like government organizations, Technical Support Organizations (TSO) or 3rd parties. Compromise of this kind of information could affect nuclear safety and the results could potentially be catastrophic for people and the environment.

Recently, there was quite a significant number of cyber-attacks directed towards a nuclear sector and trend shows, attackers are becoming more motivated, they have different and various intentions, capabilities (skills), knowledge, funding and tactics (Computer security for nuclear security: Final draft implementing guide, 2018).

CYBER-ATTACK

Cyber-attack is a criminal or intentional unauthorized act directed at or affecting computer-based systems with the aim of achieving or facilitating the theft, alteration, preventing access to or destruction of sensitive information or sensitive information assets. Cyber-attacks jeopardize the CIA principle or a combination of these properties, of sensitive information (Computer security for nuclear security: Final draft implementing guide, 2018). Cyber-attacks are performed by cyber attacker, which can be divided into two groups. The first group called external attackers consists of terrorists, hackers, nation states, etc. The second group is much more delicate, thus it is a part of our organization and it is called internal attacker or just insider. The big difference is, beside all properties of external attacker, insider has extra advantage with knowledge, access, authorization and additional level of motivation. In some cases, individual or insider could also be planted by an external group. (Figure 1) represents a major sophistication in performing cyber-attacks (Computer security at nuclear facilities: Reference manual: Technical guidance, 2011). Cyber attackers have become much better in doing their activities, and on the other hand, our work much harder. In the past few years, problem regarding ransomware has exponentially risen. In practice our business systems are defended with frequent backups. Sometimes, especially in nuclear sector, as operation technology side, we have to have an access to our information at all times, and any interruption could have greater consequences.

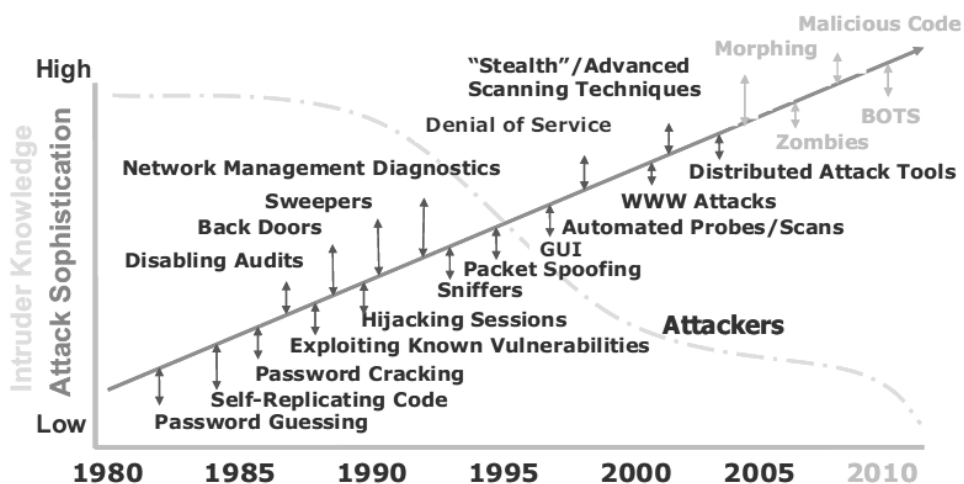


Figure 1: *The increasing complexity of threats as attackers proliferate*

Source: Computer security at nuclear facilities: Reference manual: Technical guidance, 2011

SOCIAL ENGINEERING

Social engineering, by its very nature, means primarily the deception to manipulate individuals (victim) into divulging sensitive information to social engineer (attacker), that may be used for fraudulent purposes. The attacker then acquires sensitive information by gaining trust, using social skills or psychological techniques. Sensitive information could be our business data, passwords, banking information, personal data, etc. Research from Edwards, Larson, Green, Rashid and Baron (2017) highlights the problem increased posting of sensitive information online by the individuals, particularly on social networks.

The process of social engineering targets people rather than IT infrastructure. Therefore, it is not surprising, that social engineering is a part of for community for a long time. Research from Dimc and Dobovšek (2010) has shown, there is still a significant number of people that are not familiarized with the term phishing or pharming, both social engineering techniques.

Social engineering has been analyzed inside out by many different researchers, from psychology, sociology, ethnology, criminology and, of course, information security. According to Bernik (2014) social engineering techniques are one of the most widely used for cyber-attacks.

Nuclear sector is not an exception, and there were cases of social engineering attempts on many nuclear stakeholders, and some of them even had wider consequences.

SENSITIVE INFORMATION IN NUCLEAR SECTOR

Nuclear sector encompasses a great diversity of sensitive information types which needs to be protected (Bowen & Hobbs, 2014). In nuclear sector, sensitive information is information, the unauthorized disclosure (or modification, alteration, destruction or denial of use) of which could compromise nuclear security or otherwise assist in the carrying out of a malicious act against a nuclear facility, organization or transport (Security of nuclear information: Implementing guide, 2015).

Such information may refer to (a) detailed national nuclear security policies; (b) facility security plan; (c) security reports; (d) construction details; (e) physical protection systems; (f) information relating to the quantity and form of material; (g) material in transit (including movement within a site); (h) IT systems and computer systems important to security and safety; (i) guard forces and response force; (j) details of nuclear material accounting; (k) safety cases, engineering documents and other safety or environmental information; (l) detailed contingency and response plans and exercises; (m) personal information; (n) threat assessments and security alerting information; (o) detailed nuclear technology; (p) historical information.

There are also other examples of related sensitive information (a) details of radioactive sources used for medical, industrial, research, or other applications (specific location, isotope, activity level, and the protective measures in place); (b) details of physical and personnel security systems; (c) details of procedures and detection equipment sensitivities at points of entry/exit (ports, border, etc.); (d) detailed forensics information; (e) specific measures and capabilities employed for major public events.

The list doesn't stop here. If any stakeholder considers additional information sensitive, it should take appropriate measures to secure this information accordingly to international, national and organizational standards, policies, plans and procedures.

CYBER-ATTACKS ON NUCLEAR SECTOR

There were already a lot of cyber-attacks targeting critical infrastructure. Tomažič and Bernik (2017) found cyber-attacks are also targeting nuclear facilities.

According to Falliere, Murchu and Chien (2011), first major cyber-attack at nuclear facilities was Stuxnet in 2010 in Iran. The primary target was a uranium enrichment facility in Natanz. Complex malware targeted Siemens ICS, it exploited a long list of vulnerabilities, four of which were zero-days. These vulnerabilities opened an opportunity for malware to self-replicate, update, connect to a remote server, download malicious code and modify the existing code on ICS. In order to get as much useful information during reconnaissance phase, social engineering techniques were one of the first used.

Second well known cyber-attack occurred at the beginning of 2014 at Japans Monju NPP. Paganini (2014) explains, that several computers in the control room were compromised. It was discovered, that the system in the reactor control room had been accessed (of course not authorized) several times, just after an employee updated a free application on one of the computers. Computers contained sensitive information like e-mails and staff training reports.

The same year, there was another major cyber-attack at Korean Hydro and Nuclear Power (KHNP). Lee and Lim (2016) found, that the attackers used social engineering techniques to access and steal KHNP sensitive information. A lot of sensitive information were later on posted publicly online.

Last cyber-attack happened in Germany at Gundremmingen NPP. According to Batchelor (2016), computers on IT side were infected with viruses, which include "W32.Ramnit" and "Conficker". Operational technology infrastructure, due to isolation from the internet, was not infected. Malware was also found on removable data drives and other office computers.

There are probably much more cases of infection and cyber-attacks at nuclear facilities. The only problem with better understanding them is not even knowing if they occur, where, on what systems and what sensitive information they affect.

In above cases sensitive information got stolen or someone got access to them. This is the point, where we ask ourselves, what are sensitive information in nuclear, how do we protect it and who is responsible for maintaining that CIA principle of these information.

METHODS

Our research has been divided into two main parts and was based on a collection of qualitative data. A basis to identify what has actually been done and where there is still a room for improvement is descriptive analysis of various sources. First part focused on analysis of various publicly available sources and the second part of on performing interviews with relevant international nuclear cyber security experts. Eleven main questions with extra sub-questions for the interview were prepared based on an analysis of various sources.

At the beginning of our research we reviewed various publicly available sources such as international standards and best practices like ISO, SANS, ENISA, NIST, IAEA and others. Latest expert articles, doctoral dissertations and literature has been reviewed. We also took a look at some publicly available regulations and regulatory guides, published by national competent authorities or nuclear regulators. These findings were an opportunity to improve what is already available and to identify some of the good practices. Descriptive analysis was used to structure the collected data and to accordingly prepare for the next stage, structured interviews.

Structured interviews with relevant international nuclear cybersecurity experts were conducted. Group of interviewees were selected based on their expertise and relation of their responsibilities with nuclear sector. Some work for at nuclear facilities, regulators, international organizations, competent authorities, others for 3rd parties or vendors. They all have two things in common; they are all cyber experts and they all somehow work with nuclear sector.

Interview questions were based on descriptive analysis of various sources such as international standards, best practices, expert articles, doctoral dissertations, literature, regulations, etc. and also based upon our knowledge of situation in cyber security in nuclear sector in Slovenia. Listed below are several main interview question related to the topic of sensitive information:

- Do you have regulations, guides and inspections related to cyber security?
- What kind of systematic approach to cyber security do you practice?
- How is your organization prepared for cyber-attacks?
- What kind of information sharing is established in nuclear sector in your country?
- How is reporting of cyber incidents or events at nuclear facilities organized?
- Are there any best practices you would like to highlight?
- Do you have any additional recommendations or suggestions?

With these interview questions we really got an insight into an actual situation at nuclear facilities or at other stakeholders around the world. We also got quite a lot of information on several good practices.

There have been quite a lot of challenges while preparing for interviews and even more while performing them. Nuclear security community is, because of its nature, always sceptical while sharing information. This resulted in several cancelled interviews. After consolidating with their co-workers or superiors, interviewees stopped talking with us or said they are not allowed to share any information. Other challenge was immediately upon the start of an interview. Although majority of interviewees saw the questionnaire in advance, they didn't want to share basic information like "Do you have regulations?". Even after explanation of the goals of our research, they were still sceptical. Additional challenge was when interviewees got to read their words and then realized, information given could potentially be sensitive, and therefore wanted to delete it.

Not sharing information doesn't necessarily mean a bad thing. It could also potentially represent a maturity of security culture and high level of obeying rules.

RESULTS

Legislation and regulation regarding sensitive information in any sector is really well developed across the globe, there is no question about that. But what measures do different stakeholders use, and how do they implement them, is totally different story. In this chapter we will try to present several of most needed and fairly easy implemented protective measures to protect sensitive information in nuclear sector. Protective measures with high financial expenses and a lot of man hours won't be presented in this article.

All proposed measures will be based on information gained during source analysis and information gathered while performing interviews. The majority of proposed measures will be at the same time also good practices, used by different countries.

In order to structure protective measures, the same way many nuclear stakeholders do, we also divided them into administrative, technical and physical protective measures.

ADMINISTRATIVE MEASURES

Though it may seem, everyone has information security policies, plans and procedures in place, this is not always the case. Therefore, our first administrative measure proposal is to establish an Information Security Management System (ISMS). Several international standards and best practices are available, but one, most widely used is ISO27000 family. In addition, it is necessary to establish preventive measures such as in-depth vetting or background checks prior to employment and then periodic checks, segregation of duties, two person rules, organizational policies, define roles and responsibilities and clear policies on access control.

Second protective measure is not so much administrative, but can easily fit in here. Social activities such as morning coffees every week or two, can establish a circle of trust among stakeholders, that usually wouldn't talk or share information. Some member states share the same information through established national working groups, but this type tends to be more formal and information flow could be a bit slower. But in both cases, we see a great improvement in information sharing inside a country.

Awareness training courses can be of a huge benefit to all employees. Not a lot of countries prepare basic awareness training course for all employees, but the ones that do, major improvement is noticeable. Administrators report of less or even no infections few months after the training. To complete the circle of awareness, posters and leaflets published and check e-mails with SPAM / social engineering content is sent.

Quite a lot of countries also said, that training courses, organized by the IAEA, much improved their awareness and knowledge about cyber security in nuclear sector. IAEA offers four types of trainings like (a) computer security for facilities that handle nuclear and other radioactive material; (b) conducting computer security assessments at nuclear facilities; (c) information and computer security - advanced practices for nuclear security; (d) hands one training - computer security for industrial control systems at nuclear facilities. All trainings are usually tailored to the needs of a country requesting IAEA's support.

TECHNICAL MEASURES

Technical protective measures are usually very expensive. But there are several things we can do, to improve this area. First are open source Intrusion Prevention Systems (IPS) and Intrusion Detection Systems. There are several classifications of IDS, but most widely used are Network Intrusion Detection Systems (NIDS) and Host Intrusion Detection Systems (HIDS).

Examples of open source NIDS are Snort, Suricata, Bro and Kismet. And examples of open source HIDS are OSSEC, Samhain, FIM Only (AIDE, Tripwire and AFick) and Security Onion.

Installing them is more or less trivial, but setting them up, and putting them into operation is a bit harder. When installing them, try to set up a test environment first and only after a successful test, put the software into the operation.

One technical measure, that is really easy to implement, but not so often seen, is sufficient access control and least privilege. By that, we mean giving employees only the access they need to perform their work, all other access is stripped away. The other one is privilege need to know. Employees are given exact the level of knowledge, they need to now according to their responsibilities. Giving them greater access and knowledge, could lead to intentional or unintentional compromise of sensitive information.

PHYSICAL MEASURES

Physical protective measures are commonly in the domain of physical protection employees like security guards, police, military or others. According to our research, there are several things we can do. First, we should limit physical access to computing systems based on employees' job function.

One of the most important, and most disregarded at the same time, is key management. Even though key management is a part of almost every information security policy, it is often not implemented into the real world. Keys are laying around, server racks are opened, employees don't know the procedures for handling keys, etc. Our recommendation for this physical protective measure is to prepare key management procedure, if not yet prepared, designate responsible personnel and teach them how to handle keys, locks, doors, cabinets, etc.

Some presented administrative technical and physical protective measures could be implemented at many organizations really quickly, and some would need additional efforts, knowledge and financial resources. Same approach could also be used within stakeholders in nuclear sector, with exception at nuclear facilities, where number of changes, because of the nature of the facility, tend to last a bit longer.

DISCUSSION AND CONCLUSION

The research showed us there was quite a lot of cyber-attacks in the past years directed toward national critical infrastructures. Nuclear sector, as a part of critical infrastructure, is also not immune to cyber-attacks and has been also targeted several times. Thankfully, nuclear facilities distinguish between Information Technology (IT) and Operational Technology (OT) and usually separate them physical as well as logically. Many times, personnel responsible for IT are not the same as personnel for OT. This is really important due to the core mission of nuclear sector and if compromised, consequences could be catastrophic for people and the environment.

During the research, we identified significant number of sensitive nuclear information that could potentially be a target of a cyber-attack. We have also identified gaps, issues and problems, all involved nuclear stakeholders face on a daily basis and noticed a room for improvement. Therefore, this article presents a few protective measures which are easy to implement and can improve sensitive information security.

Of course this is just a beginning, as cyber security in nuclear sector has only began to evolve a few years ago, and it still needs a lot work, to achieve maturity level as it is in the business environment. And not only this, because of its nature, cyber security has to be even stronger and support all processes in the

The research is an important contribution to a better understanding cyber security, cyber-attacks and sensitive information in nuclear sector, where facilities are built for a relatively long period of time. Managing these types of facilities requires a lot of specific knowledge and expertise. The results of this research are several of most needed and fairly easy implemented administrative, logical and physical measures to protect sensitive information in nuclear sector from cyber attackers.

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PRIVATE SECURITY SERVICES AS PART OF A POTENTIAL INTELLIGENCE COMMUNITY IN THE REPUBLIC OF SLOVENIA

Darkeo Prašiček¹

ABSTRACT

This study discusses the cooperation between private security services, national intelligence and security services, and companies, regardless of their ownership, in the Republic of Slovenia by mutually sharing open source data. The analysis of the quantitative research on private security services and the qualitative research will determine the current state. Systematic cooperation with regard to sharing open source data and information in the Republic of Slovenia has been fairly unexploited and represents a challenge for the cooperation. The research is limited to the state of cooperation related to systematic sharing of data and information as a form of an intelligence activity to safety and economic development. The research findings will be useful when establishing a potential intelligence community in the Republic of Slovenia, which some countries have been familiar with for a long time.

Keywords: private security services, intelligence services, Republic of Slovenia, open sources

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INTRODUCTION

Political changes in Slovenia and globally are also bringing changes to the economy. The Republic of Slovenia (RS) is no exception. After the Slovenian Independence War in 1991, the situation regarding safety assurance also began to change. With the transition to private property and market economy, the need for safety assurance has increased. The state ensures public security in the public interest according to available resources. With the increase in private property, the need for safety assurance, or the protection of people and their property against various criminal offences (murders, abductions, theft, robbery, etc.), is also increasing.

Crime in any environment causes discontent, fear, material and social losses, and stress to people who live in such an environment. Economic operators, who work in a criminal environment, can also suffer financial losses due to material damage, or a reduction in finalised contracts with business partners, or avoidance of business partners for fear of crime in their area of business, or due to illegal interference with the logistical or other business processes of companies (Jere & Čas, 2011; Prašiček & Čas, 2013).

As the state became no longer able to provide protection in the form and amount that certain individuals required, a greater need for safety assurance developed. This presented an opportunity for individuals who started to provide safety as a service in the form of private security services and as private detectives who perform economic activities. With the transition to capitalism, security also became a commodity, which can be afforded according to available material and financial resources. Safety has become a service, which individuals can afford according to the amount of financial resources (Čas, 1995: 118). As

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the economic relations changed, private security services as companies started to fill the grey area in the safety assurance sector. Thus, a certain part of safety assurance has been transferred to the private sector (Pečar, 1991). Since the state is still responsible for safety assurance there is the possibility of abuse of private entities performing security services, especially when force or other interventions which violate human rights and fundamental freedoms are used. To avoid this and to organize the private security area the Republic of Slovenia adopted the Private Protection and Obligatory Organization of Security Services Act (Zakon o zasebnem varovanju in obveznem organiziranju službe varovanja [ZZVO], 1994) and the Detective Activities Act (Zakon o detektivski dejavnosti [ZDD], 1994). The Acts set the foundations for systemic regulation of these fields, professional training and education, improvement and monitoring.

In the current crisis, the performance of economic operators and their processes is especially important, because social, health protection and coexistence are widened if people are given employment opportunities. After all, the state's performance also depends largely on economic prosperity (Prašiček & Čas, 2013).

The socio-economic systems in the world and in Slovenia have changed, which has led to changes in crime prevention. The police slowly began losing the primacy of safety assurance due to the reduction of resources required for police work, among other things. In the light of all these considerations, private security services undoubtedly also have an important role in crime prevention (Prašiček & Čas, 2013).

Cooperation between private security services and private detectives, especially with regard to sharing open source data and information, is useful, and represents a cost benefit to the country and companies, regardless of their ownership, as well as to every individual. Crime prevention is one of the most common forms of preventive measures, and it includes the identification of the problem, planning, execution of measures and assessment of the impact of the preventive measures (Meško, 2002: 257). It aims to reduce the chance of certain crimes by increasing the integration of risks, and by hindering and reducing the possibilities for making profit through crime or diffusion of benefits (Clarke, 1995: 91). Pauwels (2010) suggests that a risky lifestyle leads to neighbourhood disorder.

The research presents a hypothetical frame which refers to cooperation between private security services and private detectives and national intelligence and security services, with regard to sharing open source data and information and data handling, especially with respect to the data type and classification level. In the research, the following hypotheses are confirmed:

- H1: private security services and private detectives share open source data and information with national intelligence and security services to provide protection against crime and for the benefit of the economy, regardless of ownership, and under their own initiative.
- H2: private security services and private detectives evaluate the open source data and information to determine the appropriate data type and classification level.
- H3: cooperation between private security services and private detectives and national intelligence and security services happens because it is mutually beneficial (financial benefits).

The research was presented with limitations arising from the willingness of respondents to participate in the survey, thus affecting the validity/relevance of its results, and hence the understanding of the current cooperation of national intelligence and security services.

In the context of the processes of intelligence activities, a model for potential cooperation of everyone for the benefit of all residents in the Republic of Slovenia and beyond is presented.

PRIVATE SECURITY SERVICES IN THE REPUBLIC OF SLOVENIA

According to Pečar (1991), after the independence of the Republic of Slovenia from the former Socialist Federal Republic of Yugoslavia in 1991, the social, political and economic order changed, and the state realised that certain other mechanisms than its own, should be allowed to exercise supervision (Čas, 1995).

The change in social, political and economic order also led to a change in the form of property, which can be private, public, state, association, etc. This transformation of property led to changes in the security sector (Čas, 1995), because the state only uses its security services to perform security tasks which are in the public interest. Thus, safety assurance became a commodity which anyone could afford, according to their financial capacity.

The methods of property protection performed by private security services, are similar to the methods used by the national police. The private security sector therefore had to be legally regulated.

The ZZVO (1994) and the ZDD (1994) were adopted and led to the identification of new entities, providing protection of people and property, which were not provided by the state (Čas, 1995). From the adoption of the first Acts until today, the private security sector has continually developed by following the most up-to-date aids, technical and otherwise, to provide protection, as well as the very changes in social processes and situations in society. Amendments and supplements in the legislative sphere were also therefore required. The legislative development related to private security services continued with the adoption of the Amended Private Protection and Obligatory Organization of Security Services Act (Zakon o dopolnitvah zakona o zasebnem varovanju in o obveznem organiziranju službe varovanja [ZZVO-B], 1998), the Private Security Act (Zakon o zasebnem varovanju [ZZasV], 2003), the Amended Private Security Act (Zakon o spremembah in dopolnitvah Zakona o zasebnem varovanju [ZZasV-A], 2007), the Amended Private Security Act (Zakon o spremembah in dopolnitvah Zakona o zasebnem varovanju [ZZasV-B], 2009) and the Private Security Act (Zakon o zasebnem varovanju [ZZasV-1], 2011), which is currently in force. With regard to detective activities performed by natural persons, the legislative development continued with the adoption of the Amended Detective Activities Act (Zakon o spremembah in dopolnitvah zakona o detektivski dejavnosti [ZDD-A], 2002), the Amended the Detective Activities Act (Zakon o spremembah Zakona o detektivski dejavnosti [ZDD-B], 2005), the Amended Detective Activities Act (Zakon o spremembah Zakona o detektivski dejavnosti [ZDD-C], 2007), the Amended Detective Activities Act (Zakon o spremembah in dopolnitvah Zakona o detektivski dejavnosti [ZDD-D], 2010), and the Detective Activities Act (Zakon o detektivski dejavnosti [ZDD-1], 2011), which is currently in force.

Ensuring a high level of security and quality of life for all residents is of the greatest interest to the Republic of Slovenia. The Ministry of the Interior (Ministrstvo za notranje zadeve [MNZ], 2010) therefore adopted the Strategy in the Field of Private Security. A prerequisite for ensuring a high level of security and quality of life is the "strict respect for basic human rights and freedoms, and the systematic prevention of unlawful interference with personal privacy and rights. The policy of safeguarding internal security, which seeks

to establish and operate an efficient and rational internal security system, has also been developed based on these principles. It is therefore in the interest of the Republic of Slovenia to establish and encourage closer partnerships between state and private security mechanisms, which will additionally strengthen the legitimacy, credibility and optimality of the system” (MNZ, 2010: 4).

In the framework of safeguarding national security, the private security sector is also included in the Resolution on the National Security Strategy of the Republic of Slovenia (Resolucija o strategiji nacionalne varnosti Republike Slovenije [ReSNV-1], 2010), which is the basic development guidance document related to national security. The document defines the national interests and the national security objectives of the Republic of Slovenia, analyses the security environment, the sources of security threats and the security risk for the state, defines the grounds for responses to individual threats and risks, and determines systematic and organisational solutions for the entire performance of the state to ensure national security. Safeguarding national security of the Republic of Slovenia involves national institutions, responsible and accountable for safeguarding national security, and external activities, which directly affect national security. Thus, external activities also include economic activities, part of which is undoubtedly the private security sector because private security services perform tasks related to private security as an economic activity in the field of security which is not provided by the state and is in the public interest (ZZasV-1, 2011).

THE TASKS OF PRIVATE SECURITY SERVICES

The ZZasV-1 states that private security services can be performed by a company or a self-employed individual with a registered activity, valid licence and confirmed compliance with other requirements according to the Act. It also defines the purpose of private security services by stating that the purpose of private security services is to provide the protection of people and property in the public interest with the purpose to protect public order, public security, contracting authorities, third parties and security personnel directly performing the activities. Thus, private security services, according to the licence, is formed of (ZZasV-1, 2011):

- protection of people and property;
- protection of persons;
- security services and transport of cash and other valuables;
- protection of public gatherings;
- security at events in bars and restaurants;
- management through a security control centre;
- development of technical protection systems; and
- implementation of technical protection systems.

Administrative tasks in the private security sector are performed by the Ministry of the Interior, which supervises the lawfulness of actions and education, grants and withdraws licences to perform economic activities related to private security services, and keeps statutory records.

The ReSNV-1 states that the internal security system also includes judicial and other public authorities and institutions which contribute to internal stability and security by performing the tasks. Internal security is provided by the state institutions related to public security, and different security services and private-law institutions, which collaborate with each other and within the framework of public private partnership.

To ensure efficiency and development legal and natural persons in the private security sector, related to the protection of persons and property, volunteers cooperate and form the Chamber for Development of Slovenian Private Security, which is a professional economic interest group (ZZasV-1, 2011).

THE TASKS OF PRIVATE DETECTIVES

Trivan, Podbregar and Mijovic (2017) have concluded that detective activities in Slovenia and the Balkans, as performed by natural persons, are typical of post-authoritarian and post-conflict countries.

The ZDD-1 (2011) regulates the conditions, entitlements and obligations of individuals, legal persons and self-employed individuals engaged in detective activities. detective activities are considered. To be the collection, processing and transmission of data and information, and consultancy related to the prevention of crime, which is performed in accordance with the needs of the contracting authority and the afore-mentioned Act.

The tasks, which private security services and private detectives perform based on the law, are to a certain degree intertwined with the tasks and legislative provisions of law enforcement bodies and security and intelligence services. We can therefore establish that they would be an important part of the intelligence community for the acquisition of open source data if a potential intelligence community in the Republic of Slovenia were established.

RESEARCH METHODS

The subject of the analysis includes licensed private security services and detective activities as a licensed economic activity in the Republic of Slovenia. Individual activities and tasks are presented in the chapter "Private Security Services in the Republic of Slovenia". Legal options and limitations of managing the performance of intelligence activities in a potentially established intelligence community in the Republic of Slovenia are presented. The practical aspect of performing tasks, which can be defined as intelligence activities based on acquisition of open source data, includes the analysis of the answers, given by the respondents. Based on theoretical knowledge, we evaluate that the respondents completely or partly perform private intelligence activities in the Republic of Slovenia. An online questionnaire was sent Via e-mail to private security service personnel and detectives. The questionnaire included questions regarding open source data and information acquisition, determination of the type and classification level of obtained data, and the exchange of data relating to the prevention and detection of crime with the state security authority, the police, national intelligence services, such as the Slovene Intelligence and Security Agency (SOVA) and the Intelligence and Security Service of the Ministry of Defence (OVS MORS), and companies, regardless of their ownership.

SAMPLING AND DATA COLLECTION

The survey was conducted in April 2018 and its target population was all licensed private security services in Slovenia. On 9 April 2018 there were 143 private security services registered in the Republic of Slovenia (MNZ, 2018). On 23 April 2018 there were 86 private detectives with a license to perform detective activities in the Republic of Slovenia (Detektivska zbornica Republike Slovenije [DeZRS], 2018).

The 1KA online tool was used for the development of the questionnaire. The 1KA tool is an open source application which provides online surveys and includes the following elements: (a) provision of support in the development, creation and design of online questionnaires, (b) administration of online surveys, that is, inviting respondents to participate in the survey, and conducting data collection, and (c) statistical analysis of the collected data and process analysis (1KA, 2018). The questionnaires were sent to the respondents via e-mail. E-mail addresses for individuals engaged in detective activities were taken from the website of the Detective Chamber of the Republic of Slovenia, and e-mail addresses for individuals from private security services were taken from their individual websites.

QUESTIONNAIRE

The questionnaire includes 21 open-answered questions (Mitar, 2000), of which 13 questions are related to the acquisition of open source data, and the sharing of open source data with national security and intelligence services connected to the Ministry of the Interior, the Police, the Slovene Intelligence and Security Agency (SOVA) and the Intelligence and Security Service of the Ministry of Defence (OVS MORS). These questions refer to crime prevention and support for companies, regardless of their ownership. Five questions refer to the identification of the data type and the classification level, dependent upon the acquisition of open source data and information, conclusion of contracts with the recipients of security services, and meetings. Two questions, allowing open answers, are aimed at identifying the causes for potential non-cooperation with the national security and intelligence services. A demographic question is included to find out whether the respondent belongs to a licensed security service or to the detective activities sector.

RESULTS

Altogether 229 questionnaires were sent, and 35 completed questionnaires were received, which equates to a 15.28% response rate, of which 21 or 9.17% were adequately completed, and 14 or 6.11% were not completed adequately. Of 21 respondents, 11 (4.8%) completed the entire questionnaire, and 10 (4.37%) completed part of the questionnaire.

Given the lack of willingness of all subjects involved in the research to participate and the actual unwillingness of everyone to participate in the study considering that only 21 respondents were happy to participate in the study, of which only 11 completed the entire questionnaire, the formulated hypothesis H1 can neither be confirmed nor completely rejected.

Due to the small number of answers, the findings cannot be generalised to the entire population and H2 cannot be confirmed.

Since H1 and H2 cannot be confirmed, H3 can also not be confirmed, because it refers to the cooperation between private security services and private detectives and national intelligence and security services which occurs for mutually beneficial reasons (reduced cost).

DISCUSSION

The lack of willingness of all subjects involved in the research to participate, and actually unwillingness of everyone to participate in the study, are major limitation and means the formulated hypotheses can neither be confirmed or completely rejected.

Below are answers to the questions related to the confirmation or rejection of H1: 19 (n=21) respondents of the statistical population (90.48 percent) said that they use open source data and public information at work, and 16 of them pay particular attention to how

open source data is collected. 6 respondents of the statistical population answered that they do not pay particular attention or any attention to the acquisition of data when they access open source information through the Public Information Access Act. Only 11 respondents obtain open source information on the basis of the Public Information Access Act in both the Republic of Slovenia and in the European Union.

The exchange of open source data and information which come from mutual agreements and are related to the provision of security, meetings minutes or communications of private security services between the Ministry of the Interior, the Police, SOVA and OVS MORS, can be determined by the answers of the respondents (n=12). Only 1 respondent of the statistical population often shares open source data and information, 3 respondents of the statistical population sometimes share such data and information, and 8 respondents of the statistical population never share such data and information.

7 respondents always inform the public authorities of cases related to the detection of economic crime, whereas 2 respondents of the statistical population only sometimes inform them of such. Worryingly, 3 respondents never notify the public authorities about the detection economic crime, despite this being a legal requirement, 3 respondents of the statistical population immediately inform the public authorities about the detection of economic crime, 1 respondent of the statistical population informs the public authorities about this not immediately but later, 4 respondents of the statistical population inform them later with a time delay, 1 respondent of the statistical population never informs them, and 3 respondents inform them in a different manner, though an explanation was not provided.

National security and intelligence services had asked 4 of the respondents of the statistical population (n=11) to provide data and information important for the development of the economy as protection against criminal offences; however, 7 of the respondents of the statistical population stated that they had not been asked to provide such data and information. The number of requests expressed by national security and intelligence services to private security services in the last five years is shown also shown in Table 1 below.

Table 1: *The number of requests expressed by national security and intelligence services to private security services in the last five years*

National intelligence and security services	2013	2014	2015	2016	2017
Police			2	1	3
Slovene Intelligence and Security Agency (SOVA)					
Intelligence and Security Service (OVS)					

Table 2 shows the number of times that national security and intelligence services asked private security services to provide data, and provided feedback to them in cases of data and information exchange in the last five years.

Table 2: *The number of requests for private security services to provide data, and the number of times that national security and intelligence services provided feedback in cases of data and information sharing in the last five years*

National intelligence and security services	2013	2014	2015	2016	2017
Police	1	1	12	3	6
Slovene Intelligence and Security Agency (SOVA)					
Intelligence and Security Service (OVS)					

Below are answers to the questions related to confirmation or rejection of H2: 15 (n=20) respondents, which equals 71.43 percent of the statistical population, answered that at work they classify certain documents, such as mutual agreements, minutes of meetings or communications, etc.; 5 respondents (23.81 percent of the statistical population) stated that they do not identify the type and level of classification.

13 respondents (n=19) also determine the type and classification level of open source data and public data, whereas 6 respondents of the statistical population do not. In an open answer, one respondent of the statistical population stated that it depends on the particular case or the source and manner of data acquisition as to whether to determine the type and level of classification or not.

CONCLUSION

Cooperation between private security services with state security and intelligence services such as the Ministry of the Interior, the Police, SOVA and OVS MORS is urgently necessary from the viewpoint of the national security system of the Republic of Slovenia, in both the narrow and broader.

Despite the unconfirmed hypotheses, the answers of the respondents allow us to establish that some respondents from the private security sector already cooperate with the national security service, especially with the police. There seems, however, to be no cooperation with the national security and intelligence services, although this should be necessary, considering the national security system of the Republic of Slovenia. The causes for non-cooperation, as stated by the respondents (n=8), should therefore be considered in future in order to eliminate them. Three respondents of the statistical population believe that the reason for this non-cooperation is the fact that the public sector distrusts the private security services and doubts their professionalism. Four respondents of the statistical population state problems with legislative regulation. One out of these eight respondents of the statistical population believes that the lack of legislation means there is no foundation for (mutual) cooperation or for the development of such public-private partnership, which, regardless of the current relationship, represents the entire national security system of the Republic of Slovenia.

Globalization offers the possibility to extend entrepreneurship at the international level. Together with the removal of national borders and the possibility of free movement of people and capital in the EU, there was also an increase of risk of entrepreneurship. Globalization affects also the integration of countries in Europe. Namely, with the creation of new connections and activities that cross and eliminate political, economic, cultural and geographical boundaries, it has an impact on the integration of European countries into the European Union (Perenič, 2010: 61; Prašiček, 2016). According to Perenič (2010: 45),

although the European Union has certain elements of a federation, it has its own way of integrating the European countries on the basis of an agreement as a confederation.

The cooperation between private security services and government institutions represents a challenge for the protection of formal economy against the informal economy and organized crime (Dobovšek & Slak, 2016).

Based on the review of foreign publications and reports related to the activities of similar services in foreign countries, it can be concluded that there is a major focus on collecting open source data which is important for the country's economy and defence capability. Within the field of intelligence, the intelligence activity comprises civilian as well as military intelligence services and economic sectors of vital importance (Office of the Director of National Intelligence, 2009). Therefore, some countries seriously consider and are in favour of collecting open source data which are intended for the effectiveness, competitiveness and development of the economy rather than using conventional methods of data collection (Sir Omand, 2009).

The private security services and security organizations, such as the MNZ, Police, SOVA, OVS MORS, as well as companies, regardless of their ownership, collect information which should definitely be shared, since they could be useful for the Slovene economy (Prašiček, 2016) and national security safety in the Republic of Slovenia.

Despite the unconfirmed hypotheses and the indication of reasons for non-cooperation of private security services and national security and intelligence services, we can nevertheless establish that private security services are interested in mutual cooperation, and that some of them are well aware of the contribution such cooperation could make to the provision of the national security system in the Republic of Slovenia. The study can be understood as a basis for further research and proper regulation of cooperation between private security services and national security and intelligence services, and cooperation in the event of the establishment of an intelligence community in the Republic of Slovenia, which most certainly will depend upon the political will.

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POLICY FOR EFFECTIVE REALIZATION OF CORPORATE SECURITY

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ABSTRACT

The realization of security in the modern corporation is linked to the achievement of the goals and values of the corporation. The author will apply a qualitative research approach that will enable the use of a number of methods and techniques to analyze the concept of corporate security, identify content that constitutes corporate security and create assumptions for the effective realization of security in the modern corporation. The author will use the following methods: analytical method, descriptive method, and method analysis of content analysis. Due to the efficient functioning of the corporation, security management will need to follow the two basic groups of reasons for the onset of crisis (internal and external). The author finds that these reasons for the occurrence of the crisis reflect the objective situation in the state, the situation of the market, as well as the impact of inadequate or adequate legislation and by-laws.

Keywords: corporate security, risks, security policy, security management

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INTRODUCTION

The process of globalization, internationalization and integration in the last decades has created a completely different ambient, a social space for the business operations of economic entities, both nationally and internationally. Corporations and other business entities work in an existing environment full of security challenges and a wide range of threats. In order to prevent the negative consequences and the effects of the threats, and to minimize the risks on the one hand and to increase stability, competitiveness and profitability on the other hand, all companies pay great attention to corporate security.

The willingness of the company's management at any cost to eliminate the negative and ultimate causes of threats (as this could jeopardize the company's survival or reputation) have led to corporate security today presenting an important strategic issue as well as a strategic function in all major economic systems.

The following considerations of corporate security can be found in the literature. According to Cabbage and Brooks (2012), corporate security is aimed at detecting fraud and offenses, and examines the actual cases of corporate crisis, crime, and other crimes for which corporate security professionals should be aware of to ensure effective protection of the people, the operations of the means.

Michael Genser (2006) believes that corporate security is adjusted to meet the structural risks for the company, through the application of certain models of simulation to implement best security practices in the company.

According to Deitelhoff and Wolf (2010) in their compilation of editing of materials, corporate security is aimed at corporate safety responsibility, which is focused on the role of private business in conflict zones. It provides a picture of the types of contribution to peace and security by transnational corporations.

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Peter Reid (2012) believes that corporate security should provide the necessary balance between the level of security in the corporation, business, and conventional work requirements complemented by wisdom, and in this way a radical but inspired proposal for success (Reid, 2012).

The corporate security is a function of the corporation that controls and manages the coordination of all activities within the enterprise, and which relate to safety, continuity and reliability. The existence of an effective system of corporate security protects the company from all threatening actions, establishes the basis for management decision making, provides the top management access secret information and establish processes and procedures that prevent spilling protected data from the corporation (Milošević, 2010).

Ivandić, Karlović and Ostojčić (2011) define corporate security as a strategic function of the company, which aims at realizing the safety of the business success of the corporation, which includes: elimination of all risks and threats that may affect business activities and achieving business success; reduction of threatening factors to minimum; business operation in crisis, i.e. overcoming the crisis and re-establish normal operations.

Certain definitions are very broad in its view, regarding corporate security as part of national security in the context of realizing etc. civilian security. In that context, Marković (2013) believes that corporate security is a subsystem of national security and it is part of the security structures with a set of social goals that guide the business activities of companies and measure their social responsibility in accordance with the standards and law. According to the guidelines of the European Union, corporate security in corporations is defined as integral security which includes security and security issues, which, in turn, includes information gathering, security assessments and risk assessments, information security, crisis management, fire protection, explosions and accidents, protection of safety and health at work, and more (Ivandić et al., 2011). The analysis of the situation in the Balkan countries shows that a significant part of the current functioning of the corporate security within the business entities is still connected to matters that in the broadest sense relate to the physical and technical security of persons, property and operations of economic companies, the internal factors that they organize and direct them, as well as the engaged external or internal entities that implement it in practice.

From the said considerations for corporate security, it can be concluded that has a lack of a precise definition of this term. The definition of this term is extremely difficult, because the true nature and scope of the field of corporate security is difficult to determine.

In the scientific-professional literature, as a result of numerous polemics and debates, it has been accepted that within the business systems there are three common reference objects of protection: persons, property and business of the company or other economic entity.

The category of persons includes: all employees (managers - managers and direct executives) in the company, as well as other persons who are on any basis staying within the company: company clients (visitors, buyers of goods, users of services) business partners (suppliers, contractors) and others (Daničić, 2005).

The property of a company in the narrow sense means the right to own movable and immovable things, monetary assets and securities and other property rights. In a wider sense, the company's assets include everything that the company has achieved with past labor and with its current appearance on the market: its name, trademark, corporate image, business data and information, fixed assets, spare parts, raw materials, a process of production, products, inventions and innovations and profits. Business operation of the company is the

daily active relationship and work process, aimed at achieving a better and stable position of the company on the market and increasing its property (Daničić & Stajić, 2008: 47).

In close connection with the mentioned reference objects of protection is Analysis of security threats - assessment of threats that represents an assessment of any real, real or potential threat to the company, which can cause injury or death to persons and/or the destruction (loss) of a company's assets and / or a decrease in profits, i.e. financial losses regardless of their size. It refers to a gradual and systematic analysis of actions and procedures arising from the process of work in the company, in order to identify the threats to security in the company and to proactively make recommendations, solutions and procedures for their elimination, and/or mitigate the consequences in case to accomplish the threats during the process of work in the company" (Daničić & Stajić, 2008: 47).

RISK ASSESSMENT

Broad analyzes and discussions that are intensively occurring within security studies from the end of the last and the beginning of this century show that the term threat slowly disappears and loses its importance and is increasingly replaced by the term risk or synonym of uncertainty (Komarčević, Pejanović, & Živanović, 2012). This tendency is associated with the expansion and deepening of the concept of security and the domination of the so-called. soft security that is associated with non-classical threats arising from political, economic, social, environmental and similar spheres, as well as from the great natural disasters that occur around the world. When it comes to terminological delineation of the meaning of threat and risk concepts, both terms represent a synonym for uncertainty. Bearing in mind some of the definitions that indicate that "the threat is a clearly expressed intent for injury, damage, etc.", and the risk "is associated with probability or possibility of consequences ..." it can be concluded that their distinction should be sought in the quantity the uncertainty that arises as a consequence. In modern conditions, it is very difficult to set a universal definition of risk, since its terminological meaning deviates depending on the scientific and applicative area in which it is used. Today, for the needs of different scientific disciplines, different definitions are accepted that are accepted by the researchers, guided by the goals and the subject of research. According to certain definitions that can be found in scientific literature, risk represents:

- The risk is the expectation of an (unwanted) event and is primarily a social construction. The perception of risk is considered as an important factor in the process of determining the significance of risk. In this sense, the theory develops two directions that try to answer the questions of risk. These are: the psychometric model and the theory of culture (Sjoberg, 1984);
- A measure of the likelihood that the consequences harmful to life, health, property and the environment will arise as a result of certain dangers (Sage, 1995);
- A complex phenomenon that simultaneously describes the likelihood of occurrence of harmful events and the expected size of the consequences of that event in the overall system and the course of the determined length of the time interval or the course of a particular mission (Keković, Bakreski, Stefanoski, & Pavlović, 2016);
- Possibility of the potential danger to occur during and during the conditions of use and/or exposure and the possible significance of the damage (Luković, 2001);
- Degree of probability of occurrence of natural phenomena that characterize the occurrence, formation and effect of hazards as well as social, economic, environmental and other types of losses and damages (Keković et al., 2016);

- Risk is a complex, constant, inevitable and uncertain characteristic of all events and phenomena in today's conditions of modern life.

Corporate security tasks are to be found and at an early stage effectively prevent any development of threats that endanger the corporation and its operations. For the efficient business operation of the corporation, security management needs to monitor the two main groups of reasons for the crisis (internal and external) occurring in the corporation (Gerginova, 2017):

- External causes that occur in the company and do not have a significant impact (General market changes, changes in industry, global economic crisis, political changes, legislative changes, natural disasters).
- Internal causes, which are within the same corporation (inadequate and unusual management, incompetence, immoral leadership, underestimation of public opinion and subordinate, unrealistic goals and demands of trade unions, inefficient communication system, weak organizational culture, dissatisfaction and lack of motivation employees, lack of employee control, inadequate work organization and poor job relations).

The issues of corporate security include protection of property, persons and operations of the company, prevention of criminal activities of external and internal entities and internal supervision over the legality of the work of employees and management.

Knowing the legal regulations that prescribe the forms of criminal behavior and prescribing penalties and other sanctions for perpetrators of criminal acts can be an important element in the prevention and control of risks. The persons in charge of creating and implementing security measures within the company (managers and employees) must be familiar with a number of criminal-legal norms for several reasons: (Keković et al., 2016: 167).

First, the frequency of certain types of criminality indicates the likelihood that the company will become a victim of a crime. The types of criminal activities that most often and most dangerous affect the companies are: property crime (especially the following criminal acts: theft, robbery, robbery, petty theft, fraud and evasion); cybercrime (especially criminal acts: making and entering computer viruses, computer fraud, computer espionage, damaged computer data and programs), criminal offenses against intellectual property (especially criminal offense: violation of the patent right) and criminal acts against the general safety of people and property (in particular causing general danger, difficult acts against the general safety of people and property). Among the most numerous are property and computer crime. Employees who attend the commission of a crime or managers who are familiar with the circumstances surrounding this crime become significant witnesses in the further court proceedings. If they know the criminal norms they can assess the danger that would result in the commission of the crime. Details that at first glance are less important can be crucial for the legal qualification of the crime. Therefore, the mentioned circumstances are of crucial importance in the process of proving the existence of a criminal offense and passing a guilty verdict and sentence. Knowing these details of persons responsible for security directly help them to protect the legitimate interests of the company and to eliminate the harmful consequences. Secondly, the legal concepts of a particular crime to some extent differ from the importance we attach to everyday speech. Thirdly, the failure to comply with the legal obligations related to the reporting of criminal offenses, as well as their preparation, entails criminal liability of the competent person (Keković et al., 2016).

If we want to categorize the risks of the different types of delicts, we must take into account the weight of their potential consequence and the probability of their realization. The fact is that companies are susceptible to certain criminal offenses.

Here we first refer to criminal acts in the field of property, economic and cybercrime, as well as crimes that are related to the general security of poultry, property and intellectual property. Accordingly, the risk assessment process should encompass the analysis and assessment of the risks of committing crimes that are most commonly occurring in the company and can severely affect its assets and operations. Furthermore, it is necessary to take into account the fact that public enterprises, institutions and state bodies have a need for risk management, especially in situations when they perform their business activities. For example, state authorities can hire (this is done regularly) private security and ask for consulting services in the area of risk assessment of endangering the property that is being offered to them and those who work for them. Accordingly, the analysis and risk assessment in their case must include criminal phenomena characteristic of the domain in which they are located, so in the categorization should also be added the criminal acts against the constitutional order and the security of the state. In addition, disciplinary offenses and offenses must take into account the severity and likelihood of the consequences as well as their frequency. None of these forms of unlawful activity, however, has no meaning or weight as a criminal act. We cannot say that the risk of committing a misdemeanor against the enterprise should be placed in the same ranking with the risks of criminal acts or of natural disasters and fires.

Based on the above, we can conclude that when assessing the risks of unlawful activity, the company's external entities must determine the type of crime that jeopardizes the company's business operations. There are the following types of crimes (Keković et al., 2016: 170):

- against constitutional ordering and security - terrorism, diversion, espionage;
- against the general safety of people and property - causing general danger, destruction and damage to public devices;
- against property - theft, robbery theft, robbery;
- against the security of computer data - damaging computer data and programs; and
- against intellectual property - unauthorized use of a copyright work or objects of related law, infringement of the right to a patent, etc.

In assessing the risk of unlawful activity of internal entities, the organization must determine whether the user is in danger due to the unlawful activity of the employees or managers to become an object of the following delicts (Keković et al., 2016: 171):

- Crimes against the general safety of people and property - causing danger due to non-provision of OSH measures;
- Crimes against the economy - money laundering and issuing business secrets;
- Criminal acts against property - thefts, frauds;
- Criminal offenses against official duty - embezzlement, issuing official secrets;
- Crimes against the security of computer data - computer sabotage, computer fraud;
- Criminal offenses against rights based on work - violations of rights based on work and social insurance, on taking measures for protection at work;
- Offenses against safety and health at work - failure to take preventive measures to protect the life and health of employees;
- Disciplinary offenses in the area of violation of the work obligations related to the tasks of providing persons, property and work, etc.

Disciplinary offenses in the area of violation of the work obligations related to the tasks of providing persons, property and work are closely related to the violations against safety and health at work. The risk of violations in the area of safety and health at work is important in view of the fact that there is a state regulation that prescribes obligations in the field of occupational safety and health. Violation of legal provisions is a direct risk to both employees and the company.

Below we will list an example of an assessment of the risk of unlawful action against the corporation: Threats: Enforcement of offenses that are perceived as a violation or endangerment of persons, property or company's operations (Keković et al., 2016: 172).

First, the author Gerginova (2017) determines the degree of threat related to the commission of a particular crime as an infringement or endanger the persons, property or work of the company. Degrees of threat are: maximum threat, big threat, medium, small and minimal threat:

- Maximum - lack of system for physical and technical security of persons, property and operation and failure to take regular and prescribed measures for the protection of employees, infrastructure and property from committing criminal offenses, employees who are not trained in timely recognition of the threat of committing criminal offenses and proper reactions that could mitigate or prevent the consequences;
- Great - there is no system for physical and technical security of persons, property and property working with taking protective measures that have not proved to be adequate or are applied selectively and irregularly; employees who are not trained for timely recognition of the threat of committing criminal offenses and proper reactions that could mitigate the consequences; however, in the previous cases, a correct reaction was observed by the employees as a result of their own initiative;
- Medium - existence system for physical and technical security of persons, property and working and undertaking measures for protection only in relation to threats of committing criminal acts and crimes against the general safety of persons and property, but not of other types of threats; employees trained for timely recognition of the threat of criminal offenses and proper response that could mitigate or prevent the consequences but only in relation to certain criminal offenses, while the reaction in the case of other crimes in previous cases was reduced to a personal initiative, low level of information literacy of employees;
- Small - existence system for physical and technical security of persons, property and operation and undertaking of regular and prescribed measures of protection regarding the threat of committing criminal acts, criminal acts against the general safety of people and property and criminal acts against intellectual property (developed mechanisms of factual and legal protection of business secrets that apply copyright or related right, patent and right of invention); with the existence of some degree of protection against cybercrime, employees trained for timely recognition of threats of crime and proper response, which could mitigate or prevent the consequences, high level of information literacy of employees;
- Minimum - existence of a system for physical and technical security of persons, property and operation, as well as undertaking regular and prescribed measures for protection regarding the threats from committing property crimes, criminal acts against the general safety of people and property and criminal acts against intellectual property (developed mechanisms of factual and legal protection of business secrets that apply of copyright or related right, patent and right of invention); use of state-of-the-art

computer programs and systems for protection against cybercrime, employees trained for timely recognition of the threat of crime and proper response that could mitigate or prevent the consequences; high level of information literacy of employees, engaging employees who are specialized in protection against high-tech criminality.

By committing a crime as an infringement or endangering persons, property or company's operations, the following consequences occur: Violation of the bodily integrity of the person, appearance of property damage on a large scale, destruction or damage to important infrastructure objects, disruption of the working reputation and creditworthiness of the company, destruction or damage to computer data and programs of importance for the operation of the organization, disabling or substantially aggravating the procedure for electronic processing and transmission of data within the company, lost profits as a consequence of loss of a patent or the inability to use the subject of copyright or any other related right (Keković et al., 2016: 174). In order to prevent risks, the management of the corporation should take the following measures:

- introducing an adequate system of physical and technical security of persons, property and property working;
- prescribing and regular implementation of appropriate measures for protection against committing crimes to the detriment of the company;
- education of employees for timely recognition of threats of criminal offenses and proper reactions, which could prevent or mitigate the consequences;
- procurement and use of software for protection of computer systems, data and programs; and
- raising the level of information grievance of employees.

NEED FOR SAFETY MANAGEMENT AND POLICY CREATION FOR BUSINESS SAFETY

The security policy for corporate affairs is an element of corporate governance and represents a part of the corporate policy. Although it can be defined in various ways, the most often under the security policy is defined by clearly defined and accepted programs on the merits and activities that the company achieves in achieving or preserving the strategic goals of the company's work. In the first order, the policy of this activity or management activity on a company that has the other party has the obligation to build security contingencies in the broader context of that corporate policy. In the narrow sense, security policy is a total or a set of measures and actions or actions undertaken by management, organizational units and workers themselves in terms of establishing and acting on the security and protection system of the company in its entirety or in its segments. The procedure for defining a security policy takes place on the basis of the defined security objectives that are aligned with other strategic goals. Then it is necessary to determine the activities and measures that the entity within the company will undertake to implement the security program. Security policy is most often incorporated with one part in a business or corporate policy, and the other part is accomplished through appropriate programs, procedures, plans, elaborates and the like (Gerginova, 2017).

Security management should provide the work of the corporation under normal conditions, in times of crisis, emergency situations and accidents, as well as ensuring the continuity of operations after the crisis and emergency situations. In order to secure the

work of the corporation, it is necessary to act proactively and reactive. Proactively operates in normal operating conditions, in which companies operate in the course of their existence. In these circumstances, the management of security activities is mainly performed according to a strictly prescribed risk management methodology. Risk is a potential measure of an unfavorable outcome of a particular event. It is a combination of the probability of events and their consequences.

According to classical American economist Frank Knight (1964), the difference between risk and uncertainty is as follows: "If you do not know for certain what will happen, but you assume the probability, that's a risk. However, if you do not assume the probability, then it is uncertainty". Reactive action is applicable in crisis and emergency situations in which appropriate procedural activities are undertaken. All reactive procedures are planned and performed in the normal mode of operation, which is an integral part of the proactive action. In order to effectively achieve security in a modern corporation, management needs to create a policy that will include the following content (Daničić & Stajić, 2008):

- recognition of the form and the holder of threats;
- timely and realistic assessment of the intent of the threat holder, revealing his goals and plans;
- organization and operation of physical and technical security of all objects belonging to the company;
- measures of protection related to the safety and health of employees, protection of the environment, protection against fires, explosions and explosions;
- measures to protect the work of the corporation from all forms of corruption, various types of abuse, embezzlement, fraud and other methods of alienation and appropriation of its property;
- precise the measures for protection of business and professional secrecy;
- specifying the measures regarding the control of movement and stay of external persons in the facilities and the space belonging to the business entity;
- initiating the undertaking of appropriate measures by the state bodies; and
- preventive action for preventing the preparation and organization of threats;

In the realization of the stated activities, all the entities (employees and management) participate in the fight against all forms and sources of endangerment, each within their scope of work. In addition, the service for persons and property security in the corporation has the function of detecting, monitoring and preventing the threat. In order to effectively implement the security policy in the corporation, the following actions are required:

- all policies and strategies should be discussed with the entire managerial staff and employees;
- managers must understand where and how they can implement their policies and strategies;
- policies and strategies must be regularly revised;
- business requires a good environment and team spirit;
- the tasks, goals, strengths and weaknesses of each department must be analyzed in order to determine their roles in achieving the task of the business; and
- contingency plans must be developed.

The risk management policy should be in line with the company's objectives i.e. be feasible and should include the following elements: (Keković et al., 2016: 98):

- responsibility and authorizations for risk management;
- performing periodic reviews and verification of the concept and risk management policy through their continuous improvement;
- links between company policy and goals;
- company risk preparedness;
- resources available to fulfill the role and responsibility for risk management; and the way in which the results will be measured and reported on the results of risk management.

Risk management is a process of continuous decision-making in relation to the identified hazard and the inclusion of all practical and reasonable measures to minimize the impact of that hazard. The process of predicting and assessing risks contributes to effectiveness in decision making by taking into account the uncertainty and the possibility of future, deliberate or unintentional events and circumstances, as well as their impact on the vision, mission and objectives of the system. The systems for protection of persons and property belong to the group of organizational systems in which the operation is expressed a high degree of uncertainty. Basically these are complex, open and dynamic systems (Keković, 2009). It is necessary for the company to develop practical methods and tools for the application of risk management functions, including the allocation of appropriate resources for the risk management function, which will include the following: documented processes and procedures, information systems, human resources and skills as well as material resources necessary for each step of the risk management process.

To ensure proper functioning of the corporation and protection from criminal conduct, it is necessary to continuously take a number of measures and activities by the corporation and by cooperating with the police, the Public Revenue Office and other relevant state institutions. The Ministry of the Interior is one of the state entities in the security system, which should cooperate and assist in the functioning of the system for securing persons, property and business in the company. That relationship with the Ministry of the Interior and the security system, that is, its role and place in the functioning of the security system, is an important link without which the system itself is unable to function adequately and respond to the challenges associated with time and space. In parallel with the development of the system, which was conditioned by the new emergent forms of threats, the development of certain organizational units at the Ministry of Interior, which represented the country's necessary response to the new forms of crime, also flowed. Experience shows that an active role of the Ministry of Interior is necessary, which, in addition to standard and routine work, already exists in practice, directs its work and advocates the continuation of studies and assessment of risk assessment in the future. This makes it a reason to be able to timely support the discovery of the source of threats, the identification of the dangers that come (proactive action) and / or the routes and methods of recovery from certain risks (reactive action) in order to reduce the negative consequences. This task must be carried out by the Ministry of Interior in cooperation with other participants in the realization of security, that is, the system of protection and other institutions and organizations.

In order to effectively accomplish corporate security, it is also important to investigate the legal regulations, which determine the conditions under which a legal entity can perform this work and the authorizations of the employees in the companies and who perform the security activities. Finally, the successfully realized activities regarding securing persons, property and functioning of the companies and achieving proper cooperation with the police in the security system can be achieved by professional staff, which also implies certain

types of education at all levels of performing these activities. We can conclude that for the efficient realization of security in the modern corporation it is necessary to realize the following contents:

- acquiring knowledge that corresponds with modern security situations and provides continuity in the business of the corporation; continuous analysis of the causes and forms of endangering persons, assets and operations of the corporation that should be expected in the future; Assessment of the degree of endangerment of persons performing activities in the corporation related to the protection of its vital values. In today's open market competition, each business entity has the opportunity for business success. At the same time, that entity is vulnerable regardless of whether the dangers to which it is exposed is due to fierce market competition or arise from general uncertainty. Corporate managers in the past have never had such a need and understanding of the threats that their company faces. Unlike the previous period, today no corporation is completely immune to the factors of surprise, that is, "sudden blows". Corporations, if they want to work successfully in modern conditions, must anticipate future events and threats, and top management is obliged to define primary business responses to all challenges. In addition, the operation of today's corporations cannot be observed in isolation, but it is related and depends on a number of circumstances and events;
- precise the competencies and powers of the people working in the company works on protecting its vital values (Reputation of the company on the market, its corporate image (reputation), morale and motivation of employees, Strategic development plans, Competition analysis), and determining the state of expertise and motivation of persons working in the company;
- organization and realization of physical and technical security in all buildings that belong to the company; and
- harmonization of the normative acts in all segments of security, with the national regulations and the standards of the European Union.

INSTEAD OF CONCLUSION

The process of globalization, internationalization and integration in recent decades has created a completely different social space for business operations of companies on national and international level. Risks, threats and uncertainties have become a constant business, that is, a key reason for companies in modern times to have a developed and embedded security-protection component in all business processes and in the function of managing the corporation. First, by analyzing the definitions of the term corporate security in scientific literature, the author determines the contents of corporate security: detection of fraud, criminal activities, violations as a threat to the protection of persons and property in the corporation; it is about integrated security as performing a variety of different functions which need to be synchronized, a function of the controlling corporation that manages the coordination of all activities within the business, and which relates to security, continuity and security; the correlation of corporate security with corporate security responsibility; corporate security is a strategic function such as the elimination of all risks and threats that may affect business activities and the achievement of business success; minimizing the risk factors; business operation in times of crisis, i.e. overcoming the crisis and restoring normal operations, corporate security is working on creating plans and implementing measures aimed at: protecting the user of services, protecting employees in the business organization,

protecting the property owned by business organizations, protecting the information and the reputation of the business organization against material damage, criminal activities etc.

The realization of security in the modern corporation is linked to the achievement of the goals and values of the corporation: preventive action directed towards the elimination of all risks, reduction of the endangering actions to the lowest possible extent; business operation in times of crisis, as well as overcoming the crisis and re-normal operation, increasing productivity and fostering competitiveness, reducing security risk to the smallest possible extent, and preparing measures that are taken if incidents, hazards and harm occur, corporate security must be involved in the processes of introducing new technologies in order to be able to predict the security risks, but also to propose measures by which the risks would be reduced to a minimum. The key values of the corporation are reputation of the company on the market, its corporate image (reputation), morale and motivation of employees, tactical development plans and competition analysis.

Corporations, if they want to work successfully in modern conditions, must anticipate future events and threats, and top management is obliged to define primary business responses to all challenges. In addition, the operation of today's corporations cannot be observed in isolation, but it is related and depends on a series of circumstances and events.

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ANALYSING MACEDONIAN TRANSLATIONS OF ENGLISH TERMS RELATED TO PRIVATE SECURITY

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ABSTRACT

The paper focuses on the analysis of the Macedonian translations of two English private security terms by the students of the Faculty of Security in Skopje. To this end, the authors designed a questionnaire with English sentences containing the selected terms that were to be translated into Macedonian. The questionnaire was distributed to two groups of students: (a) students who have attended lectures in English language but have not attended lectures in System of Private Security, and (b) students who have attended lectures in both subjects. The authors expected that the students with knowledge of both subjects would provide more accurate answers in choosing the Macedonian lexical equivalents. Besides determining students' knowledge of the meanings of the selected terms, the research findings will also help the authors to reassess and tailor the syllabi in the respective subjects in order to better meet students' needs.

Keywords: private security, translation, English, Macedonian

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INTRODUCTION

Private security is a complex security notion that encompasses guaranteeing the security and exerting security powers by non-state and non-public security entities. It is a specific phenomenon whose existence is primarily related to the occurrence of natural or legal persons that are interested in additional protection of their values and goods (property, persons and phenomena). Private security exists primarily in societies in which private ownership dominates, and the state cannot respond to the demand for the increased degree of protection that natural and legal persons seek because of the increased level of security risks, threats and endangerments (Spaseski, Aslimoski, & Gerasimoski, 2017: 20-21). In fact, private security has emerged from the need to protect persons, private property, private work or privacy in general. But since the security is much wider in scope and meaning, and the notion of private security itself has the tendency towards narrowing its extent, it creates a kind of strain, a tension in defining and understanding the core term of private security, which can be seen in numerous definitions of private security. Some of them show clear tendencies towards almost equalizing private security with private security industry or private security sector definitions (Dempsey, 2011: 410; Fišer, Helibozek, & Grin, 2013: 47-49; Hess, 2009: 522), while others do not (Bakreski, Daničić, Kešetović, & Mitevski, 2015: 49-51; Daničić & Pilipović, 2015).

At least half of the world's population nowadays lives in countries with more private security officers than police officers. It is estimated that more than 20 million people work

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in private security today, and the global private security market by 2020 is expected to weigh 240 billion dollars. The annual growth of the private security industry is estimated at 6% and is higher than the average annual economic growth in the world (Provost, 2017). In Europe only, private security employs more than two million private security workers, the total annual turnover of private security industry exceeds 25 billion euros, while estimated growth in the next 10 years is around 7% (CoESS, 2013: 251-252). That is why many scholars and experts talk about private security as private security industry, a term itself specific in meaning that has been understood and translated variously worldwide.

The development of private security is being marked by rise of the interest for private security services, spread of private security market, differentiation of private security services and heightening of the level of professionalism. The rate of development is so fast, and in some parts of the world so dramatic and hard to control, that has even puzzled some scholars. Peter Singer, for instance, calls for attention, saying that the development has gone too fast and too far, even for the most optimistic and inclined commentators and advocates, whether they are coming from the professional or scientific field (Singer, 2002). At the same time, the boundary between public and private is being more and more blurred, so that it raises by itself a lot of questions related to the very future of private security (Button, 2007: 37). This blurring refers to the increased outsourcing of security services from the public to the private security which narrows the gap between them.

All these controversies that continuously follow the institutional development of private security throughout history, have found its reflection in one way or another in the terminology that is being used in private security nowadays. The issue is so tangled that even scholars and professionals in the field of private security cannot agree on most of the terms due to different reasons: different national legislations concerning private security; lack of historical tradition in private security; different semantic and linguistic approaches in using and translating private security terminology; lagging of terminology development compared to development of private security practice; absence of internationally agreed terminology; unfavourable influence of the media and colloquial language which distort the right understanding and use of private security terminology etc. As a result, scholars and professionals in private security are in a very delicate situation when they have to cooperate and understand each other (Cvetkovski, 2011; Fišer et al. 2013; Jakovleva, 2010; Spaseski et al., 2017; Trajkovska & Gerasimoski, 2015). For instance, the term *private security*, which is one of the most frequently used, can mean both private security sector as subsystem within the security system, and private security as activity within private security subsystem in English speaking countries, while in Slavic speaking countries (Macedonia, Serbia, Croatia, Slovenia, Russia, etc.) different and more precise language and translational equivalents are being used (Trajkovska & Gerasimoski, 2015: 164). Another example could be related to the use of the words *private detective* or *private investigator* in different parts of the world. Thus, while the term *private investigator* is used in the USA not only within scientific and professional circles, but also in legal documents, media and in colloquial speech, at the same time the term *private detective* is widespread in Europe, almost equally in all speech situations. These examples, by its very nature, show the real challenges and problems that could arise in front of translators, scholars and professionals when they have to understand each other properly and to cooperate. Good lexical knowledge is also expected from students who are educated for security-related professions who, in the course of their studies, are expected to master the above-mentioned lexical issues, which will enable them to understand and use private security terminology correctly in their work.

RESEARCH METHODOLOGY

In order to evaluate the level of familiarity of the students from the Faculty of Security Skopje with private security concepts, we designed a questionnaire with two paragraphs and two separate sentences in English containing eight terms related to private security. The paragraphs and the sentences were translated into Macedonian except for the selected terms which the students were supposed to translate based on the given context. The students were divided into two groups. Group A consisted of forty students from first, second and third year of studies who have attended only English classes, while Group B consisted of forty students from first, second and third year of studies, who have attended classes in both English and System of Private Security – subjects taught at the Faculty of Security in Skopje. The vast majority of the students were full-time, unemployed students who are obliged to attend the lectures. Due to the diversity of the answers given by the students we decided to limit our analysis to only two of the given terms: *security officer* and *private detective*, which both refer to generic terms for natural persons which are bearers of private security activity and private detective activity respectively.

The students were given the following paragraph in English (Figure 1) that contained the term *security officer*.

*This is not a safe suburb. My sister opened a garment factory here a couple of years ago, but has been robbed three times so far. She had employed a number of security guards to watch for all suspicious activities inside and outside the factory building, but she soon realized that **IN-HOUSE SECURITY** didn't help. It was neither efficient nor economical. Now she's looking into options for **CONTRACT SECURITY**. That basically means she's going to hire a private security agency that will provide a 24/7 security services customized to her specific needs. The agency will provide **SECURITY OFFICERS** and will install surveillance cameras and a sophisticated alarm system.*

Figure 1: English paragraph containing the term *security officer*

They were asked to write down the translational equivalents in the following text translated into Macedonian (Figure 2).

Naselbava e nebezbedna. Sestra mi otvori fabrika za konfekcija pred nekolku godini, no do sega beše ograbena triпати. Vraboti nekolku čuvari da vnmavaat na site somnitelni dejstva vo i nadvor od fabričkata zgrada, no naskoro sfati deka _____ ne i pomogna. Ne beše nitu efikasno nitu ekonomično. Sega razmisluva za opcijata _____. Kje najmi privatna agencija za obezbeduvanje kojasto ke i pruzi 24/7 bezbednosni usluzi spored nejinite potrebi. Agencijata ke obezbedi _____, no isto taka kje instalira i kameri za nadzor kako i sovremen sistem za trevoženje.

Figure 2: Macedonian translation of the English paragraph containing the term *security officer*

They were also given the following paragraph in English that contained the term *private detective* (Figure 3).

PRIVATE POLICING is quite popular in the USA and in some European countries. This means hiring a **PRIVATE DETECTIVE** and conducting a private investigation for certain offences. However, this is mainly used for resolving personal or family issues, such as love affairs, embezzlement of family businesses, etc. For serious crimes, such as burglaries or murders, which are of general public concern, the systems of **PUBLIC POLICING** have to deal with the issue.

Figure 3: English paragraph containing the term *private detective*

They were asked to write down the translational equivalents in the following text translated into Macedonian (Figure 4).

_____ e mošne popularno vo SAD I vo neкои evropski državi. Toa podrazbira angažiranje _____ i sproveduvanje privatna istraga za odredeni prestapi. Sepak, vakvata praktika glavno se koristi za rešavanje problemi od lična priroda, kako na primer ljubovni aferi, pronevera na pari od semen biznis itn. Za spruvuvanje so seriozni krivični dela od tipot na provalni kražbi ili ubistva, koišto se od javen interes, se zadolženi sistemite za _____.

Figure 4: Macedonian translation of the English paragraph containing the term private detective

Being the official script in the Republic Macedonia, the Macedonian translation of the paragraphs and the students' answers were written in Cyrillic letters, but for easier presentation of the research findings in the paper we transcribed the Cyrillic words in Latin script.

Our starting hypothesis was that the students from Group B who have attended lectures in both subjects would show better knowledge of the meanings of the terms *private detective* and *security officer* and would provide more accurate translations into Macedonian, than the students from Group A who have attended English classes only. The results were statistically analysed in Microsoft Excel and the findings based on both groups' data were compared and discussed.

RESULTS AND DISCUSSION

SECURITY OFFICER

The distribution of the various translational equivalents of security officers given by the students is presented in Table 1.

Table 1: Distribution of translational equivalents for the term security officer

Translational equivalent	Group A	Group B
bezbednosni inspektor	1 (2.5%)	-
bezbednosni oficir	3 (7.5%)	-
bezbednosni policajec		1 (2.5%)
bezbednosni službenik	3 (7.5%)	2 (5%)
bezbednosna kancelarija		1 (2.5%)
bezbednosno lice	1 (2.5%)	1 (2.5%)
čovečko obezbeduvanje	-	3 (7.5%)
čovek koj kje obezbeduva		1 (2.5%)
čovek za osiguruvanje	1 (2.5%)	-
čuvar	3 (7.5%)	-
lice koe kje obezbeduva		1 (2.5%)
lice obezbeduvač	2 (5%)	-
lice za obezbeduvanje	1 (2.5%)	4 (10%)
lice za privatna bezbednost	1 (2.5%)	-
lično obezbeduvanje	1 (2.5%)	-
no answer	2 (5%)	2 (5%)
obezbeduvač	4 (10%)	6 (15%)
obezbeduvač (fizičko lice)	1 (2.5%)	-
obezbeduvanje	8 (20%)	2 (5%)
obezbeduvanje (čuvar)		1 (2.5%)
obezbeduvanje (fizičko)		1 (2.5%)
obezbeduvanje (lugje, čuvari)	1 (2.5%)	-

Translational equivalent	Group A	Group B
obezbeduvanje po potreba		1 (2.5%)
oficer za obezbeduvanje	1 (2.5%)	-
policiski službenik	1 (2.5%)	-
policiski/bezbednosni službenik	1 (2.5%)	-
privatni oficer		1 (2.5%)
privatno obezbeduvanje	-	2 (5%)
radnik za bezbednost		1 (2.5%)
radnik za obezbeduvanje		1 (2.5%)
radnik za privatno obezbeduvanje		1 (2.5%)
službenik	-	2 (5%)
službenik za obezbeduvanje	2 (5%)	5 (12.5%)
stražar/inspektor/policajec	1 (2.5%)	-
telohranitelj	1 (2.5%)	-

Security officer is a natural person who performs duties and tasks of private security on the basis of the powers stipulated in the regulations within the field of private security (Spaseski et al., 2017: 301). According to the legal definition, the official Macedonian counterpart of the English *security officer* is *radnik za privatno obezbeduvanje* which is defined as “a natural person who possesses a valid private security licence and private security legitimation, has been employed by a legal person and secures persons and property, i.e. carries out tasks on the grounds of the powers stipulated by the law.” (Zakon za privatno obezbeduvanje, 2012). This practically means that the security officer (in Macedonian: *radnik za privatno obezbeduvanje*), according to Macedonian and private security legislations in other countries, must be licensed and employed on contract or proprietary security grounds in order to be considered and defined as security officer (Bakreski et al., 2014: 39-40). Despite *security officer*, *private security officer* and *private security worker* can be found as synonyms in English speaking countries, used in their science and vocation of private security, as well as in colloquial usage (ASIS International, 2004; Storm et al., 2010: 13). This is a generic notion in private security and it includes all different working positions and professions that security officers can perform, like for instance physical security officer/worker, technical security officer/worker, guard, bodyguard, bouncer, CCTV operator etc.

Taking into consideration the fact that the term *security officer* has already been lexicalized and defined in the respective law that addressed the issue of private security in Macedonia, the term *radnik za privatno obezbeduvanje* was taken as the most acceptable translational equivalent given by the students. However, comparing the results from both groups, it can be inferred that none of the students from Group A provided this answer, which didn't surprise us considering the fact that they haven't attended System of Private Security classes and haven't dealt with the legal definition of the term yet. On the other hand, the fact that only 2.5% of the students from Group B chose *radnik za privatno obezbeduvanje* as an answer indicates that even the students who have already dealt with the legal definition of this term still haven't acquired it to a satisfactory level.

However, after the analysis of the remaining answers, apart from *radnik za privatno obezbeduvanje*, we identified other lexical solutions offered by the students that can be accepted as its synonyms to a higher or lesser extent. For that reason, we classified the answers into three categories: (a) acceptable answers, (b) answers unacceptable in the given context, but acceptable in other contexts and (c) unacceptable answers. Results of the classification of answers are presented in Table 2.

Table 2: Classification of translational equivalents given by the students

Acceptable translational equivalent	<i>čovjek koj kje obezbeđiva, čuvar, lice koe kje obezbeđiva, lice obezbeđivač, lice za obezbeđivanje, lice za privatna bezbednost, obezbeđivač, obezbeđivanje, obezbeđivanje (čuvār), obezbeđivanje (lugje) (čuvār), oficer za obezbeđivanje, privatno obezbeđivanje, radotnik za obezbeđivanje, radotnik za privatno obezbeđivanje, službenik za obezbeđivanje</i>
Translational equivalent unacceptable in the given context, otherwise acceptable	<i>čovjeko obezbeđivanje, lično obezbeđivanje, obezbeđivač (fizičko lice), obezbeđivanje (fizičko), radotnik za bezbednost, telobranitelj</i>
Unacceptable translational equivalent	<i>bezbednosen inspektor, bezbednosen oficer, bezbednosen policajec, bezbednosen službenik, bezbednosna kancelarija, bezbednosno lice, čovek za osigurivanje, obezbeđivanje po potreba, policijski službenik,, policijski/ bezbednosen službenik, privaten oficer, službenik, stražar/inspektor/ policajec</i>

In Table 3, results of distribution of answers in both groups are presented.

Table 3: Distribution of acceptable and unacceptable translational equivalents

	Acceptable translational equivalent	Translational equivalent unacceptable in the given context	Unacceptable translational equivalent	No translational equivalent provided
Group A	57.5%	7.5%	30%	5%
Group B	60%	12.5%	22.5%	5%

The results showed that with reference to the choice of acceptable translational equivalent in Macedonian, the students from Group B achieved higher scores (60%), compared to the students from Group A (57.5%). Although the percentage of acceptable answers cannot be considered satisfactory, the results confirmed our starting hypothesis.

In spite of the majority of acceptable translational equivalents, it is an alarming fact that there are still students who cannot distinguish between security officers within the context of private security and police officers or inspectors, so we encountered answers such as *bezbednosen inspektor, policijski službenik, bezbednosen policajec* etc. which were marked as totally unacceptable.

There were also some answers that we counted as unacceptable in the given context, but can be accepted as adequate translational equivalents in other contexts. Such was the case, for instance, with *telobranitelj* which actually corresponds to the English noun *bodyguard*. Although both security officers and bodyguards are hired for providing services related to private protection, the noun *bodyguard* more specifically refers to “a person or group of people employed to escort and protect an important or famous person” (Oxford Dictionaries, 2018a) while *security officer* covers a broader concept which includes protection of both individuals and property. Therefore, *bodyguard* cannot be accepted as appropriate answer in this context, but can be accepted as accurate translation in other contexts where the term *security officer* is used, as one specific type of security officer as we have explained above.

The research findings revealed that instead of *radotnik za privatno obezbeđivanje*, the students are more inclined to use other, synonymous forms, such as *obezbeđivanje* - the gerund form of the verb *obezbeđiva*, which in English means *secure (v)*. The gerund form is not officially used as adequate lexical solution in Macedonian laws that regulate this field, but it is commonly used by Macedonian speakers as well as in the media. The gerund form has also entered the Dictionary of Macedonian Language, where *obezbeđivanje* is defined as “a group of several persons that have the task to secure somebody or something” (Koneski, Velkovska, & Cvetkovski, 2006: 416). Therefore, the word *obezbeđivanje* can be counted as appropriate translational equivalent.

Also, we noticed that 12.5% of the students from Group A and 15% of the students from Group B chose the noun *obezbeduvač* when translating the original English term. This noun is not listed in the Dictionary of Macedonian language, but it is used colloquially and, in the media, and it has even entered the Digital Dictionary of Macedonian as a non-standard word (Digitalen rečnik na makedonskiot jazik, 2018). The reason for the choice of this word might be the unfavourable influence of the Macedonian media which clearly favour the use of the term *obezbeduvač* instead of *rabotnik za privatno obezbeduvanje*, which could be viewed as a very close equivalent to *security worker/officer* (Jakovleva, 2010). However, further research will be necessary in order to confirm or to reject this hypothesis. Taking into account its root (*obezbeduva*) which corresponds to the tasks that security officers carry out, we considered this answer acceptable but only as a colloquial lexical solution.

As far as the other answers are concerned, we were rather surprised by the fact that students from both groups offered several translational equivalents whose semantic contents differ drastically from the one of the original English term. This is the case with the term *bezbednosen službenik* which we encountered in both groups' answers and rejected as wrong translation of *security officer*. The adjective *bezbednosen* is derived from the noun *bezbednost*, which is one of the translational equivalents of the English noun *security*, when referring to "the state of being free from danger or threat" (Oxford Dictionaries, 2018b). However, in collocation with the adjective *private* the noun *security* may have other translational equivalents in Macedonian as well. Thus, for instance, *private security* may be translated as *privatna bezbednost*, but it may also refer to *privatno obezbeduvanje*, which is what exactly (private) security officers do. Bearing this in mind, translating *security officer* as *bezbednosen službenik* is not considered acceptable in this context. One possible reason for translating *security* with *bezbednost* and *obezbeduvanje* interchangeably might be found in the fact that even in textbooks on security used at the Faculty of Security and translated from English into Macedonian, the translators do not always translate the semantic nuances distinguishing these two concepts appropriately and consistently (Trajkovska & Gerasimoski, 2015). In addition, the use of different and sometimes conflicting colloquial terms for security workers even by scholars and experts within the field of private security can also be considered an important factor that contributes to the acquisition of alternative lexical solutions that are used both formally and colloquially by Macedonian speakers. Moreover, there is an evident lack of internationally accepted terminology of generic terms and notions regarding private security; insufficiency of scientific and expert studies which would elaborate private security terminology and its translation especially from English to Macedonian and vice versa etc.

Taking all these possible reasons into account, it could be unrealistically and too optimistic to expect and gain answers from the students' survey that could be more unified and that could converge towards the generically adopted term and notion of *security officer* i.e. *rabotnik za privatno obezbeduvanje*. In this sense, we can explain the emphasized diversity of answers obtained by the students includes in the survey.

PRIVATE DETECTIVE

The distribution of the various translational equivalents of private detective given by the students is presented in Table 4.

Table 4: *Distribution of translational equivalents for the term private detective*

Translational equivalent	Group A	Group B
detektivski uslugi	-	1 (2.5%)
no answer	1 (2.5%)	-
privaten detektiv	33 (82.5%)	39 (97.5%)
privaten inspektor	2 (5%)	-
privatna zaštita	1 (2.5%)	-
privatno istraživanje	1 (2.5%)	-
taen detektiv	2 (5%)	-

The analysis of the collected data revealed that both groups of students showed high level of familiarity with the term *private detective*. From all the answers provided, only the term *privaten detektiv* was counted as acceptable translational equivalent in Macedonian. The percentage of students with this answer was higher in Group B (97.5%) compared to Group A (82.5%), which means that with reference to this term our initial hypothesis was confirmed.

The answers regarding the term *private detective* were classified into two categories: (a) acceptable translational equivalent, and (b) unacceptable translational equivalent. Based on this classification, we obtained the following results (Table 5 and 6).

Table 5: *Classification of translational equivalents given by the students*

Acceptable translational equivalent	<i>privaten detektiv</i>
Unacceptable translational equivalent	<i>detektivski uslugi, privaten inspektor, privatna zaštita, privatno istraživanje, taen detektiv</i>

Table 6: *Distribution of acceptable and unacceptable translational equivalents*

	Acceptable translational equivalent	Unacceptable translational equivalent	No translational equivalent provided
Group A	82.5%	15%	2.5%
Group B	97.5%	2.5%	0%

It was expected that both groups would provide relatively high percentage of acceptable answers since the term *privaten detektiv* has a long history in the Macedonian lexical system, being the literal translation of the English *private detective*. In Macedonian even the use of the noun *detektiv* without adjective mainly refers to *privaten detektiv*, and this form is equally common in both colloquial and formal use. Namely, the notion of private detective in this sense is defined and elaborated on in the Law on Detective Activity of the Republic of Macedonia, where the person who is eligible for carrying out detective work is referred to as a *detektiv*. The Law stipulates numerous conditions that have to be met by private detectives when carrying out detective activity which, in its broadest sense, refers to “gathering data and information, their processing and brokering” (Zakon za detektivskata dejnost, 1999). It is interesting to note that there is an answer which refers to private investigative activity as can be seen in the answer *privatno istraživanje*, which most probably can be related to the more precise Macedonian expression *privatna istraga*, which undoubtedly is an unacceptable answer, but important from a different aspect. Namely, the students did not provide the answer *privaten istražitel* (*private investigator*) that is common in the USA, which can be also explained with the previous statement that the notion *private detective* has been strongly accepted and rooted both in the European and in the Macedonian lexical system (Gunter & Hertig, 2005: 1).

As far as the other answers are concerned, we rejected all of them as unacceptable. Thus, for instance, 5% of the students who haven't attended System of Private Security classes were unable to distinguish between the nouns *detektiv* (detective) and *inspektor* (inspector) although the scope of work and the responsibilities of detectives and inspectors differ considerably. Detectives' work covers a wide spectrum of activities which, to certain extent, overlap not only with the work of inspectors, but also with the work of intelligence officers and criminalists. Moreover, the term *privaten inspektor* in Macedonian is considered an oxymoron since the two words used in collocation are mutually exclusive. The *inspektor* (inspector) in Macedonian is a person employed by the Ministry of Interior or other state organs i.e. the inspector is a rank that police officers may achieve (Zakon za Policija, 2006) in the course of their professional development and inspectors do not provide services to private clients for a fee the way private detectives do. The Ministry of Interior issues detective licenses and oversees private detectives' work, but it does not employ the private detectives as members of the Ministry's staff.

Taen detektiv is another answer that we found interesting for our analysis, which is literally translated into English as *secret detective*. We considered this answer an inaccurate translational equivalent since the collocation *taen detektiv* does not exist in Macedonian. It might be possible that the students confused the terms *private detective* and *secret agent* or *covert agent*. However, we might add that the private detective could work also as undercover agent and agent provocateur, which are both done secretly, so there is a possibility that some of the answers could be attributed to such understanding (Cvetkovski, 2011). Also, private detective services or investigations can be done both open and in secrecy. Open private investigations are known as reconstructive (such as investigating criminal acts, investigation of missing persons and objects etc.), while secret private investigations are known as constructive (such as marriage infidelity, mobbing, insurance frauds etc.) (Sennewald & Tsukayama, 2006: 3-4). As we have already written, detectives' work, inter alia, includes activities similar to the ones carried out by intelligence officers, inspectors or criminalists. It encompasses various secret activities such as shadowing, providing video and photo documentation etc. but only as one specific segment of detectives' work. On the other hand, if *taen* is used in collocation with *detektiv*, it may imply that the detectives are secret, unknown, unseen, which is not actually always the case in reality.

CONCLUSION AND RECOMMENDATIONS

It is evident that the research results confirmed our hypothesis. The students who have attended lectures in English language and System of Private Security have achieved higher scores regarding both terms analysed in the paper. However, the heterogeneity of the obtained answers indicates certain tendencies that needs to be addressed and analysed as part of other research in the future. This particularly refers to the students' lexical solutions for the term *security officer*, where, in spite of the confirmed hypothesis, a relatively small number of students provided acceptable translational equivalents in a broader sense. Therefore, we recommend the following:

- In order to improve students' familiarity with these terms, especially with the term *security officer* it will be necessary to revise the syllabi in both subjects and to integrate contents that will put greater emphasis on the semantic specificities of *security officer* and the semantic nuances that distinguish it from its synonymous counterparts.
- The influence of the media on the acquisition of vocabulary is another aspect that needs to be addressed in the future. Particular attention should be given to the colloquial

terms that have penetrated the media and their acquisition by the students, who, instead of using official vocabulary incline towards the use of non-standard forms.

- There is a need for harmonization of the variety of terms that are adopted and used by scholars, experts and translators dealing with the issue of private security. In achieving this, adopting some good practices from other languages, especially the ones that belong to the same group of languages with Macedonian, might be a good idea as well.

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ORGANISED CRIME AND CORRUPTION

IN SICKNESS AND HEALTH: CORRUPTION IN CROATIA AND THE SANE SOCIETY CHALLENGE

Anita Dremel¹, Renato Matic²

ABSTRACT

Moving away from theoretical perspectives on and definitions of corruption that blame the individual and wishing to reach the analytical micro-macro bridge, our aim in this paper is to put focus on corrupted institutional relationships stabilised to the degree of distrust and disappointment of citizens. We will address the concept of self-sustainable sources (and social causes) of corruption in analysing the role of corruption in blocking full democratization and development. In the paper we analyse the position of Croatian society comparatively through four ideal typical corruption levels constructed based on (*ex post facto*) corruption data on Croatia and Transparency International CPI. Corruption in the police and its social consequences are also tackled. The level of prevailing or total social corruption is finally interpreted through the lenses of Erich Fromm's concept of the sane society, because of its totalitarian omen and the critical policy-oriented calling of sociology.

Keywords: corruption, Croatia, the sane society, Fromm, sociology

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INTRODUCTION

The aim of this paper is to discuss the problematics of the concept of corruption (Budak, 2006; Senior, 2006; Štulhofer, 2004; Štulhofer et al., 2008), to outline a four-level model of corrupted societies (Matić & Dremel, 2013) and to analyse the Croatian society comparatively based on that model. Finally, the analysis is opened up towards the critical reflection on terrifying consequences of high level long term corruption based on the reading of Erich Fromm's *The Sane Society* (2008). We use *ex post facto* data on corruption in Croatia and *Transparency International Corruption Perception Index* for 2017. In our theoretical background, we wish to depart from the positions that base their approaches to corruption in blaming the individual victim (e.g. Azfar, 2005; Hunt, 2004, 2007) and move towards the view that tries to create a structuration bridge between the individual and the structure, the micro and the macro level (Andersson & Heywood, 2009). Our special interest is thereby on the potent notion of (dis)trust (Papakostas, 2012), which is like corruption a relatively recent notion in social theory, and is here operationalised as the indicator of social relationships appearing in corrupted societies. The final aim is to point to adverse effects corruption exerts regarding the potential of full democratization and development, where Fromm's theoretical position is useful, despite often relevant and founded criticism it received, because it warns us of the totalitarian potentials of alienated and corrupt social relationships and processes, at the same time urging us never to forsake hope and never to forget that man is an agent of transformation.

The first chapter brings the discussion of different approaches to conceptualizing and doing research on corruption, with specificities of the Croatian context in focus, after which

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the mechanism of political intervention into professional spheres is analysed as one of the crucial generators of corruption, primarily political, which is of main interest in this paper. The third chapter outlines four ideal types of societies based on corruption levels present in them and positions the Croatian society in this comparative framework. The final chapter offers in the place of conclusion the analysis of the potential of Fromm's sane society challenge when applied to corruption. This paper aims to present a contribution to sociology of deviance and sociology of crime rather than criminology, nonetheless insisting on their interdisciplinary dialogue.

THE MULTI-LAYERED CONCEPT OF CORRUPTION AND THE SOCIAL CONTEXT THAT SUPPORTS CORRUPTION

Given the complex phenomenology of corruption, its different types and levels of appearance and the multiplicity of its causes and consequences, it hardly comes as a surprise that it is almost impossible to reach a consensus on the clear definition of the concept. Corruption has traditionally predominantly been studied within criminology but it is a topic of sociological interest as well. Although the Dictionary of Sociology (Abercrombie, Hill, & Turner, 2008) does not list the entry, the encyclopaedic dictionary (Hrvatski enciklopedijski riječnik, 2002) defines corruption as bribery of civil servants and other persons holding influential positions, the use of one's social position (or function) to obtain illegal privilege or material gain, but also as general material and moral corruptness. This latter meaning conveniently illustrates relevant effects of corruption on society as a whole.

The focus in this paper is not on the corruptness of character of concrete individuals offering and accepting bribe, but on the corruptness of institutionalised relationships stabilised to the degree of disappointment of citizens, who do not perceive social institutions as the neutralizers of injustice but as its generators, and on the distrust of citizens towards the state (Papakostas, 2012; Segal, 1999)³. Štulhofer et al. (2008: 17) outline several models of perceiving corruption: simplified and populist, complex and comprehensive, comprehensive definition emphasizing violations of human rights, legalistic and *ad hoc* definitions of corruption. They base their arguments on the grounded theory approach (Charmaz 2000; Strauss & Corbin 1990), wishing to complement public opinion polls and similar "quantitative research methods since they are mainly oriented towards the dis/confirmation of the pre-established ideas and hypotheses, which are blind to some (unexpected!) aspects of the phenomenon under study" (Štulhofer et al. 2008: 8). Corruption is a social process, which means there are always two sides to it. It happens as a secretive relationship, which produces challenges for observation (Papakostas, 2012). Corruption relationships are therefore always relationships of trust in this sense too. Still, there are conspicuous and hidden types of corruption – and they can be analysed along the difference between "expressions given off" and "expressions given" (Goffman, 1959). "To define something as corruption is also a question of power" and that is why "the axis conspicuous/observable corruption – sophisticated/unobservable corruption follows social patterns", mainly connected with the axis pure/rich countries (Papakostas, 2012: 110).

3 Corruption may appear in different fields of activity like politics when politicians make decisions to ensure their personal interest or gain rather than public good, police when bribe is taken instead of fining, in business when donations are made to political parties prior to getting a public contract, health care when paying patients are given more attention regardless of who is in bigger need, in education when entering a school is a matter of bribery, in the judicial system when rulings are passed based on who paid the most or on instructions from a high ranked person, at customs when classifying goods at a lower tariff after accepting bribes etc. (Thomas & Meagher, 2004).

The main tool used in research on corruption is the corruption perception index. It can say a good deal about conspicuous corruption and the economies of countries, but less about sophisticated corruption. As a result of its sophisticated character and the problems of interpretation and translation linked to the wide social distance between people's everyday lives and this type of corruption, no survey in the world can capture it completely (Papakostas, 2012: 111).

Given these challenges, it is also important to point out from a structural functionalist point of view (e.g. Parsons, 1951) that any state emerges, develops and exists in time and space only if it permanently realizes the purpose of its existence: continued fulfilment of expectations of members of a society. We should bear in mind that according to the systemic aspect of the phenomenon of purpose, the system, once established, maintains itself by means of internal differentiation and can renew its purposefulness (its existence and self-maintenance) on its own. In other words, although the focus is on the interest and good of all citizens, in the sense that the state when it fulfils its purpose discourages those social phenomena that threaten the public good, we should not lose sight of partial purposes that can be disguised as public good. The effort to achieve a more just economic distribution, often via the *trickle-down* effect, actually pushed already otherwise deprived citizens in the position where they suffer long term inequality, referred to also as the *elephant in the living room* (Hiatt, 2007: 63) in the name of alleged future greater good. Citizens' needs can be publicly presented as the main purpose but at the same time actually endangered because of private or special interests as well as authoritarian attempts to master the social space (Aguilera & Vadera, 2007).

Unlike informal social groups and informal communication among society members, the rules of institutional activity are not arranged from case to case nor are they based on the current mood of civil servants and citizens we meet (Weber, 1976). The rules are based on relatively stable norms and their execution guarantees the realization of the final goal in the formal sense of the word: legal and efficient service that citizens expect to receive because they paid for it in advance as tax payers. It is important to point out here that only formal sense of the institution is implied here, which means that social injustice *per se* is not questioned but care is taken of the existence of a legal mechanism that citizens can resort to in case of injustice, with that mechanism having the power to rule in matters of (in)justice. By sticking to formalized norms, a civil servant fulfils his or her role of providing a highly skilled service to every citizen/client, because the servant owes it to the citizen, just like he or she owes loyalty to him or her as to an employer who pays him directly, through taxes. Trust in state and institutions actually boils down to a relatively stable degree of likelihood that every citizen will enjoy the right legally belonging to him or her in relation to every legally foreseen step in any institution (Gosseries, 2006). The lack of trust in that mechanism is a result of unstable and foggy social relationships that fail to offer expected certitude regarding outcomes. Legal and moral resources result in a legal outcome and create the social experience that legal and moral resources pay off, while illegal path results badly for the actor who resorted to lawlessness. If this message is not clear, alternative paths arise, because the legal and commonly expected ways do not produce desired outcomes (Gosseries, 2006). The alternative path mainly boils down to informal incentives and a series of additional extra-institutional activities, including friendly recommendations, threats, blackmail, counter services and different rewards. In this way legally provided official duty and expert activity tied to the role of a concrete position in the social structure get to be transformed into privatised services no longer founded on institutional expectation (for the fulfilment of

which the law stipulates a pay) but on a possible good will that needs to be additionally enforced by a private counter service, most frequently in the financial form, which is also privately arranged from case to case.

In such circumstances social and public goods are used as private property, which if left unsanctioned with time becomes an expected and profitable model of social action – which finally rounds up the definition of a corrupted state, which fails to be a public service and becomes a hindrance to social development. The pervasiveness of corruption can be compared to an uncontrolled fire that spreads through invisible underground channels and can be expected at any place and time. Political strategists think the only way to put it out is to establish countless intervention groups and action committees that tackle each new case individually (Della Porta & Vannucci, 2007). This position is based on the assumption of unquestionable competence and on the misunderstanding of corruption, the mechanisms of its generation, maintenance and spread. This is where the paradox arises: it is precisely in the societies in which corruption is mostly talked about that it disproportionately develops and increases. It is therefore necessary to explain the causes of corruption and how corruption encompasses the majority of institutional relationships in a given society – because otherwise it is not possible to expect the efficiency of social institutions or to renew the trust of citizens (Goel & Nelson, 2008; Treisman, 1999).

In order to comprehensively understand the causes and consequences of corruption in the social reality, in addition to analysing the total content of wider deviant and criminal activities as well as individual forms of corruption, it is necessary to consider the perspective of actors involved in corruption activities, especially when it comes to choosing corruption as an acceptable and simple way towards desirable material and political goals (Goel & Nelson, 2008). In analysing development of corruption in social relationships (Leite & Weidman, 1999) it is necessary to recognize and understand its resilience, adaptation and permanent renewal. The accent is thereby put on the characteristic contradiction: that fighting corruption is persistently led by the same logic that enabled its initial emergence and development. That logic implies stubborn insistence on the domination of political staffing in all areas, especially state and public institutions, which directly encouraged the model of cost-benefit calculation harmonized with partial and individual interest and in conflict with general and public ones (Stephan, 1999).

CONSEQUENCES OF POLITICAL STAFFING IN PROFESSIONAL ENVIRONMENTS

There are several most visible consequences of political staffing in professional working environments, as well as of relying on the criteria of political aptness rather than criteria of expertise. The main five are listed and discussed in the following paragraphs.

An actor appointed from above might even have the formal prerequisites for managing a type of public institution, but does not come from a concrete working environment and is thus not familiar with common professional experience, specificities and problems – and therefore can hardly share an interest with other employees he or she meets in a new environment. This is precisely opposite of choosing managerial staff from a similar or the same professional background based on a public call, evaluated expert programme and not less relevantly trust of professional committee in charge of employing a person who will best protect professional and specific institutional interests (Ades & Di Tella, 1995).

Furthermore, the rules of politically based staffing do not include the need to adjust the politically imposed leader to the new environment, but contrarily, an externally imposed

actor not only does not accept the professional rules but also may change them entirely together with the entire infrastructure that might have been built for years and exclusively based on strict professional principles (Glaeser & Goldin, 2006).

By accepting the logic of political appointments, imposed staff does not necessarily have any respect towards the associates – which is otherwise, in cases of employments based on public calls, unquestionable when the main say is with the professionals. The total loyalty is owed to the actor(s) who arranged the employment and it is from them that promotions are expected, even if good results are absent. Party loyalty is particularly frequent. Also, politically employed staff usually come to positions that before them belonged to the opposing political structure, which is traditionally presumed to be less worthy and politically imposed staff believe they are beginning to do the *real* work. This situation turns professionals as potentially useful associates into suspicious, incompetent and potentially dangerous people. Distrust (and the need to manipulate and impose ritual purposeless discipline) is thus developed instead of cooperation and creative working environment.

Assumed institutional goals and professional interests, lacking the atmosphere stimulating responsibility towards them, wane with time in the face of party, particular and private interests (Aguilera & Vadera, 2007). In this way public service is turned into private ownership. This situation excludes otherwise mandatory institutionalised relationship of responsibility, which exists when someone truly manages his or her private ownership, knowing that all consequences of business decisions have to be responsibly taken. Unlike that, without the mechanism of instant political, professional or criminal consequences, irresponsible decisions harm the common interest. There are no consequences or sanctions foreseen for wrong professional decisions that can endanger the entire institution and all whose existence is directly connected with those interest. Long term paradox is that bad and politically assigned managers are protected by various formal and informal immunities, political background they came from, and often by such contracts that independently of their results guarantee sometimes even lifelong material safety. This was precisely the outcome after a series of corruption and criminal affairs discovered in Croatia since 2009. Only after concrete multi-million affairs are proved, there is a political shift, but less frequently the experience of actual criminal responsibility and almost never the seizure of assets to compensate at least a part of the damage caused. This topic was shyly opened only with the approach of the end of the EU accession talks, although it is completely clear based on the experience of older EU members (e.g. Ireland in mid 1990s) that posterior to seizing dishonestly acquired wealth there followed a continuous social development.

The following consequence of political staffing is the wide and often uncontrolled intervention into professional relationships, which has far-reaching and sometimes irreparable ultimate consequences. Just as political staffing when it comes to top positions in public institutions is not yet fully recognised as the generator of corruption, so is the case with the problem of arbitrary interference with professional structures. In such unstable professional circumstances, with no clear professional criteria of excellence and success, employed professionals suffer from long term psychological pressure (Keefer, 2005). Taking into consideration that the prevailing political criterion does not allow the professional criteria to develop, it is impossible to say what is a well done and what a poorly done job, because such evaluation depends on the mood and unclear professional expertise of politically imposed heads. This problem is hardly spoken about in Croatia, and if so then only sideways and with a specific case in mind. Such a principle is not questioned even by professionals in public companies or institutions, because they have no experience of professional employments

based on public calls (Glaeser & Schleifer, 2003) or because of habit or fear of losing one's job (Bacio-Terracino, 2008).

The lack of transparent motivation and clear models of managing a personal professional career, in both public services and other business environments, leads to the loss of trust in expertise and education that should be the main warrants of achieving professional goals. Conscious renouncement of trust in one's own expertise can cause a series of socially dysfunctional possibilities.

The first direct consequence of political staffing is the deprivation of active working population (Cabelkova & Hanousek, 2004). Namely, if the criteria of professionalism, knowledge, expertise, experience, measurable working results (based on yearlong hard work and study) do not present a good foundation of professional success, what follows thereupon is disappointment and apathy (Segal, 1999). They can on the one hand incite the idea to give up, to retreat altogether or to change the environment, which is the most frequent situation referred to as 'the brain drain'.

The second consequence of continued political staffing is systematic de-professionalization of public services, which pushed Croatian society farther away from democratic ideals it strives to achieve, which is unfortunately indicated by statistical results and evaluations of the most competent international institutions. As an example, professionalism of the police is directly connected to the safety of citizens (Matić, 2005). Despite various experiments and repeated promises given by every new managing team, so far no clear criteria of advancement have been established that would guarantee every employee an equal opportunity to manage his or her own expertise and career. Current situation in Croatia is that half of Croatians believe the police is corrupt, but very few reported actually paying a bribe to the police (Transparency International, 2013). In the Croatian example, successful performance of police duties, permanent education and professional development are no guarantee of vertical mobility in the service, and it is not rare that these criteria are completely disregarded. After parliamentary elections, there are many confusing changes and many horizontal and vertical movements and appointments of leaders lacking adequate education or experience but with the right political, family or friendly ties. This has an extremely destructive effect on the working motivation of other employees in the police and consequently on the safety of citizens and the entire society.

The third and final option leads to the acceptance of deviant criteria of political aptitude, or some other type of aptitude but not professional – which intensifies systematic de-professionalization and on the long run removes us from modernizing and developing processes, creating at the same time a good climate for unstoppable rise of corruption. The final alternative to honest work and professional success within professional structures is a wide array of criminal and corruption activities.

LEVELS OF CORRUPTION AND CROATIA COMPARATIVELY

The spreading of corruption, its direct influence on the inefficiency of social institutions and the distrust of citizens present mutually related social phenomena that can be observed through four corruption development levels. Here we will use the criteria also used to analyse the levels of crime in a society (Matić & Groznica, 2009).

The lowest level can be referred to as "corruption as exception". In the societies with the lowest corruption levels, formal and informal social control do not allow individual or organized corruption and there is a zero tolerance of corruption, with individual cases presenting an exception and an example of unacceptable and undesirable action. In a social

reality that would justify the label of a well-ordered society (Rawls, 1993), every individual act of corruption in the majority of situations initiates the mechanism of social repression of perpetrators, which creates a common experience of unprofitability of corruption and crime.

To comparatively position the societies based on the level of corruption present in them we use the Corruption Perception Index, since its inception in 1995 the Transparency International's main publication and the leading global indicator of public sector corruption. It ranks 180 countries and territories by their perceived levels of public sector corruption. It uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean. The index offers an annual insight into the relative degree of corruption by ranking countries from all over the globe. Examples of societies that can be proud of low level corruption are (TI CPI, 2017): New Zealand, Denmark, Finland, Norway, Switzerland, Singapore, Sweden, Canada, Luxembourg, the Netherlands and the United Kingdom, for example, with ranks from 1 to 11 and scores 89 to around 82.

The second level can be called "corruption as a deviant alternative possibility". Here corruption is present but prevailing institutional possibilities for achieving desirable goals are sufficiently open and stable, with predictable chances of success and generally accepted methods, which creates a common experience that it is unnecessary and risky to opt for corruption. The societies in this group are stable democracies with developed legal systems, where corruption exists but there are legal mechanisms that constantly fight it. In such circumstances corruption cannot significantly or crucially hinder development and democratic processes in political, economic and cultural fields. Here, according to Transparency International (2017), we can find Germany, Australia, Iceland, Austria, Belgium, United States of America, Ireland, Japan, Estonia, France, Chile, Portugal, Israel, Slovenia, Poland, Latvia, Czech Republic and Spain, for example, with scores 82 to around 57.

The third level of corruption may still leave the impression of an ordered social reality, but in fact destabilised norms and values responsible for the presence of corruption structure social relationships (Matic, 2009). Corruption affairs are given big media coverage, as well as government actions against corruption, but the core of the problem is not tackled. There is also amnesty of actors who influenced the biggest corruption scandals (Matsuzato, 2001). Such societies can be called societies with deviant social structure and deviant cultural forms. Rawls calls them outlaw societies or benevolent absolutism (Rawls, 1993). Such societies try to combat corruption (Glaeser & Schleifer, 2003), but have not yet neutralized focal generators of corruption. In this group we can find Croatia, Greece, Romania, Montenegro, Hungary, Belarus, Bulgaria, Serbia, India, Turkey etc., for example, with ranks not lower than about 40.

The fourth and highest level includes "corrupted societies", where corruption is the main characteristic and *differentia specifica* of such societies (Ledeneva & Kurkchiyan, 2000) and where the presence of corruption networks is assumed (Popov, 2005), they permeate all fields of social life (Radaev, 2000) with minimum chances of recovery. Of crucial importance here is the political support to corruption (Popov, 2005), which permanently ensures a high degree of internal perpetuation of corrupted social relations (Blasi, 1996). The most endangered societies belonging to this group are Somalia, South Sudan, Syria, Yemen, Libya, North Korea, Angola, Afghanistan, Chad etc., with ranks in the spectrum from below 40 to even below 20.

Croatia is ranked 57 out of 180 with the score 49 out of 100. Freedoms of press and speech generally exist in Croatia, but some journalists face harassment (Freedom House, 2015). There is a lack of transparency in media ownership, which hinders the responsibility of the media and government (US. Department of State, 2016). The state has tolerated harassment against journalists, but physical violence against reporters has significantly decreased in recent years (Freedom House, 2015). The government generally does not censor media outlets (BTI, 2016). Croatia's media environment is rated as 'partly free' (Freedom House, 2016). Moderate to high corruption risks, political patronage and inefficient bureaucracy are among the challenges companies may face when doing business in Croatia. Corruption and bribery are especially prevalent in the judiciary, public procurement, and the building and construction sector (Štulhofer, 2004; Štulhofer et al., 2008; Transparency International, 2017). The primary legal framework regulating corruption and bribery is contained in the Criminal Code and the Corporate Criminal Liability Act. Companies report that gifts in the form of drinks or food are common bribes and occasionally help to get things done. Non-governmental organizations operate freely in Croatia (US. Department of State, 2016). Civil society in Croatia is vibrant and diverse, but ideological polarization between left and right can also be felt in the civil society sector (Freedom House, 2017). Civil society keeps increasing its influence on public opinion, but the level of social trust remains low among the larger population (BTI, 2016). There is a moderate to high risk of corruption in Croatia's public services sector. Nearly four out of five business executives agree that bribery and corrupt practices happen widely in businesses in Croatia (EY, 2017). About one in seven civil servants surveyed admitted to having obtained their job with the help of a bribe (EUACR, 2014). Croatia has a large inefficient government bureaucracy with low regulatory transparency (US. Department of State, 2017). It is estimated that Croatia loses almost fifteen percent of its GDP to corruption each year (RAND Europe, 2016).

ON FROMM'S CHALLENGE OF THE SANE SOCIETY IN LIEU OF CONCLUSION

Social sciences might be right when they frown upon every use of seemingly value-burdened notions of health or sanity in a normative fashion. It is indeed important in describing corrupt societies and comparing them to avoid totalitarian tendencies and to critically interpret societies without any moralising. Wishing to take such warnings into account and still accentuate the gravity and severity of the social consequences of corruption, we propose exceptionally to explore the usefulness of Fromm's (2008) metaphor of sickness and health in analysing corruption as a malign disease, primarily in order to critically raise awareness about the relations between the micro and the macro dimensions of social reality. Papakostas (2012: 124) made a useful remark in this vein:

"The corruption scandals involve more than just people's private morality, media reporting, moral entrepreneurs, and ethics committees. They are problems that concern fundamental aspects of the social organization of society that affect the trust-worthiness of the public sphere in general."

In societies where corruption has been allowed or supported for years, harmful social consequences have in addition to sicknesses also been described as *making the deal with the devil* (Segal, 1999), with the aim to point to total and potentially irreparable consequences of the harm. Fromm (2008) evaluates the sanity of contemporary western societies, claiming they deny its citizens' basic human needs of productive activity, self-actualisation, freedom, and love. He suggests that the mental health of a society cannot be assessed in an abstract manner but must focus on specific economic, social, and political factors at play in any given

society and should consider whether these factors contribute to insanity or are conducive to mental stability (Brennen, 2006). Ultimately *The Sane Society* provides a radical critique of democratic capitalism that goes below surface symptoms to get to the root causes of alienation and to suggest ways to transform contemporary societies to further the productive activities of its citizens. Fromm envisions the refashioning of democratic capitalist societies based on the tenants of communitarian socialism, which stresses the organisation of work and social relations between its citizens rather than on issues of ownership (Brennen, 2006).

After the period of great popularity and praise for providing “biting diagnosis” (Nettler, 1956: 645), Fromm’s influence decreased by the late 1960s (Pietkainer, 2004) and today some see him as a “forgotten intellectual” (McLaughlin, 1998). However, more than sixty years after its publication, *The Sane Society* is still in many ways contemporary for all of us working in social theory. The book proposes an argument that totalitarianism appeals to those who seek security and fear freedom, and thus submit to the demands of a dictator, leader or the state (which in Fromm’s terminology become idols). Unlike explicit totalitarian societies, capitalist democracies govern people predominantly by means of conformity: we feel secure when we are just like everybody else. If we think about the predominance of corruption in many world societies today (especially level three and four as outlined in the third chapter), this point of view creates a deep problematic concerning the potential to exit such situation. Here the bridge between the micro and the macro is particularly important and functions as an alarm urging us to devote ourselves to the elimination of corruption with all our resources.

Fromm (2008) criticizes both Freud, especially for claiming that instincts and civilization are at perpetual odds and that competition and mutual hostility are inherent in human nature, and Marx, especially for not considering psychological factors when naively assuming that workers have nothing to lose but their chains, forgetting about their irrational needs and satisfactions which were originated while they were wearing the chains. Fromm suggests that while human beings can live under domination, subjugation, and exploitation, that eventually their basic humanity and sanity must deteriorate because of such conditions; he suggests that while on the surface democratic capitalism appears an improvement over totalitarian societies, that as it relates to the sanity of its citizens, it actually offers just another escape from freedom (Brennen, 2006: 9). Fromm (2008: 354) keeps stressing the need for us to be powerful active participants whose opinions cannot be easily manipulated, claiming that all gloomy “facts are not strong enough to destroy faith in man’s reason, good will and sanity. As long as we can think of other alternatives, we are not lost; as long as we can consult together and plan together, we can hope”. Our conclusion therefore aims to lead us away from pessimistic apocalyptic rhetoric and towards critical awareness of total consequences of corruption in synergy between corruption, crime and all other deviant and invisibly deviant (alienated) social phenomena. The consequences that not only hinder development and true democratization potential, but also our own sanity in the most microscopic sense of the word.

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„THE PINK PANTHER“- A DISTINCTIVE PHENOMENON OF CRIMINAL ORGANIZATIONS IN A CONTEMPORARY SOCIETY

Zdravko Skakavac¹

ABSTRACT

For the last twenty years, operations of various organized crime groups have been noticed worldwide, mainly in the Balkan region, their targets being exclusive jewelry and other similar objects in big cities around the world. A very distinctive, lurid way of committing criminal acts and other atypical characteristics in comparison to the similar criminal groups present today is what characterized those crime groups. Their appearance has caused serious security problems in capital cities worldwide and enormous material damage as well. It has not been clearly determined yet whether it is one criminal organization or a large number of organized crime groups acting unrelated to one another. Considering a very limited number of reference books on this phenomenon, the main orientation is aimed at the analysis of both certain contents found on the Internet and the existing scientific papers.

Keywords: Pink Panther, organized criminal group, criminal organization, Interpol, Balkans

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INTRODUCTION

At the beginning of the last decade of the last century, the criminal world saw the emergence and quick affirmation of a new, atypical, group of bandits which originated in the Balkans and which got involved in the theft of jewelry, setting itself apart from robbers seen thus far in numerous ways. These robbers had their own specific, sensationalist style, a spectacular execution, and committed robberies, which were planned down to the last detail. They did not use weapons, nor did they kill people, and their actions were quick, disappearing afterwards in an unknown direction. These criminal groups became the focus of Interpol and the police forces of the respective countries they targeted as they tried to find ways to oppose them. Due to the specificity of these criminal groups, and especially the methods they used to commit criminal offences, Interpol assigned the name “Pink Panther” to this international criminal gang from the Balkans, responsible for some of the boldest and most unusual robberies of gold and jewelry stores, in history. “Gangs (Italian Banda - a group of thieves and robbers), is a primary group of younger people, with a simple structure that is formed spontaneously, and is prone to vandalism, organized forms of violence and property crime. Gangs are characterized by a typical organization, with a hierarchical structure, subordinated to an authoritarian leader, who leads a joint life and have a collective consciousness. They are relatively firm organizations and are characterized by the durability of their composition, the existence of a leader (s), members and companions” (Bošković, 2015: 43). Namely, the group first attracted public attention in 1993 when it stole 575,000 pounds worth of diamonds from Mayfair in downtown London. The thieves hid the diamonds in face cream mimicking a scene from the movie bearing the same name, *The Pink Panther*.

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The London paper *The Guardian* noted that unfortunately for Interpol, and the police from the twenty or so countries in which they operate, this gang has a specific style and glamor, and an almost nonchalance about them, with which they rob jewelry stores meant only for the wealthiest (Skakavac & Peći, 2015). Security agencies around the world believe that due to the bold robberies carried out in the United Arab Emirates, Switzerland, Japan, Austria, Italy, France, Liechtenstein, Germany, Luxembourg, Spain, Sweden... this gang is responsible for theft worth over \$800 million. The targets of this criminal gang from the Balkans have been exclusive gold and jewelry stores, as well as similar facilities in world metropolises, which they have been ruthlessly robbing since the 1990s, and due to the spectacular ways, they commit these crimes, causing confusion and shock both among the public and the police. "In all cases, the subjects of attacks were located in elite city districts and were technically provided with the latest equipment and tools. The material damage in each case numbered in the several millions. Because of them, world famous goldsmiths are in constant fear, expecting to become their victims. Interpol and the police of the countries in question are trying to organize themselves better in the prevention and suppression of this phenomenon" (Skakavac et al., 2015: 93).

It is precisely for these reasons that at the beginning of 2012 a meeting was held in Bern, attended by a hundred or so police officers from about twenty countries, who spent three days talking about Pink Panther and ways of opposing them. Until then, Interpol had information on only around 25 arrested individuals, while they were conducting investigations aimed at 400 members or accomplices of Pink Panther, although there had been over 100 attacks registered on a global level. According to Interpol the group consists of several hundred members, most of them from Serbia. Some other sources state that the group consists of at least 60 members, half of whom are from Montenegro. Regardless of the different views, it is evident that all these groups originate from the Balkans, mainly from Serbia and Montenegro.

Bearing in mind Interpol's previous knowledge regarding Pink Panther's activities, it remains unclear whether it is a centralized criminal organization with a fixed hierarchy, or independent organized criminal group. According to Skakavac (2016: 33) an organized criminal group is predominantly a group of perpetrators of criminal offences - an association of at least three persons linked by a permanent, repeated or occasional commission of criminal offences, each of which gives its share during the commission of a crime. According to Bošković (2015: 242) a criminal organization is a form of criminal association, a larger organized criminal group, or several groups, with a professional criminal orientation. A higher degree of criminal structure, a closed criminal community of strict internal rules, special subcultures, quite different from traditional criminal families. In order to answer this question and to clarify the essence of this group of robbers, it is necessary to look at a brief retrospective of some their most important criminal activities and identify their most important characteristics.

A SHORT RETROSPECTIVE OF THE PINK PANTHER

As noted above, the group first attracted public attention in 1993 when it committed a £575,000 robbery in the Mayfair district of downtown London. An expansion of their activities was especially evident at the beginning of this century when a number of attacks, with millions of dollars in damages to jeweler store owners, was registered at the global level. Thus, in May 2005, nearly a million pounds in jewelry was taken from the Graf jewelry store in London bearing the name of its owner, a diamond expert. Three men were suspected of

being behind the robbery, one of whom was armed. The case was solved when a diamond ring worth € 800,000 was found in a face cream box carried by one member of the group, as in the Blake Edwards 1963 *Pink Panther* movie. This jewelry store was robbed again in 2002 when 23 million pounds of jewelry was stolen. In July 2004, one perpetrator was handed a 15-year prison sentence for this robbery (Adžić & Veličković, 2009).

After these robberies in London, in the past twenty years, the Pink Panther group has been continuously present throughout the world, from Tokyo and Dubai to the United States. They have spectacularly robbed over 200 elite jewelers and goldsmiths in over 20 countries. The group hit Japan, England, Denmark, Austria, France, Switzerland, Italy, Sweden, Liechtenstein, the UAE, and the USA. All their robberies have been spectacular and well-planned, while their dedication to detail has enabled them tremendous success in these criminal ventures. So that for example, before the robbery in Biarritz (France) in 2001, they painted all the benches near the jewelry stores to prevent passers-by from sitting down and seeing the robbery. This group is suspected of having participated in at least two so-called. "rob and grab" jewelry store robberies in the Tokyo district of Ginza. One was during 2004 when the value of the stolen gems amounted to 3.5 million yen, and the second was in June 2007 when jewelry worth 284 million yen was stolen. In this robbery, the criminals sprayed tear-gas in the sales woman's face and fled from the shop (Skakavac & Peči, 2015: 429).

"The group is also known for its daring escapes and attempts to break into selected stores. In 2005 they robbed a jewelry store in Saint Tropez, France wearing floral pattern T-shirts escaping after the robbery in a speedboat. Before robbing Graf's jewelry store in Dubai in 2008, eight members of the group drove through the front window of the store in two limousines, stealing watches and other valuables worth eight million pounds. In the following robbery, in December 2008, four men dressed as women robbed the Harry Winston jewelry store in Paris. The gang left the store carrying more than \$100 million in valuables. 'Ads' appeared after this in France offering a \$1 million reward for any information that would lead to an arrest" (Skakavac et al., 2015: 95).

In August 2012, police in Vienna arrested four robbers and two men suspected of providing logistical support, coordinating the operation, attributing three more jewelry store robberies, which took place in the Vienna district in 2005 to them. In connection to this, two more men and one woman were arrested in Belgrade, and subsequently convicted before a Serbian court in 2007, for stealing the Countess de Vendome neckless in Tokyo, worth near 15 million pounds. This robbery took place in March 2004, and this is the biggest jewelry robbery in Japan's history. The leader of the group was sentenced to seven years, while the other two members received shorter sentences. Three gang members from Serbia have been found guilty of the robberies in Biarritz, Cannes, Courchevel and Saint Tropez by a court in Chambéry in 2008. Two were sentenced to six and ten years in prison. One member of Pink Panther suspected of the robbery at the Ginza Mall in Japan in 2007 was arrested in March 2008 at a Larnaca airport with a fake Bulgarian passport. He served out a sentence in Cyprus for traveling with fake documents before being extradited to the Spanish authorities. Spain then extradited him to Japan where he was sentenced to 10 years in September 2011 (Skakavac & Peči, 2015).

In October 2008, police in Monaco arrested two members of the international Pink Panther gang (one a citizen of Serbia and one a citizen of Bosnia and Herzegovina) suspected of theft worth more than € 100 million. They were arrested after the police recognized one of them from a photo sent by Interpol as being sought by authorities in several countries. In June 2009, the French police in Monte Carlo arrested three members of the group after they

were spotted behaving suspiciously around jewelers in Monaco. One of the three arrested, a Serb, was on the Interpol list of most wanted and, according to estimates, was one of the leaders of the Pink Panthers who had been on the run since 2005 when he escaped from a prison with the aid of ladders and armed accomplices.

A spectacular robbery worth roughly € 4 million took place on September 23, 2009 in Stockholm and the police believe that behind this robbery, which was carried out with a stolen helicopter, was the famous gang from the Balkans known as the Pink Panther. Police reports said the robbery, as if straight out of a Hollywood blockbuster, was probably carried out by a group of at least five armed “former Yugoslav soldiers” because it was a complicated action requiring serious professional training and knowledge (Adžić, 2009). In mid-July 2010, the Swedish prosecutor’s office raised an indictment against 10 people involved in the theft of 39 million Swedish kroner (about € 4 million), while according to information received, the robbery was organized by a Serb (Adžić, 2010).

One of the most important Pink Panther members was arrested in Rome on March 08, 2012, after two of his accomplices in the robbery carried out one month earlier dropped the stolen items that had his fingerprints on it. In March 2012 in Athens three other members of the group were arrested while they cased a jewelry shop. The police were suspicious of their wigs and their attempted escape, after which one of the gunmen wounded a police officer (Veličković & Veličković, 2012). One member of the group was a citizen of Serbia, a former basketball representative, who carried out a spectacular escape from an Athens jail in July 2012, only to be subsequently arrested and convicted. She was charged with numerous robberies in Athens, as well as in Rhodes and Santorini. After spending five years in prison, she was released having written a book *Pink Panther - My Prison Confession* during her confinement (Kovačević, 2017).

That things do not always go as they planned is illustrated by an “accidental” arrest of a gang member suspected of robberies in Dubai and Liechtenstein. Namely, in October 2008, this member of the group was with visiting Monaco with an accomplice, a neighborhood with exclusive shops Cartier, Hermes and Louis Vuitton shops when, while crossing the street, he was struck by a car. When he was taken to the hospital, he was identified by a policeman from an Interpol warrant. In another case which led to the arrest of six gang members, the police, after a robbery in Dubai, found a phone number in a torched rented Audi (Skakavac et al., 2015: 96).

Austria is most often the target of the Pink Panther group, as the number of robberies increases from one year to the next. Only in the first seven months of 2012, 23 jewelry store robberies were carried out, while in the course of 2011, 19 such offences were committed. According to Austrian media, the police are powerless against the Pink Panthers, which has led to a € 20,000 reward for information that will help break this group. The fact that one robbery of a jewelry shop in Austria lasted only one minute and ten seconds illustrates how skillful these robbers are in their execution.

Up to the present, a number of gang members have been arrested and prosecuted. The first “panthers” (two men and one woman) were arrested and convicted in Belgrade in 2005, for the biggest theft of precious stones in Japan. The Belgrade Special Court found that they did, in March 2004, steal 1.8 billion dinars worth of jewelry from a luxury district in Tokyo. The second group (four persons) was sentenced in France in 2008.

Seven Serbian citizens were convicted in Copenhagen in early 2013 for organizing the robbery of three goldsmiths in Copenhagen in 2011, when they stole jewelry worth 12

million Danish crowns (about € 1.6 million) (Kurir, 2013). In February 2014, the Spanish police arrested and handed over a single Montenegrin citizen to the United Arab Emirates on suspicion of having participated in one of the most spectacular robberies when more than three million euros worth of jewelry was stolen from the Dubai Mall in 2007 (Blic, 2018a).

One of the more interesting robberies happened at the beginning of 2015, when three robbers used some crafty trickery to enter the renowned Schullin goldsmith in Graz (Austria). One of them, normally dressed, waited in front of the security door with a bouquet of flowers. As the employees thought that he was there to give it to one of the clerks, they let him in. At that moment, two masked, armed accomplices appeared behind the corner and entered the shop. What followed had already become somewhat of a routine. Blic, 2015a). Four armed men stole € 17.5 million in jewelry eight days before the Cannes Film Festival in early May 2015. The Cartier store robbery lasted five minutes. One of the robbers wore an old man's mask and had a pistol when he entered the store and opened the door for his two accomplices, who wore scarves over their faces, while the fourth thief guarded the entrance to the jewelry shop. They fled in a stolen Mercedes, which was later found burned in a residential part of the city. This large Cartier store was robbed in July 2013, when about \$ 140 million worth of jewelry was taken. The French police suspected a well-known member of the Pink Panther, who had escaped from prison before the robbery, to have organized this robbery (Nikolić, 2015).

Robbery of the century, as the media called it, was carried out at the Hutton Gardens in London at the end of April 2015, when the robbers managed to get through a thickly reinforced concrete vault wall, with the aid of a huge Hilti drill, and took gems and money worth 201 million pounds from a luxury jewelry store. The thieves entered the building through the elevator shaft having first disabled the sophisticated security system, they then used heavy cutting machines to break into the vault and open the safes. The police offered a £20,000 prize to anyone with adequate information which would lead to the arrest of the robbers (Filipović, 2015). The British police arrested seven people in connection to this robbery as more than 200 police officers raided multiple addresses in the northern part of London and Kent. At some of these locations, they found bags with extremely valuable items, among which were those stolen from the safes (Blic, 2015b).

At the end of January 2015, in the early morning hours in downtown Niš, Zlatara Celje was robbed. Two masked and armed robbers took several pounds in jewelry and expensive watches from the safe. The thieves entered the shop through the roof, waited for the employee to open the safe, and then robbed her under threat of a weapon. After the robbery, they walked out of the shop, before numerous citizens, since the store is located in the main pedestrian zone in Niš (Milovanović, 2015).

In January 2016, a jewelry shop was robbed at the jewelry fair in the Italian town of Vicenza at which time the robbers stole diamonds worth € 1.2 million. Five days after the robbery, after having been identified via video surveillance from Milan, two Serbian suspects were arrested but the jewelry was never found, for which reason it is presumed that they immediately surrendered it to their accomplices. A third member of this Pink Panther team was arrested in January 2017, exactly one year later, as he tried to rob the same place at the same fair in Vicenza (Jovićević, 2017).

A spectacular robbery took place at the beginning of January 2018 in Venice, when two thieves stole jewelry worth several million euros during an exhibition at Doge's Palace.

Sheikh Hamad bin Abdullah al-Thani of Qatar was damaged, and it was assumed that the Pink Panthers were behind it (Ilić, 2018). On February 20, 2018, after months of cooperation between the Serbian and Swiss police, four Serbian citizens, members of the Pink Panther, were arrested in Lugano, Switzerland, suspected of preparing to rob jewelry shops in this city (Blic, 2018b).

At the end of April 2018, one year after the robbery in Eisenstadt, Austrian police arrested four persons from Serbia suspected of being members of Pink Panther, the result of prolonged and continuous cooperation between the Austrian, Serbian, Italian and German police forces. The Serbian citizens were suspected of having robbed a goldsmith in the pedestrian zone in Eisenstadt on March 7, 2017, after which they continued with a string of robberies in Germany. While one of the robbers in Eisenstadt threatened the shopkeeper with a pistol, the rest of them bought valuable watches. The suspects used Internet telephony for communication, which is not under police supervision, the reason why police are seeking that, in the fight against crime, it has the ability to monitor communications through Internet services such as Viber (Blic, 2018c).

CHARACTERISTICS OF CRIMINAL BEHAVIOR

Based on a presentation of some of the more interesting cases involving the Pink Panthers, we can identify some of the more important characteristics in the behavior and activities of this serious group from the Balkans.

NUMERICAL DATA AND GEOGRAPHICAL ORIGIN

According to Interpol's information, and on the basis of already discovered members, this group consists of several hundred members most of whom come from Serbia, which is why some call them the "Serbian Mafia". Some other sources claim that the group has at least 600 members of which half is from Montenegro. The Austrian police, who may have the most experience with the Pink Panthers, says that the gang has about 200 members, basing their assessment on the gang's activity within its area. However, it can be concluded that these groups number between 200 and 600 members from the Balkans, mostly from Serbia and then from Montenegro. It is assumed that a smaller number originates from Bosnia and Herzegovina and Croatia.

WIDESPREAD PRESENCE OF CRIMINAL ACTIVITY

In the previous period, members of these groups performed spectacular attacks against the most famous jewels or jewelry shops in Austria, Switzerland, France, Japan, Sweden, the United Arab Emirates, Liechtenstein, Spain, Luxembourg, Italy and other countries. So far, a pattern has not been noticed regarding the territorial planning of their criminal activities. Exclusive goldsmiths and jewelers are chosen in wealthy metropolises anywhere from London to Tokyo, and from Dubai to Stockholm. Western European countries such as France, Switzerland, Austria, Great Britain and Italy, are particularly vulnerable. Statistically, Austria has been most severely affected, due to the large number of these robberies having taken place there. Security agencies estimate that the Pink Panther group is responsible for stealing over \$800 million in various parts of the world.

CONTINUITY OF OPERATIONS

The group first attracted public attention in 1993 when it stole £575,000 in jewelry from the Mayfair district in London. Since then and up until the present, this criminal gang has

continued with its criminal activities. Although in the past period several countries have made arrests and subsequently prosecuted the offenders, their activity continues at an unhindered pace.

ORGANIZATIONAL FOUNDATION

Thus far in their fight against Pink Panther, Interpol and security agencies have not come to acquire any knowledge on the existence of a unified centralized criminal organization. The most they have managed to do so far is to identify a larger number of direct perpetrators (soldiers) and possibly middle management, that is, the leaders of specific organized criminal groups, who do not know the main organizers, or their location. Therefore, the main organizers, of which there are obviously a few, are well connected to one another, which is a feature of criminal activity in mafia organizations. According to information obtained, there is no single Pink Panther criminal organization, with a single centralized organization and headquarters. What is in question is a large number of relatively small organized criminal groups (3-10), very mobile, well-rehearsed, with a precise division of tasks.

MODUS OPERANDI

It is interesting to note that the Pink Panther crime groups do not have their own MOS, which is characteristic of almost all other gangs such as those that attack banks, post offices, exchange offices, bookies, gas stations, etc. What's more, the same group does not always have the same MOS as it adapts it to each specific object of attack. What is characteristic of the Pink Panther group are rapid "bust and grab" actions. Thus, the diversity of execution and the use of various means of execution is one of the characteristics of this criminal family. Although the methods of execution are different, given the application of specific means and tactics of execution that are adapted to each case specifically, the work method in each robbery is almost identical. A masked man and woman with large dark glasses scout out the targeted shop a few days before the robbery (they look at the jewelry, remember the room layout, cameras, alarms, etc.). Wearing ski masks, hats, glasses, or wigs, or simply dressed as ordinary customers, they enter the store, sometimes with a drawn pistol. They break the showcases with a hammer or they drive their vehicle through the front window. Although they have been armed in almost every jewelry heist they have not, in any of the nearly 200 robberies committed thus far, discarded a weapon. They have not used violence in any of the robberies. The employees are usually told to lie down on the floor, the robbers break the windows, collect the jewelry and make their escape. The entire robbery usually lasts only a couple of minutes, after which they move away from the crime scene according to a previously established plan (Marković, 2011).

Hammers, axes, drills, vehicles and even helicopters are among their arsenal for breaking into shops, while they use motor bikes, speedboats, fast vehicles, and helicopters to make their escape. It is interesting that violence against people at the scene of the attacks (there by accident or intentionally) is not part of their robberies, and it is not known that they have ever killed anyone during a robbery. In some cases, weapons have been used during their escapes to prevent arrest (for example, in Athens). These criminals are extremely trained and organized and have been considered untouchable for a long time. Other gangs quickly began to copy their style while the media began to use their nickname to refer to all gangs stealing jewelry who originate from this region.

MEMBERS' CHARACTERISTICS

Most members of Pink Panther are very intelligent, which is the opinion of police experts who are fighting against them. They speak several languages, have multiple passports with

false data and are distinguished by their imagination, elegance and nonchalance. Additionally, their confidence, cold-bloodedness, lucidity, and resourcefulness are some qualities regularly associated with them. Their other characteristics are skill, originality and incredible speed with which they perform robberies, having chosen only exclusive stores. All their robberies are spectacular and subtle, and violence is rarely used. They attack only the rich, they are prone to escape from prison, and very often, their group includes beautiful women. The arrested members do not provide any information about who the organizers of the robbery are, who perform reconnaissance, rents rooms, takes the loot, etc. The chief bosses are anonymous for all members and do not participate directly in the actions.

DETAILED PLANNING OF EACH CRIMINAL ACTION

This is one of the most important features of the Pink Panthers, which makes their executives very difficult to detect. This is the reason why the number of unresolved criminal offences is high, and the number of processed perpetrators is low. Their actions are planned down to the smallest detail, as evidenced by the spectacular execution and the perpetrators imagination. They select their target, time, manner and means of execution, as well as their escape and the distribution of stolen goods very carefully, while the division of tasks is evident among the perpetrators. Their dedication to detail has enabled them much success in these criminal ventures. The robbery usually lasts only a short period of time and they quickly disappear from the place of execution. The robbers get rid of the stolen items very quickly so that even if some of them are arrested immediately after the robbery, the goods are not on them and thus there is no evidence. The further distribution and sale of stolen goods, from the location, is pre-planned and agreed. In support of good and professional planning is the fact that most of their actions are successful, spectacularly performed, and material damage numbers in the millions.

KNOWLEDGE OF SERBIAN POLICE

According to knowledge from Serbian police, the main bosses of Pink Panther are in Belgrade. The Belgrade, Užice, Čačak and Smederevo clans are currently the most active parts of this gang, which, according to police data, number about two hundred members. The majority of members are Serbian citizens, followed by Montenegrins, and citizens of Bosnia and Herzegovina. Foreigners are partly engaged in logistical support. Those from Belgrade are the most active and the strongest, led by several main bosses, who manage the entire organization from Serbia. These are criminals from Belgrade clans who were known to the Serbian public in the 1990s when they successfully developed criminal enterprises under the auspices of the war in the former Yugoslav republics. Among them, there are heirs to the former tough street guys who affirmed themselves in war events or in showdowns between of criminal gangs in the Balkans (Marković, 2011).

The main leaders plan and organize the entire action and coordinate with it. They organize specific groups of robbers and appoint their leaders, they choose their targets, determine the tactic to be used and the manner of execution, logistical support, the manner of escape and the distribution of stolen goods. They do not have direct contact with the stolen goods but follow its movement, very often through the territory of several states, until it reaches the ultimate buyer, whom only they know. Finally, the main bosses determine how the money is divided. A direct division of tasks is performed in each Pink Panther group. The role of each member is defined: who rents apartments, cars, who is in charge of

procuring fake passports, who carries out reconnaissance, who acquires the tools, weapons. The leaders of these individual groups are people who have already proven their capabilities in previous robberies.

The overall organization of the Pink Panther group, in specific actions, could be viewed through several important phases: (1) marking the object of attack; (2) choosing a group, its leader, and the division of tasks; (3) determining the tactic and method of execution; (4) reconnaissance; (5) the execution itself; (6) organization and manner of escape; /7) the manner of distributing the stolen goods; and (8) dividing up the stolen goods.

CONCLUSION

Pink Panther does not exist as a single centralized criminal organization that has its own organizational structure and hierarchy. Thus, due to the similarity of the mode of execution, a type of robbery can be called by this name. Although Pink Panther has become a true urban myth and almost every spectacular robbery involving jewelers in the last twenty years is attributed to them, their story is “overinflated”. There is no direct organizational link between all cases and all criminal groups, only between individual criminal groups. Thus, there is no global organized Pink Panther network. The only common thread is the target and the manner of execution.

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ORGANISATIONAL INTEGRITY: AN IMPORTANT STRONGHOLD AGAINST CORRUPTION

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ABSTRACT

In its deepest sense, integrity stands for congruence in thought, word, and action. The fact that it is often waived before its goal is reached gives rise to numerous anomalies, deficiencies, incongruence and risks which, in turn, allow for corruptive practices undermining not only the authority of the individual but also that of the organisation. Bearing in mind some contemporary controversial domestic and worldwide business practices, there is no doubt that integrity calls for a closer scrutiny and a proper assessment of its scope. There is a need for a clear understanding of the fact that an organisation may be seen as a lock and integrity as its key widely opening the door to all who act proactively, transparently and preventatively, while locking out all those with corruptive and other deviant intentions. In other words, the organisation needs to be aware that integrity is its firewall protecting it from corruption.

Keywords: integrity, organisational integrity, prevention of corruption, leadership

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INTRODUCTION

All over the world, organisations struggle with numerous factors and circumstances which, stronger and faster than ever before, affect their success, efficiency or, unfortunately, loss of business. In their efforts to identify these adverse elements and to take action to neutralize their effects, some organisations are more ambitious and successful than others, but what they all share is their exposure to financial and non-financial losses resulting therefrom. These factors are many and they vary from one organisation to another. However, in light of the respect for common European values, reinforcement of democratic and efficient functioning of the institutions within a common institutional framework, and pursuing common European policies, on the one hand, and particularly because of the enormous European public finance losses due to corruption, on the other, not to mention rationality and efficiency of preventive action, this article focuses on corruption, one of the most recognized and widespread adverse factors, and integrity of leadership, a countermeasure and an important if not the crucial preventive organisational and stabilization measures aimed at improving the situation.

METHODS

The article is based on the qualitative research paradigm, specifically on the descriptive and comparative methods used to gain a deeper insight into the subject matter at hand through means of compiling and analysing the data published in domestic and foreign texts, previous research and the existing legislation governing the field of corruption, (organisational) integrity and organisational management.

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CORRUPTION DETECTION, CONSEQUENCES AND PREVENTION RESOLUTIONS

Corruption is an international phenomenon or a reality causing serious damage to economy and society as a whole. Deeply rooted, it affects many countries worldwide, hindering their economic growth, undermining democracy and social justice and weakening the rule of law, and EU member states are by no means immune to it. Though corruption does differ from one country to another with regard to its nature and extent, it still affects all of them, particularly in terms of sound management of public funds and market competition. As a result of a relatively weak control over corruption risks worldwide, curbing corruption is one of the main priorities of the EU. In its 2014 Report, the European Commission assessed that corruption alone costs EU member states some incredible 120 billion EUR annually, which almost equals the sum total of its annual budget. The same report also states, among other, that over three quarters (3/4) of Europeans believe that corruption in their country is rather widespread. It also claims that four out every five EU companies believe that corruption is a rather big problem in doing business: the smaller the company, the bigger the problem (European Commission, 2014).

Taken as a whole, corruption presents a serious threat to democracy, undermining the rule of law, violating human rights and hindering social and economic development, which is why in 1997 the Council of Europe adopted Resolution (97)24, defining twenty (20) basic principles or measures aimed at curbing corruption and raising awareness of corruption and strengthening thereto related appropriate ethical conduct (Council of Europe, 1997).

Peter Eigen, a German co-founder of Transparency International, states that political elites and their spongers will make good use of any opportunity for personal gain while, hand in hand with corrupt entrepreneurs, keeping the rest of the population in poverty by not allowing real development (Dobovšek et al., 2016).

As to the influence of corruption, Lawrence Cockcroft, an English co-founder of Transparency International, states that the prime victims of corruption worldwide are the poor, whose prospects of social, educational and economic advances are directly impacted by the corruption of both local and national elite groups (Cockcroft, 2012).

According to the results published in the 2017 Eurobarometer public opinion survey on development, cooperation and aid, citizens of 17 EU member states believe corruption is one of the main obstacles to a successful development of their states (European Commission, 2017). It goes without saying that if states need to struggle with corruption, it is only logical that organisations will, too.

The findings by the Global Corruption Barometer, a most comprehensive survey made on a sample of 162,136 respondents from 119 countries regarding citizens' direct experience with bribery, corruption detection and their willingness to take action against corruption show that the most corrupt groups or institutions are the police and elected public representatives (parliament members, congressmen, senators), followed by government officials, business leaders, and local authority officials (Transparency International, 2017).

The latest corruption perception index (CPI) measuring corruption in public sectors throughout the world indicates that over six billion people or two thirds of the population of the 180 countries evaluated in 2017 live in the countries considered corrupt, i.e. in those whose index score is below 50 on the scale from 0 to 100 (0 meaning corrupt, and 100 very clean). Slovenia's index score for 2017 is 61, and its rank is 34 (Transparency International, 2018).

In its latest assessment of the current situation, the Commission for the Prevention of Corruption of the Republic of Slovenia reports that in 2016 Slovenian Police carried out a survey (N = 1, 168 respondents) indicating that corruption is a factor threatening life in Slovenia considerably (average of 4.48 on a 1-5 scale, 1 meaning the least, and 5 the most) (Komisija za preprečevanje korupcije, 2016a).

Further, corruption is an obstacle decreasing production rates in the private sector, maintaining inequality and poverty, influencing welfare and income distribution, and threatening equal opportunities of citizens' partaking in social, economic and political life (OECD, 2018a).

The key strategies in combatting corruption, i.e. guidelines to states in terms of legally relevant implementation measures concerning containment of corruption, are defined in the United Nations Convention against corruption (Zakon o ratifikaciji Konvencije Združenih narodov proti korupciji [MKZNPk], 2008), while a part of this subject matter is dealt with within the Resolution referred to below.

The Resolution on the Prevention of Corruption (Resolucija o preprečevanju korupcije v Republiki Sloveniji [RePKRS], 2004) indicates that, according to the official data, the number of corruption related criminal offences is relatively low, but the empirical surveys show that the extent of corruption in the country is larger, though still not large enough to warrant implementation of emergency measures. Nevertheless, it does require coordinated and resolute action by the state and its citizens. So far, the responses to different manifestations of corruption were distinctively repressive and aimed at eliminating its consequences only, while the true causes of this socially pathological phenomenon remain unaddressed. Mere repressive responses to corruption only lead to the removal of harmful consequences of particular corruption cases, but the real causes, reasons, and circumstances that allow it remain intact. Not only for the sake of clear world trends but also to allow for more rational and efficient preventive measures, the fundamental starting point for a proper definition and implementation of Slovenian anticorruption measures is prevention, clear definition of the causes and conditions allowing the onset of corruption, and their elimination. On the other hand, repressive actions should remain a corrective measure useful for the sanctioning of unlawful practices, of course.

As a result of all the above, seriousness of the trouble, and the many perils that corruption presents to stability and safety/security of society (in terms of undermining its institutions, democratic values, ethic principles, righteousness, threats to sustained development, and the rule of law (Zakon o ratifikaciji Konvencije Združenih narodov proti korupciji [ZIntPK], 2008), as well as due to other anomalies, we are unable to deal with an entire set of all possible measures for decreasing, elimination or prevention of corruption. Therefore, we proceed by focusing on a single segment, i.e. prevention and preventive measures: the fundamental entity here, derived from above-mentioned Resolution, is by all means integrity or even better, organisational integrity in our case.

In the Republic of Slovenia, the measures and methods aimed at strengthening integrity (and transparency) as well as prevention of corruption (and the elimination the conflict of interest) are stipulated by the law (Zakon o integriteti in preprečevanju korupcije, 2011).

INTEGRITY AND PREVENTION OF CORRUPTION

Much has been ascertained on integrity and prevention of corruption. The following passages summarize the relevant findings.

Báger, Pulay and Korbuly (2008: 64) defines integrity as follows:

The term integrity is derived from the Latin in-tangere, meaning untouched. In other words, it refers to something or someone that is untainted, intact and untarnished. It also refers to virtue, incorruptibility and the state of being unimpaired. Integrity is a hallmark that is used to assess a person or organisation's performance.

“The common wisdom has it that ‘Prevention is better than cure’. This is particularly true when public trust, the effectiveness of institutions, and security of the State are threatened by corruption” (UNODC, 2018).

Prevention of corruption spans a wide variety of protagonists and activities, but in broad terms it embodies: (a) integrity and cooperation; (b) transparency and accountability; (c) reducing risks and opportunities, and (d) control (Rieger, 2005).

“It's hard to imagine the government doing its job well without a commitment to basic levels of integrity. A weak culture of integrity creates a vacuum filled by policy capture and corruption” (OECD, 2015).

Pulay (2014: 133) claims that “strengthening integrity is an effective means for preventing corruption”.

Jensen C. (2009: 17) argues that integrity is a necessary condition for maximum performance. He finds that “integrity is important to individuals, groups, organizations and society because it creates workability. Without integrity, workability or any object, system, person, group or organization declines; and as workability declines, the opportunity for performance declines”.

Integrity association (Društvo Integriteta, 2012) believes that integrity is about wholeness and integrity or congruence and is one of the most important human values. Persons with a high level of integrity act what they speak, think and believe, and live on the inside what they show on the outside.

In the literature on management, Palanski and Yammarino (2009), important or even leading researchers of integrity, distinguish five main categories of factors constituting integrity: (a) integrity as wholeness; (b) integrity as consistency between words and actions; (c) integrity as consistency in adversity; (d) integrity as being true to oneself; and (e) integrity as morality/ethics (including definitions such as honesty, trustworthiness, justice, and compassion).

Integrity as conceived by the Integrity and Prevention of Corruption Act (Zakon o integriteti in preprečevanju korupcije, 2011) is “an anticipated performance and responsibility of individuals and organisations in preventing and eliminating risks that authority, functions and powers or other authorisations for decision-making might be exercised contrary to the law, legally admissible goals and ethical codes”.

Pursuant to the OECD definition, public sector integrity generally refers to consistent harmonization and respect of common ethical values, principles and norms of maintaining and favouring public interest over private interest in the public sector (OECD, 2018a).

Integrity as conceived by OECD is of crucial importance in establishing strong institutions as it assures the citizens that the government governs by taking into account the public interest, not in the interest of the chosen elite. Integrity is not only a question of morality but also an important factor of economic productivity, public sector efficiency, and of the economy's social involvement in every country. It is about generating trust not only in the government but also in the public institutions, regulators, banks and corporations. In 2017, OECD adopted a new recommendation on public sector integrity, providing policy makers with a blueprint for proper elaboration of a national public sector integrity

strategy and, in consequence, diverting attention from ad-hoc integrity policies to a more comprehensive risk-based approach while focusing on integrity culture within society as a whole. It rests on three pillars: a) the system, in terms of it being designed so as to decrease the number of possibilities that might lead to corruption; b) culture, in terms of changing overall culture so that corruption would become socially intolerable; and c) accountability, in the sense of ensuring that people are accountable for their actions (OECD, 2018a). These three are also referred to as ‘SCA’ pillars of public sector integrity.

In 2012, a similar research on integrity, more precisely on those national integrity systems that are supported by said three pillars, was carried out by Transparency International (and by Integrity Society in Slovenia). It included thirteen pillars (the legislative branch, the executive branch, the judiciary, the public sector, law enforcement, the electoral management body, the ombudsman, the audit institution, the commission for the prevention of corruption, political parties, the media, civil society, and business). Each of these was assessed with respect to the following three criteria: capacity, management, and its role in the management system. The key finding was that the Slovenian national system of integrity was fairly stable (Društvo Integriteta, 2012). That was six years ago, today the situation is probably worse.

The Commission for the Prevention of Corruption stated in its 2016 report that integrity in the Slovenian public sector is a rather elusive concept: the Commission finds, continually, that six years after integrity was introduced through means of the Integrity and Prevention of Corruption Act, the level of its awareness in the Slovenian public sector is still surprisingly low in spite of education and numerous training courses held with respect to this topic by the Commission as well as by other institutions (Komisija za preprečevanje korupcije, 2016a).

THE NECESSITY OF ORGANISATIONAL INTEGRITY

Martinez-Vazquez, Arze del Granado & Boex (2007: 218) argued that institutions matter and institutional reform that includes organisational integrity is key in fighting corruption.

Sparrow (2008) claims that, to reduce corruption harm, an organisational integrity system functioning as a broad prevention program is aimed at promoting ethical behaviour rather than at attacking specific unethical behaviours (as cited in Vargas-Hernández, León-Arias, Valdez-Zepeda & Castillo-Girón, 2012: 153).

According to Vargas-Hernández et al. (2012), organisational integrity as a theoretical approach aimed at minimizing corruption in organisations refers to the integration of the organisation’s operational systems, corruption control strategies and ethical standards.

Vandekerckhove’s view (2010) on organisational integrity is that it needs to be understood as an effort or a policy supporting integrity of an individual or their personal integrity, while its description refers to the ways to communicate with other stakeholders. In order for an organisation to be successful with regard to organisational integrity, the “Talk the Walk” principle needs to be observed.

Further, Rendtorff (2011: 64) states his view of (organisational) integrity as follows:

‘I consider the concept of integrity as being the virtue that contributes to the integration of individual and organisation according to the idea of the good life [...]. In this sense, integrity builds the bridge between theoretical virtues and principles of business ethics and the practical moral and political life in organizations. This may be why integrity is a very popular concept of business ethics, indicating coherence, purity or completeness of a totality. The notion of integrity is often associated with true identity, honesty, respect and trust. In this sense integrity has in many contexts been defined as a personal virtue or moral value, which is

most commonly associated with individuals. The value of integrity may be defined as a basic value, which should be the outcome of values-driven management. In this way, integrity can be said to be of intrinsic value.”

Palazzo (2007) claims that the term organisational integrity refers to ethical integrity of individual actors and to the ethical quality of their interaction, as well as to that of the dominating norms, activities, decision-making procedures and results within a given organisation.

Rendtorff (2011: 73-75) quotes that “organisational integrity relies on the ability to establish, maintain and communicate ethical standards throughout the company and it is a basic requirement for building and maintaining effective organisations”

The G20’s leading global Anticorruption Working Group claims that the fight against global corruption requires efficient measures encouraging integrity and transparency in the public sector (OECD, 2018b).

With regard to organisational integrity, Kečanović, a former employee of the Commission for the Prevention of Corruption of the Republic of Slovenia, is of the opinion that decision-making and execution of public interest matter activities are based on integrity as expected behaviour and accountability for common values in both public and private sectors. He also adds that, in assessing whether an action taken by an institution and/or its members is congruent with integrity as a legal and ethical standard of expected behaviour and accountability, it is paramount to define the consequences of such actions, to what extent the expectations have been met and the trust of the majority of people, social community and of public opinion maintained. Should legal provisions, behaviour codes, as well as decisions and actions by institutions and their members not be in compliance with the expectations, their integrity shall meet reasonable doubt (Kečanović, 2012).

From the organisational management view, integrity means that an organisation maintains the values that are congruent with social expectations and acts accordingly. The issue at stake is that its employees identify with their organisation’s values and act accordingly. In this sense, integrity stands for correct (compliant, ethical) behaviours and actions and as such represents the opposite to any fraud, corruption or other abuse of power. The higher an organisation’s integrity level, the more it is resilient to corruption. In short, organisational integrity is an appropriate measure to decrease or eliminate institutional corruption risks (Pulay, 2014), and the leadership plays an important part in its implementation.

LEADERSHIP INTEGRITY

Employees face all kinds of challenges and frequently deal with many situations where they need to decide how to respond. Providing them with proper assistance is the leadership’s task and the final reward and recognition to its integrity (Kayes, Stirling, & Nielsen, 2007).

Christie & Fellow (n. d.) claim that integrity is paramount in leadership. As many senior leadership executives have been exposed in the media for scandal and illegal activity, we see that a consistent theme in their downfall has been their lack of integrity and their inability to lead according to a moral set of values.

Fombrun (1996) claims that “leadership integrity plays a key role in creating and developing policies, procedures and the whole organizational system indicated by the level of influence that the organizational management integrity has on them. Organizational leadership integrity fostering integrity capacity improves the firm’s reputation capital with their internal and external stakeholders” (as cited in Vargas-Hernández et al., 2012: 156).

Dwight D. Eisenhower, the 34th President of the United States, wrote that the supreme quality for leadership is unquestionably integrity because without it, real success is not possible, no matter whether it is on a section gang, a football field, in an army, or in an office (Business & Leadership, 2017).

“Positive, active and pro-active leadership behaviours and doing the right things are perceived as having high levels of trust and integrity. Unethical and immoral behaviours, doing the wrong thing or what is not expected and valued are perceived as low integrity” (Vargas-Hernández et al., 2012: 157).

Bauman C. (2013) states that leaders’ integrity does not always mean they are committed to high moral values and distinguishes between three types of leadership integrity: (a) substantive leadership integrity, where a leader is committed to high moral values, e.g. Ellen Johnson – Sirleaf, who spoke the truth in spite of her risking to lose her presidency; (b) formal leadership integrity, characteristic of a leader committed to immoral values, exemplified by Amon Goeth, a Nazi and SS commander who was actually a moral monster formally justifying his cruel deeds by his commitment to immoral values; and (c) personal leadership integrity, emphasizing a leader’s commitment to their personal values, i.e. the values they uphold based on their personal judgement. Such an example would be Sir Thomas More, who was charged with treason for his personal choice and sentenced to death.

Łukasz Polowczyk (2017) states his view of integrity as follows:

“There is not one morality, and there is not one moral integrity as a moral commitment, so there are different types of integrity and different types of false integrity. A clear distinction between integrity and false integrity concerns truth and falsity and it does not relate directly to evaluation in some other respects. Evaluation of integrity and false integrity is connected with concepts of coherence, rationality, fundamental values, etc.”

Paine Sharp (1994) asserts that managers who fail to provide proper leadership and to institute a system that facilitates conduct share responsibility with those who conceive, execute, and knowingly benefit from corporate misdeeds. Moreover, according to Vargas-Hernández et al. (2012), leadership integrity correlates very strongly with leadership effectiveness, and so does the presence of integrity in terms of organisational effectiveness. Kanungo and Mendonca (1996) also support this view, claiming that leadership integrity in organisations is an important concern for organisational management integrity and leadership effectiveness. Boardman and Klum (2001: 164) assert that “an organizational integrity management system may develop institutional strategies and policies aimed at building more human and ethical capabilities intended to resist corruption and other unethical organizational behaviours”.

With respect to the above, Simons (2008) is of the opinion that integrity is the dividend governed by the power of the word. Through the interviews he conducted he found out the following: a) the payoff of the behavioural integrity is greater personal and organisational effectiveness that builds personal credibility and trust, and these contribute to our ability to get things done through people; b) employees who trust their leaders work harder and with clearer direction, and this also leads to greater efficiency in customer-, supplier-, and union relationships; c) executives can extend behavioural integrity and its dividends through leaders and practices throughout the organisation; and d) some of the greatest challenges of behavioural integrity management come down to recognizing and reckoning with our own personal habits and the ways we have learned to interact with people. The elements of self-knowledge and self-control are integral to managing behavioural integrity. And finally, according to Christie & Fellow (n. d.):

“As a leader, one can significantly impact the assessment of their integrity in various ways. By knowing your values and what is expected of you, by showing your values, and by leading through your values, as a leader, you can espouse and enact integrity that will lead to greater organizational effectiveness and build lasting trust. Nobody is perfect and this lasting trust will inevitably be shaken a time or two over your tenure as a leader. Acting without integrity can severely damage trust, but there are ways in which it can be prepared. By keeping your word, telling the truth, being transparent in your actions and giving without strings attached, you can always rebuild trust and regain your integrity as a leader.”

DISCUSSION AND FUTURE RESEARCH

In their development and activities, organisations daily face numerous risks and deal with factors threatening their performance, efficiency and endeavours for business excellence. This is why they are forced to take measures their very existence depends on: the choice of which among these to implement is theirs only, but preventative measures have proven more rational and efficient than repressive ones, as the latter may only help eliminate the damaging effects, not the causes, reasons and circumstances facilitating their onset.

Said research methods showed that among many identified risks affecting success- and efficiency-rates of organisations and their management it is corruption that has been recognized as one of the greatest obstacles to organisational excellence, resulting in financial and non-financial losses.

Further, we found that corruption is a phenomenon featuring international dimensions whose harmful effects may be observed on all levels: national, local, individual, and institutional.

In the light of the fact that an organisation, public or private, is a live entity comprised of people who, in their most sincere efforts, should try to do their best to fulfil its mission and goals, it is by no means unimportant what values the organisation aims to pursue. And since integrity ranks the top of them all and, simply put, represents congruence of thought, word and action, this fact should be taken into account when the issue at stake is management, particularly that of organisations.

Our literature review shows that the authors relevant to this subject matter differ in how they regard, categorize, define or conceive organisational integrity. In their views, integrity reveals many of its facets, such as a) the crucial value in fighting corruption; b) a supreme value; c) a bridge among values as such and their practical application within an organisation; d) a condition for efficient corporate management; e) a prerequisite for maximum performance; f) an important factor of economic productivity; g) a synonym for the right management; h) a dividend, etc. Embedded in all of these is the fact that it has become an indispensable current measure in the fight against corruption and a prerequisite for any successful accomplishment of the organisation's mission and implementation of its goals. Similarly, world organisations for economic development and non-profit organisations regard it as (a) a crucial value in building strong institutions; (b) the expected behaviour; (c) an effort or a policy; (d) commitment; (e) consistent harmonization and respect of ethical values, principles and norms; (f) a promoter of ethical actions, etc. Nevertheless, in spite of the differences in focus, all these organisations also stand united in their belief that one cannot hope they could all be transparent, accountable, successful or efficient, should their leadership fail to be prepared to acknowledge, accept or internalize integrity as the supreme or top-notch management feature.

Based on all the above and with a view to controlling corruption risks and decreasing thereto related adverse effects, it remains with the leaders to adopt the policy of zero tolerance to corruption while committedly and ambitiously striving to present, introduce and support preventive organisational measures and provide for adequate conditions in which their employees could implement them. In their efforts, leaders need to proceed from integrity as their organisation's excellence feature, meaning, among other, that they themselves need to act according to the organisation's expected operation procedures while honouring "Talk the Walk" and "Walk the Talk" principles.

As to the limitations of this research, the authors admit to the fact that no special empirical study was done exclusively for the purposes of this article; nevertheless, all findings described herein stem from previously published works and currently available (secondary) empirical studies.

As regards further studies on the subject matter, our own empirical research using quantitative methods is currently underway to be completed in 2018.

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CRIMINAL - LEGAL AND CRIMINALISTIC ASPECTS OF THE BRIBERY IN THE REPUBLIC OF MACEDONIA

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ABSTRACT

Bribery is a form of corruption and a danger to any organised and democratic society in terms of rule of law and equality of citizens. Republic of Macedonia has accepted the recommendations of the international community contained in international conventions and in the national criminal legislation which criminalises various forms of criminal activities with elements of bribery. The paper will analyse the criminal - legal aspects referring to the criminal acts of the Criminal Code of the Republic of Macedonia with elements of bribery in the function of investigating the operational combinations in the criminal investigation in order to provide evidence necessary for the criminal prosecution of the perpetrators. The period of research is 2012 - 2016, with special emphasis on reported, accused and convicted offenders and measures imposed on prohibition to perform activity, profession or duty as well as measures of confiscation of property.

Keywords: bribery, corruption, unlawful influence, criminal investigation, confiscation of property.

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INTRODUCTION

Corruption is a phenomenon that seriously threatens the legal state because it is governed by individuals led by merciless goals instead of the rules of law and its norms. It is a direct attack on the constitutional order “constitutional principles and guarantees of human freedoms, rights and equality of citizens”. The performing of public authorisations very often receives the character of performing certain services for those citizens who can pay for them only. “Despite the elementary right to equality, there is no human right that cannot be endangered if the principle can be enjoyed only to the extent that the citizen is ready to buy it prevails.” (Kambovski & Naumovski, 2002). The legal state should guarantee “freedom of the market and entrepreneurship and ensure equal status of all market participants”. Corruption is becoming a way of behaviour, communication, negotiations, a way out of the “impassable,” just like our people say, “money opens even the iron doors.” And, it’s the money, which is corruption, way and means of communication, way and means of bargaining and completing things. But should anyone pay, as we are talking about a legal state, in which rich and poor people live, for the rich it’s easy, but for the poor it’s hard!

Corruption in the Republic of Macedonia is a serious problem that can be noted from the Corruption Index published in the Transparency International Report for 2017 (Meta News Agency of Macedonia, 2017). The Republic of Macedonia is ranked at the top spot 107, compared to the previous in 2016, when it was 97th, in 2015- 67th, in 2014 - 64th, and

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in 2013 – 63th. Regarding the countries in the region, Slovenia is ranked 34th, Republic of Croatia 57th, Republic of Montenegro 64th, Greece and Romania 59th, Bulgaria 71th, Republic of Serbia 77th, Turkey 81th, Kosovo 85th and Albania 91th (Libertas Macedonia, 2018). Little progress in improving the perception of corruption was noted in 2014 only compared to the year 2013 when the move was in a positive direction. Corruption index, which refers to the public sector, was made on the basis of six relevant surveys, and the same methodology has been applied since 2012.

Citizens' perception of corruption, according to the survey "Citizens' Opinion of the Republic of Macedonia on Corruption" conducted in 2013, indicates that over 80% of the citizens perceive corruption as receiving, bribery, power abuse and illegal mediation. According to the employee scale of corruption in the institutions and to the profession or certain duty, the customs and customs officials, political leaders and political parties, judges, holders of public functions, inspection bodies, civil servants, prosecutors, doctors and healthcare workers as well as university professors are found as the most corrupted (Mojanovski, Malish-Sazdovska, Nikolovski, & Krstevska, 2014).

According to data obtained by the survey on "The Impact of Bribery and Other Forms of Crime on Private Firms" that focused on the scope of bribery by companies, five different economic sectors account for over 69.1 percent of the entire business sector in Republic of Macedonia have frequent interaction with the public administration. The data indicated that corruption and other forms of crime are a major obstacle for private companies and have a negative impact on private sector investment. Many companies give bribes to public officials throughout the year, and construction sector enterprisers are most affected by corruption, followed by enterprises from the wholesale and retail trade sector. Public officers at greatest risk of bribery in contact with the enterprises are: customs officers, cadastre officials, municipal officials, police officers and inspectors (United Nations Office of Drugs and Crime, 2013).

According to data obtained by both surveys, it is strongly suggested that corruption is most often perceived as receiving and giving bribery by the citizens, and according to that perception, Republic of Macedonia is categorized as a country with a high degree of corruption, which is a serious obstacle to the Euro-Atlantic integration of the state according to the international community (Figure 1).

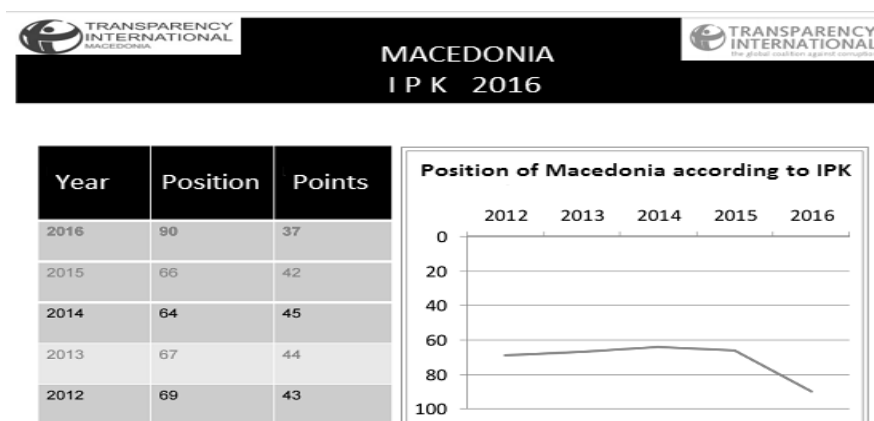


Figure 1: Position of the Republic of Macedonia according to the Corruption Index
 Source: Meta News Agency of Macedonia, 2017

The suppression of corruption, and especially bribery, is a complex problem that includes the redefinition of legal acts and the anticipation of sanctions, as well as raising the awareness of citizens that bribery is a “bad thing” that should be avoided. But, how, when it’s a way of “completing lawful things”? Citizens are powerless in front of corrupted persons in whose hands and according to “whose will” is the realization of certain legal rights, which they need to realize. There are laws, but they do not apply them. However, bribery is the occurrence and “coverage” of illegal activities, or the realization of rights that are contrary to law, therefore a “lubrication” of persons who will enable these illegal activities by abuse of their power and laws is necessary. That are all acts of “corruption”, which is corruption by definition as well (corruption - bribery, corruption). In general, corruption is defined as an abuse and exploitation of the public function for personal gain, in all its shapes and forms, from the most ordinary “everyday” to the largest, with elements of organized crime and abuse of power, which is a real “cancer wound” of the society.

In Republic of Macedonia, the corruption is understood to involve the use of the function, public authorization, official duty and position for achieving any benefit for themselves or for others according to the Law on Prevention of Corruption (Law, 2002). Corruption includes several criminal offenses, but the subject of this paper research is focused on the criminal acts with elements of reception and giving bribes, receiving gifts, mediation and influence, as well as acquiring unlawful property gain only. These are corrupt criminal acts that cover criminal behaviour according to the perception of the citizens. These are criminal behaviours for which citizens have an information, encountered the problem of having to “bribe” or “give gifts”. There is nothing more dangerous in an organized society in terms of proper functioning of public services and the performance of public functions than bribery - the corruption of the holders of functions. At the same time, it is an attack on the freedom and citizens’ rights because corruption entails a violation of one of the basic principles of the law, the equality of citizens before the law. On the other hand, corrupt public officials perform their function inefficiently, with the (covetousness) individual interest over the general one.

CORRUPTION AND TYPES OF CORRUPTION

There are numerous definitions for corruption, but in common for all of them corruption is defined as an act of bribery of a public servant in order to complete some illegal work or to “accelerate” legal work. Bribery is an essential element of corruption, and the purpose of the perpetrators is precisely the “bribe” or “the value they would get for a good job”. Corruption belongs to terms that are difficult to determine the content denotatively because its significance changes over time in a given political context (Kregar, 2006). It is commonly considered that corruption is money-laundering in form of payment of services to a person who has legal power to commit an unlawful act in a shorter period of time than it is legally allowed. This socially dangerous phenomenon that brings the citizens into an unequal position violating the rules of law under the influence of corruption, it concerns or applies only to “those who can pay for the service or those who may incur non-fulfilment of a legal action to be performed”.

Corruption is an old phenomenon that alters emerging shapes and forms, adapts to social changes, especially to economic and political ones. The concept of corruption was studied by ancient Greek thinkers Plato and Aristotle, who developed it as a learning of profligate behaviour of the government contrary to the general interest. Corruption is defined as an act of breaking that is, manifesting a profligate attitude towards the moral values of

the society. Corruption is an immoral and harmful phenomenon and causes far-reaching consequences for the society and is directly dependent on the manner in which the entrusted functions are performed (Tupanchevski, 2015).

Corruption has a wide range of criminal activities that are constantly being explored and analysed. According to previous research, corruption is reduced to three types: “white”, “grey” and “black” corruption, and according to the level of corruption there are four levels: the lowest level of street corruption encountered daily that greatly affects the perception of the citizens, commonly known among the people as “present”, etc.; the average level of corruption in the business sector, which is reduced to occupation in catering facilities, the completion of certain services, and there are certain types of extortion; high level of corruption related to the criminal justice system - referring to the knowledge and actions of the perpetrators of the criminal justice system and law enforcement agencies in cases of corruption; and the highest or black corruption where there is a connection to organized crime and the exploitation of the function and power, involvement in organized criminal groups on the basis of power, function or influence and the acquisition of high amounts of illegal property gain. The most widespread and “most visible” is corruption at the first three levels, and the highest level is a high-profile corruption which refers to government involvement, but these are cases of abuse of office and authority, while bribery is most common in the first three levels of corrupting persons in the public sector.

CRIMINAL AND LEGAL ASPECTS OF THE PURCHASE IN THE REPUBLIC OF MACEDONIA

Bribery is a crime that manifests itself in many forms of criminal activity and passive criminal behaviour, or behavioural assistance and mediation in bribery. The Macedonian legislator in the first Criminal Code of the Republic of Macedonia since 1996 in Chapter 30, has systematized three criminal acts with elements of bribery: “Receiving a Bribery” in Art. 357; “Bribe” according to Art. 358 and “Counterfeit mediation” by Art. 359. These criminal acts since 1996 have been amended in accordance with the recommendations of the International Conventions, but new incriminations have been introduced in order to sanction the activities of receiving or giving presents as a way of corrupting public officials. The Criminal Code also defines the status characteristics of the perpetrators of crime, such as an official person, a foreign official, a responsible person, a foreign responsible person and a person performing activities of public interest, but also a legal entity because the legislator predicts as “bribe” can be a “legal entity”. Article 122, Criminal Code, Official Gazette of the Republic of Macedonia No. 37/96, 80/99, 19/04, 114/09 and 51/11). In any criminal relationship of bribery, one party is a “perpetrator” with status feature, that is, a “bribe” can be given by “every person”, but only “a person with status feature can receive”. These crimes are also intended to protect citizens from “persons with status qualities” who abuse them in order to gain some benefit for themselves or for others, but act criminally within the framework of performing “public service”, or besides the “salary” of the State, they earn in a criminal way from the citizens on behalf of the “service”, and for their own account.

The basis for these incriminations should therefore be sought, on the one hand, in the conflict between the principle of the rule of law and the performance of power and, on the other hand, between the ruling structure and its bureaucracy, which is the basis for undertaking various measures aimed at the state administrative to keep the device within the limits of the given powers” (Kambovski, 2003). As perpetrators of criminal offenses

against official duty are persons appointed or designated to perform a certain function in the structure of the government as holders of public, official powers or as persons who are in a managerial position in the public enterprises and other institutions where by law certain powers are provided. The official duty implies a true and proper fulfilment of official authority, in the sense in which such performance of these powers is a necessary element for the proper functioning of the rule of law. The object of protection includes the interest in the consistent respect of the freedoms and rights of the individual and the citizen, which may be endangered by various forms of abuse of the position of power.

RECEIVING A BRIBE

Receiving a bribe according to Art. 357 is a crime that can be committed by an official person, a responsible person, a person performing public interest matters, and a foreign official.

The legislator foresaw three forms of execution:

- For unlawful conduct in the performance of the service or in cases when “the perpetrator shall directly or indirectly request or receive a gift or other benefit or receive a promise of gift or other benefit for himself or for another to perform an official act that would not be allowed to perform or not to perform an official act that he would have to perform “, a punishment of imprisonment of four to ten years is provided.
- For legal actions in the performance of the service, in the cases when: “the offender, when he or she directly or indirectly requests or receives a gift or other benefit or receives a promise of gift or other benefit for himself or herself, in order to carry out an official act which he would have to perform, or not to perform an official act that he should not have performed, a sentence of imprisonment of one to five years is provided.
- After a “well-completed job” (legal or illegal) in cases where “the perpetrator, after the execution or non-performance of the official request, receives or agrees to receive a gift or other benefit, a sentence of imprisonment of three months to three years is provided.

Receipt of a bribe is a criminal offense because the legislator has foreseen higher penalties if the perpetrator has gained a greater property benefit, he or she will be punished with imprisonment of at least four years, and if the perpetrator has acquired significant property gain, he or she will be punished with imprisonment of at least five years. It is foreseen the seizure of the received gift or property benefit. Objectively, this crime constitutes a violation of the authority of the service and the trust of the citizens in the legal treatment of the officials. In the performance of their official duties, officials must be guided by the interests of the service, not by personal interests (Vitlarov, 2006). The receipt of bribes is one of the very serious crimes, because receiving a prize is a violation of the rules of service and the destruction of reputation, both of officials and of the official duty itself. In addition, such behaviour by officials can create habits for them and in the future seek and receive bribes or rewards. In official and responsible persons, bribery becomes their normal behaviour, they are guided by the amount of bribery, and are not guided by the rules of conduct imposed on them by their official position, but their operation depends on who and how much they “bribe”.

Receiving a bribe is a classically corrupt criminal act characteristic of all social arrangements, the purpose of the perpetrators is the same only changes the persons - their identity, depending on the position, function and power in the society. Criminal activity

is always related to persons who exploit their public, office or other function or power in society in order to acquire unlawful property gain (wealth) that they would not acquire by law in such a scale. "Man is the most insane living creature, and when it comes to corrupt activity, it can be said even boldly" (Nikoloska, 2013). Why exactly this conclusion? Always the perpetrators think that "they will not reveal them"; "They are close to the power, which makes them untouchable"; "they know how to do it, and the police can not reveal them, there is no capacity or power"; "skilfully negotiate with the other party - the bribe-takers"; but what is most dangerous is the psychological pretence of "corrupted persons" that they will not be disclosed, or that it is a "remuneration" they deserve because of their "commitment, dedication, expertise" and so on.

GIVING A BRIBE

Bribing (active bribery) is in a fundamentally unbreakable relationship with passive bribery. Accepting a bribe means accepting, agreeing to be corrupt, while giving bribery is an active corruption, incitement, indication of an official person, responsible person, responsible person in a foreign entity, a person performing public interest matters and a foreign official for an unlawful procedure. Therefore, both sides, the recipient and the briber are involved in this relationship. In the corpus of corruption there are two sides: the recipient and the bribe-taker. Although it seems that there is an internal connection in this relationship, this does not necessarily mean that giving a bribe can be only a single act in cases when the perpetrator bribes, without the official or other persons, by law envisaged as perpetrators of this act, wants to accept the bribe (Nikoloska, 2015). If he does not receive and report the case, then the responsibility for committing a criminal act refers to the bribe-taker.

Bribe-makers are natural persons and legal entities, but always, bribery should be directed to official, foreign official, responsible foreign persons or persons performing public interest matters. The criminal act has three forms of execution:

- Giving bribe for unlawful conduct, when "the perpetrator, who directly or indirectly gives an official, promises or will offer him a gift or other benefit for him or another to perform an official act that he should not perform or not to perform an official action that he or she should perform, a prison sentence of one to five years is foreseen"
- Bribe for legal action when: "the perpetrator who directly or indirectly gives an official, promises or will offer him a gift or other benefit for him or another to perform an official act that he or she should perform or not to perform an official act that should not be performed by him or the mediator in this, a sentence of imprisonment of one to three years is provided.

In cases when the bribe is reported from the "perpetrator" before the crime is discovered, that is, before it is committed, there is no criminal act for the "perpetrator" who gives bribe, there is a second part of the bribery-acceptance-bribe-taking. The object of the crime is confiscated. The liability of an official in a legal entity that has bribe does not exclude the liability of the legal entity for a certain official work in their interest carried out by the recipient of the bribe, an official within the scope of his official authority (Stojanov, 2005/2006). In each individual case it is necessary to clarify the manner of giving the gift, as well as the relationships that exists between the gift provider and the official, in order to be able to conclude what service the requesting gift provider requires for the official or responsible person to do within of his official powers. Certainly, the official can also grasp the purpose for which the gift is given, i.e. the official should know about the gift, otherwise

he can report that he is being bribed.” (Vitalarov, 2006). In case of bribery for legal action by the official person or other person in accordance with the law, that person acts legally, but violates the basic principle of equality of citizens before the law, giving certain advantages, the convenience of the bribe-taker or in turn, exceeds the limits of its powers in the interest of the bribe-maker.

GIVING A PRIZE FOR ILLEGAL INFLUENCE

An elected or appointed functionary, official and responsible person in a public enterprise or other legal entity disposing of state capital must not receive personal gifts or promise of gift, except suitable gifts, such as books, souvenirs and similar items of lesser value (Article 30) (Law, 2002). Giving a reward for the illegal influence (Article 358) is the incrimination introduced in the Macedonian criminal material legislation in 2011 in order to suppress the “trading with influence” by “influential persons” towards persons with status (Criminal Code, Supplement to the Criminal Code of the Republic of Macedonia, 2011). According to the manner of execution there are the following forms:

- Giving a reward for the unlawful influence on legal action, when: “the offender who directly or indirectly gives a reward, gift or other benefit or promise or offer for such benefit to him or a third person in order to exploit of his real or presumed influence, official or social position and reputation, demands, intervenes, instigates or in some other way influences the performance of a certain official act that would have to be performed or not to perform an official act that should not have been performed, consideration It is a prison sentence of one to three years.
- Giving a reward for the unlawful influence on lawful conduct, when: “the offender gives the award, the gift or other benefit, the promise or the offer for such benefit, directly or indirectly, to another to exploit its real or presumed influence, official or social position and reputation, demands, intervenes, instigates or otherwise influences an official act that should not be performed or not to perform an official act that would have to be performed, a prison sentence of one to five years is provided. If the crime is related to initiating a criminal procedure against a certain person, a prison sentence of three to five years is provided.
- Impact on a responsible person or a person performing activities of public interest is a special form of criminal act and this is realized when “the perpetrator who gives to another directly or indirectly a reward, gift or other benefit or a promise or offer for such a benefit , for him or for a third person, in order to exploit his real or supposed influence, official or social position and reputation, seek, intervene, encourage or otherwise influence a responsible person, responsible person in a foreign legal entity performing an activity in Republic Macedonia or a person performing a public interest to perform or not to perform an action that is contrary to his duty, provides a fine or imprisonment up to three years.
- Exemption from criminal liability is foreseen when the person who is to illegally mediate is required, and the offender reports it before it is discovered or before it finds out that it is detected. The award, gift or other benefit will be deducted.

RECEIVING A PRIZE FOR ILLEGAL INFLUENCE

In 2011, the Macedonian legislator redefined the criminal offense of Counter-arbitration mediation (Article 359 Criminal Code of the Republic of Macedonia, 2004) by changing the name with “Receiving a Prize for Illegal Influence” (Article 359) (Criminal Code, Supplement to the Criminal Code of the Republic of Macedonia, 2011). According to the manner of execution there are the following forms:

- Receiving a reward for the unlawful influence of legal action, when: “the offender who directly or indirectly receives a reward, gift or other benefit, or a promise or offer for such benefit to himself or to a third party in order to use his or her real or supposed influence, official or social position and reputation, demands, intervenes, instigates or otherwise influences the execution of an official act that must have been committed or not to be performed which must not have been performed, a prison sentence of one to three years is provided.
- Receiving a reward for the unlawful influence of legal action, when: “the perpetrator who by using his real or presumed influence, official or social position and reputation, will seek, intervene, encourage or otherwise act to perform an official act which should not have been performed or the official action that had to be performed was not performed, a prison sentence of one to three years is foreseen. If the crime has been committed in connection with initiating or prosecuting a criminal offense against a certain person, a prison sentence of one to five years is provided.
- The perpetrator seeks, intervenes, encourages or otherwise affects the responsible person, responsible person in the use of his/her real or presumed influence, official or social standing and reputation, seeks a reward, a gift or other benefit, or a promise of such benefit, intervenes, encourages or affects the responsible person a foreign legal entity performing an activity in the Republic of Macedonia or a person performing public interest activities to perform or not to act contrary to his duty, a fine or imprisonment of up to one year is foreseen. If the offense resulted in the illegal acquisition or loss of rights, or the acquisition of a greater property benefit or inflicting damage on another, domestic or foreign legal entity, a prison sentence of one to five years is provided.
- Criminal liability is foreseen for legal entities, for which a fine is provided.
- If for the mediation where the act was committed in an unlawful manner and for which a reward or other benefit was received, the offender shall be punished with imprisonment of one to ten years, in which case, the “perpetrator” is a legal entity. It will be punished with a fine.
- In terms of giving and receiving gifts, world experiences show the legal permission to receive a gift to an appropriate amount. According to an unwritten rule, London gifts are considered allowable - drinks that can be drunk within 24 hours, but this is also relative, because who can tell who and how much one can drink for that period of time. In the United States, the Organization for Ethics of Federal Servants allows them to receive gifts or values below \$ 25, with their total value not exceeding \$ 100 in one calendar year.

UNLAWFUL ACQUISITION AND CONCEALMENT OF PROPERTY

According to the Law on Prevention of Corruption, every elected or appointed person is obliged to report the property upon taking office and after leaving office, to report all changes in the property for himself and for the family members. It is foreseen for this

to fill in the questionnaire and a notarized statement. The questionnaire is the basis for investigating unlawfully acquired property. In 2004, the Macedonian legislator incriminated the crime as "Covering the origin of property disproportionately acquired", in 2009 it redefined with the new title "Unlawful acquisition and concealment of property" in Article 359 Official Gazette of the Republic of Macedonia, 2009.

Criminal behaviour consists of non-compliance with law when reporting property, in order to hide illegally acquired property or other values and rights. Thus, the criminal offence is committed when the perpetrator with a status of "Official" person or responsible person in a public enterprise, public institution or other legal entity disposing of state capital, which, contrary to the legal duty to report the assets or its change, will give false or incomplete data on his property or property belonging to his family members, which in a significant amount exceeds his legal income, shall be punished with imprisonment of six months to five years and with a fine, also, with the same fine, an official or a responsible person in a public enterprise, public institution or other legal entity disposing with state capital shall be fined, who, when acting in a legally regulated procedure, determines that during the performance of the office or duty, he or a member of his/her family, acquired property that significantly exceeds his legal income, gives false information, or conceals his real sources. If the crime is committed in respect of property that exceeds his legal income in large proportions, the perpetrator shall be punished with imprisonment of one to eight years and a fine. The perpetrator shall not be punished if in the procedure before the court he gave an acceptable explanation of the origin of the property. The property that exceeds the revenues that the perpetrator legally exercises for which he gave false or incomplete data or does not provide data or conceals his true sources is confiscated, and if his confiscation is not possible, the offender confiscates his other property corresponding to his value. The property is also confiscated by the members of the family of the perpetrator for whom it was realized or transferred to it if it is obvious that they did not give a counter-charge corresponding to its value, as well as from third parties if they do not prove that they have opposed a property corresponding to the object or property their value.

With this incrimination, a legal basis was created for engaging all competent institutions, primarily the Public Revenue Office, for the implementation of procedures, for determining the actual situation with the declared property on the data on actual revenues and the actual data on what the officials they report as income and the actual property they own (Vitlarov, 2006). The procedure is conducted by the Public Revenue Office *ex officio* or at the request of the State Commission for the Prevention of Corruption. "It is obvious that the legislator introduces instruments for monitoring the property status of the officials, that is, the elected and appointed persons, in order to prevent the use of the property acquisition function in an unlawful manner by abusing the position and other corruption-related offences. The obligation to register property is supplied for the official and responsible persons in the public enterprises and public institutions" (Manevski, 2005).

The burden of proof is the suspect who has a legal obligation in the proceedings before the court to give an acceptable explanation of the origin of the property.

SCOPE, STRUCTURE AND DYNAMICS OF THE BRIBE IN THE REPUBLIC OF MACEDONIA FOR THE PERIOD OF 2012 – 2016

In the investigated period from 2012 to 2016 (Table 1), out of the total number of 96 perpetrators reported for the crime "Receiving a Bribery" under Article 357 are 45, for "Bribe" according to Art. 358 reported 34 perpetrators, and for "Receiving a Prize for Illegal

Influence” by Article 359 are a total of 17 perpetrators. Out of the total number of reported defendants, 88 were, and 83 perpetrators were convicted. Compared to the other criminal offenses under Chapter 30 of Criminal Offenses against Official Duty (1996), criminal offenses with elements of bribery are deeds for which the highest percentage of both are indicted and convicted. Namely, the reported defendants are 91.7%; while 94.3% of the defendants were convicted, while 86.5% of the reported were convicted. In comparison with the investigated period 2007-2013, (Nikoloska, Boskov, & Jakovleska, *Criminalistics characteristics of crimes against official duty*, 2017), out of the total of 190 perpetrators of the investigated crimes committed by this investigation, 159 or 83.7 were charged, of which 137 were perpetrators or 86 were convicted. The percentage of convictions in relation to reporting is 72.1%, which points to greater efficiency of the prosecution authorities and, of course, the judiciary. But these are only statistical indicators of detected, clarified and proven cases that for the most part ended with imprisonment and the seizure of objects - subject to bribery. As the subject of seizure, only the objects found, that is, money as the most common means of bribery, are also subject to confiscation, but that is the money that was previously treated by the police officers. The money was processed with pre-photocopying, the photocopy was used to compare the found money as a subject of bribery. Part of the money that is previously provided with “official money” intended for operative actions, are returned after the end of the action.

Table 1: *Scope, structure and dynamics of the bribe in the Republic of Macedonia for the period 2012-2016*

YEAR	Article 357			Article 358			Article 359			Total		
	Reported	Accused	Convicted	Reported	Accused	Convicted	Reported	Accused	Convicted	Reported	Accused	Convicted
12	9	9	9	4	8	8	5	1	1	18	18	18
13	13	10	9	5	5	5	8	0	0	26	15	14
14	11	10	10	11	7	7	0	0	0	22	17	17
15	6	15	13	7	4	4	0	7	7	13	26	24
16	6	14	12	7	5	5	4	0	0	17	19	17
Total	45	58	53	34	29	29	17	8	8	96	88	83

Source: Nikoloska, 2015

Note. A reported person is a person against whom criminal charges have been filed due to the existence of grounds for suspicion that he / she is a perpetrator of a crime. The accused person is a person against whom a prosecution act has been raised by the prosecutor, which means there is a well-founded indictment that he or she is a perpetrator of a crime. The convicted person is a person for whom there is an effective court verdict by which the person was found guilty of the committed criminal act and for which the appropriate punishment and / or sanction has been pronounced.

CRIMINALISTICS RESEARCH OF CORRUPTION IN THE REPUBLIC OF MACEDONIA

The effective removal of corruption in the international arena is not only a matter of harmonization of penal legislation and the creation of other instruments for effective prosecution, but it is also a matter of complex anti-corruption legislation in each state, which presupposes the establishment of effective preventive, controlling and repressive mechanisms in several spheres: finance, banking, spending of budget funds, etc. (Kambovski V., 2003). The detection of criminal offenses with elements of receiving and giving bribes

and illegal actions is a very complex and specific process. Information come on a daily basis, and in most cases these data speak of bribery by officials in order to complete some work, to speed up the work, to “blur” where it should not do so. There is a lot of information and operational workers come to them every day, but it is quite specific to provide evidence for receiving, bribing or unlawful mediation. Often, these crimes are committed in a criminal situation where we have a bribe-taker, a recipient of bribery, but the existence of intermediaries in that process. Citizens say that they are being asked for a “bribe” and are bitter of accepting the “bribe” as a way to complete a job, even knowing the “tariff” of those who take “bribes”, but when they need to collaborate, they are retreating, probably due to fear of retribution.

Different ways of committing criminal offenses with elements of bribery are conditioned by the inability of some standardized methods in their clarification and proofing. However, the practice points to some important facts and circumstances that needs to be established in these crimes. First of all, they are: the form of bribery, time, place and manner of execution, the motives and the existing circumstances before the bribery and during the bribe, as well as the presence of the perpetrators, the inciters and other persons who participate in the commission of these crimes (Bošković, 1990). It is important to clarify the purpose of the bribery, that is, what the official person should do or not perform in the interest of the bribe-taker. Operational workers, although dealing with a complex criminal situation, work on the processing of operational information to which they come and plan ways, methods and means for clarifying and proving the existence of these crimes. During detection and clarification, several methods are used, most commonly in criminalistics, methods with chemical baths are pre-processed with photocopying of the money that should be given for bribery. Active co-operation is needed with people who have been asked for a purchase, while those offering bribe and not reporting are interested in doing their job.

The most common motive is the illegal acquisition of property benefits by persons who use their jobs, functions, influences, authorizations in order to exploit someone else’s “trouble” or “situation” to make money or any other benefit or service. The material evidence is different and, most often, it is items or money that “bribe” objects or money that need to be provided as evidence that a criminal act has been committed, but on those items or money to remain a trace from the recipient of a bribe or they are previously reported and processed by the Police. Most often, money or objects are coated with chemical substances, or photocopy money, etc. and they should be found at the receipt of the bribe, for the work to be completed. In the case of services, in those situations the operational work is directed to the detection of operational information and data for an organised trip paid by the bribe-taker in favour of the recipient of a bribe, in order to provide proof of who is the payer of the service, and which user and clarification of the purpose of payment of that service. Operational work certainly has the greatest role in collecting information and data on previous relationships and contacts between the recipient and the bribe-taker, business relations, relations with regard to seeking some administrative work, or else, these situations, although they have elements of receiving and giving bribes are usually brought under abuse of official duty and authorization on the basis of the evidence provided in a particular documentation prepared or certified and signed by the recipient of a bribe. These are mostly forged documents: decisions, contracts, travel orders, payment orders, suspicious payments for services that cannot be proven - management, advising, consulting, etc. After the introduction of special investigative measures, the most commonly criminal situations are elucidated and proven by applying these measures, in combination with operational -

tactical measures and investigative actions. These are complex operational combinations, for which, prior to the received and processed operational knowledge and provided adequate orders for the application of investigative actions and special investigative measures, the time, the crime scene (receiving and giving bribes) is planned and immediately it is clarified by arresting the perpetrators and finding them with the coins and funds that were previously processed.

The most common operational combinations are: getting initial operational knowledge, checking them, processing an application if it is available by the bribe-taker, talking to him, being offered marked money, and in certain situations a covert police scout, monitoring, wiretapping, or an operational combination that will fully clarify the criminal situation and immediately provide evidence materials. In these operational situations, operational actions are planned in which a large number of operational workers participate, each with its role in the process of clarification and proofing, and those actions are well-planned and implemented with a high level of secrecy and conspiracy and are managed by one centre.

CONCLUSIONS AND RECOMMENDATIONS

Bribery as a criminal behaviour is a serious problem for the Republic of Macedonia, in which although a series of legislative reforms, and especially the Criminal Code and the Law on Prevention of Corruption, have been made, but also reforms in strengthening the capacities of the state bodies and institutions competent for the suppression of corruption, legal measures and actions for providing evidence with the Law on Criminal Procedure (2002) have been introduced, especially with the introduction of special investigative measures, however, according to the Corruption Index, it is on the rise. Corruption in the form of receiving and giving bribes and receiving gifts, influences and illegal acquisition of property according to citizens' perception is on the increase, and according to the data on reported cases and convicted persons it is reduced, the percentage of efficiency increased from reported to convicted persons, which is not the same with other forms of corruption, especially in abuses of official duty, where the conviction is around 15% according to surveys from 2007 to 2016.

According to data from several surveys, citizens perceive corruption, especially bribery, recognize forms of corruption, but registration is avoided for many reasons. The most common are the mutual interest of the "bribe-taker" and "the recipient of a bribe", then mistrust in the prosecution authorities, and this can also be established on the basis of corrupt "professions" where customs officers, police officers, prosecutors are at a high level, all this indicates a mistrust of the citizens towards the State authorities.

The increased degree of conviction of perpetrators in relation to reported ones is due to the application of planned operational combinations, but also to the secret preparation and realisation of operational actions for detection, clarification and provision of evidence. Some of the actions are being prepared for a long period of time, "victims" are being prepared, however without well-planned action and provided relevant evidence, there is no successful case for conducting a criminal procedure and convicting the perpetrators. Well-planned actions lead to the provision of "solid and undeniable evidence" for the judiciary, and "the gods are silent before the evidence", so that the bribe in the judiciary is also reduced if quality evidence for these crimes is provided.

The biggest problem is the acceptance of the "bribery" as a "normal phenomenon" and "accepted by citizens", which in some parts of the country they perceive as the most normal occurrence of "bribe" or "reward".

In the past years, several campaigns have been conducted, SOS phones have been introduced for reporting corruption in Customs, in the Police, in other institutions, but the number of reported cases is small, which is a problem that needs to be addressed, raising awareness among citizens to report bribery, but also to cooperate in order to clarify cases by providing evidence.

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TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION IN CROATIA AND SERBIA

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ABSTRACT

The paper³ presents an overview of trafficking in human beings (THB) for the purpose of sexual exploitation in Croatia and Serbia. The paper is based on a legal, descriptive and comparative method of analyzing the international and national legal framework, state and trends. Sexual exploitation is the most common form of exploitation of victims of trafficking. Prostitution, sexual exploitation, child pornography and pedophilia were treated as manifested form. Significant place is held by a comparative critical review of international documents, solutions in the national legislations, analysis of the situation and trends of sexual exploitation. In combating THB, cooperation at national and international level is necessary. The paper is limited to research related to THB for the purpose of sexual exploitation in Croatia and Serbia. The paper, with a critical overview of previous solutions, gives analysis of the situation and trends of sexual exploitation as a form of THB.

Keywords: trafficking in human beings, sexual exploitation, forms, Croatia, Serbia

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INTRODUCTION

Trafficking in human beings is one of the most difficult forms of organized crime in today's modern times. It is a global problem that has long gone beyond national frameworks and represents an extreme threat to the entire international community. The victims of human trafficking in most cases appear to be young people, especially girls and children as the most vulnerable social groups. In the doctrine, legislation and practices of individual states, there has long been no uniform definition of trafficking in human beings and harmonized legislation, and thus prevailed the legal qualification of smuggling of people, prostitution and related forms of crime (Knežević, Božić & Nikač, 2017: 296).

The ethical dimension of trafficking in human beings starts with the causes and conditions of a mostly economic nature such as poverty, unemployment, the economic crisis in the world and especially the transition of countries from the former socialist bloc. There is also a low level of education of victims, inequality and discrimination of women, corruption, culture. In the phenomenology of trafficking, sexual and labor exploitation are the most common and most dangerous manifestations. Victimological aspects of trafficking in human beings puts young people in the forefront, women (girls) and particularly children as victims whose basic human rights and civil liberties are endangered.

The reaction of the society to trafficking in human beings and the most severe forms of crime include measures and actions at the domestic and international level, operational and legislative. At the national level, states undertake measures and actions to combat trafficking

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in human beings through specialized bodies such as police, prosecution, courts, customs, inspection services. The multi-agency approach, cooperation and coordination of these bodies are the most important for effectively combating trafficking in human beings and related sexual exploitation. In the normative-legal field, it is important to adopt applicable and sustainable legal solutions in this area, harmonized with international standards. In the international context, information exchange between states and organizations, joint operations, joint investigative teams, co-operation and co-ordination in the fight against trafficking in human beings is of great importance. The legislative aspect includes the adoption of international conventions, declarations, resolutions and memoranda in the fight against trafficking in human beings (Nikač, 2015: 79-88).

The Balkan route is an important crime route for the most serious forms of organized crime, human smuggling, trafficking in human beings, organs, animals and wild plants, narcotics and weapons. The Western Balkans is a bridge that brings together wealthy Western European clients and victims from the poor countries of the Near and Far East. In the function of achieving profit, human traffickers go hand in hand with the historical inheritance and consequences of recent war conflicts: transition, unemployment, poverty, high degree of corruption, fragile state institutions and inefficient mechanisms of control. Member States of ex Yugoslavia are on this route and rely on each other in a common struggle against trafficking in human beings. Slovenia and Croatia, which are now members of the EU, have a more favorable position, while Serbia and other countries have recently applied for accession to the Union.

METHODS

The aim of this paper is to investigate sexual exploitation as a form of trafficking in human beings in Croatia and Serbia, for this purpose we conducted three interrelated studies. In the first one, we given a theoretical framework of human trafficking and sexual exploitation, with an analysis of the national legislative framework of Croatia and Serbia and harmonization with international documents. The paper, therefore, is based on the normative, legal, descriptive and comparative method of analyzing the international and national legal framework of Croatia and Serbia in combating sexual exploitation of victims of trafficking in human beings. In the second study, the situation and the movement of sexual exploitation in the territory of Croatia and Serbia was investigated with special emphasis on victims of this form of trafficking in human beings. The analysis encompasses the current state and trends of this type of crime. In the third study, measures are being taken to combat the exploitation of human trafficking both at the national and at the regional level. The findings are presented below.

SEXUAL EXPLOITATION AS THE MOST COMMON MODEL FOR TRAFFICKING IN HUMAN BEINGS

CONCEPT AND ELEMENTS OF TRAFFICKING IN HUMAN BEINGS

The United Nations Convention on Transnational Organized Crime (UNCATOC) (United Nations [UN], 2000) is a par excellence international document adopted with a view to more effective combat against the most serious forms of organized crime. Additional documents were adopted for the purpose of its application: I - *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, II - *Protocol against the Smuggling of Migrants by Land, Sea and Air* III - *Protocol against the Illicit manufacturing of and Trafficking in firearms, their parts and components and ammunition* (UN, 2000).

According to Protocol I, Trafficking in human beings shall mean the recruitment, transportation, transfer, harboring or receipt of persons, 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 or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (UN, 2000). Consent of a victim of trafficking in human beings to the intended exploitation shall be considered irrelevant.

The essential elements of the criminal offense of trafficking in human beings relate to: (a) *act of commission*, (b) *assets* and (c) *purpose* (Božić, 2012). Some elements are additionally defined by state regulations such as: kidnapping, deception, abuse of position, vulnerability, forced labor, slavery, exploitation, abuse of vulnerability (Regionalne smjernice za identifikaciju trgovanih osoba, 2012).

As a form of trafficking in human beings, in practice, the most common are: (a) labor exploitation by forced labor or service, by establishing slavery or similar relationships; (b) sexual exploitation of prostitution, pornography, involuntary or forcible marriage; (c) trafficking in human organs; (d) use in armed conflicts; and e) use for the purpose of making an illegal act (Kazneni zakon Republike Hrvatske, 2017).

SEXUAL EXPLOITATION AS A FORM OF TRAFFICKING IN HUMAN BEINGS

Sexual exploitation is the most visible aspect of human trafficking, which is at the same time the most complex as there is a prior question of voluntary consent of the person to be exploited. This is a form of trafficking in human beings that is steadily progressing due to external environmental factors such as heavy economic opportunities and poverty in the countries of origin of the victims, a high degree of corruption, gender inequality, discrimination against women and human rights violations. This is also contributed by the internal factors pertaining to the personality of victims, the low level of education and the cultural level of the community.

Perpetrators and organizers abuse poverty and the difficult financial circumstances of victims who are looking for jobs and a better life. There are entire international organized crime groups that connect perpetrators and victims from the countries of origin, through the states of the transfer to the final destination. In groups, there is a classical division of labor and job specialization in order to achieve maximum profit and reduce the risk of criminal prosecution. Depending on the type of work the group is formed for: recruitment, escort, guidance, support and logistics, money laundering, exploitation and accompanying jobs, and corrupt highly-positioned civil servants (Božić, 2012: 48-49).

Victims are mostly young girls between the ages of 13 and 25, from the poorer regions, unemployed, whose naivety and lightheadedness are used by perpetrators. Criminal activity is greatly facilitated by the great popularity of social networks, the Internet, and attractive job offers abroad. After consent to a promised job and *good* earnings, the victims' situation changes after they arrive in the promised land, where their documents are seized, freedom of movement is denied and they are forced into prostitution and sexual exploitation (U.S. Department of State, 2016). Girls fall into debt bondage, causing them to be forced to prostitution to return the allegedly investing money to traffickers for the costs of transportation, accommodation, food, clothing.

The *modus operandi* of criminal offenses are fraud and deception by publishing false adverts and incorrect presentation of facts in terms of types of jobs that are offered, the amount of pay, status and other circumstances. Deception continues and the transfer to the state of destination and starting exploitation when traffickers do everything to extend this relationship with blackmail, threats and otherwise compromise the victims. Shooting and recording of group rape is a method by which traffickers blackmail the victims by threatening to send the images and records to families and media, forcing the victims to obedience and submission (Kovčo & Jelinić, 2003). Victims are kept in strict isolation, at the minimum of water and food, drugged and physically abused if they refuse to obey. This is a threat and warning to other girls who are coming or are already in the camps of traffickers (Gonzalez, 2003). Cases of murders of young women who tried to escape because they did not want to prostitute themselves are not rare. Thus, the bodies of the two Moldavian girls were found a few years ago in a river in Brčko (Bosnia and Herzegovina), with tied arms and legs and loaded with concrete blocks and duct taped mouths (Malarek, 2006: 48).

A special problem is the fact that victims of sexual exploitation are often engaged for the purpose of recruiting other women, as well as distrust towards the members of the police to whom they are unwilling to report criminal offenses for fear of deportation and imprisonment (Štulhofer, Raboteg-Šarić, & Marinović, 2002).

The most common forms of sexual exploitation are prostitution, sexual exploitation, child pornography and pedophilia:

- *Prostitution* is considered to be a provision of sexual services for money, based on the consent of the provider and receiver of services (Smartt, 2003: 168). Individual authors cite multiple categories of prostitution: forced, exploitative sexual activity and sexual work. Forced prostitution implies providing sexual services under compulsion in the form of threats, extortion or violence. Exploitation sexual activity includes sexual services of women whose earnings are constantly denied or taken. Sexual work or voluntary prostitution is a freely chosen activity and well paid job (Štulhofer et al., 2002). From the point of view of criminal law there is no compulsive prostitution because there is no special protective object, but it can actually exist in reality as a forced sexual act that somebody charges (Ristivojević, 2015: 8)
- *Sexual exploitation* includes criminal offenses related to sexual intercourse without consent, rape, serious criminal offenses against sexual liberties, sexual misconduct, sexual harassment (Kazneni zakon Republike Hrvatske, 2017). Under exploitation we include misuse of special physical conditions of a person as follows: immobility and paralysis, aphasia, deafness, drowsiness, dizziness, unconsciousness, with severe mental difficulties, disabilities, retardation, and inability to consent. An important element of sexual exploitation is the fact that the victim's condition can not provide resistance. In the function of this form of sexual exploitation, perpetrators resort to methods and means such as locking the victim, taking them to lonely and distant places, giving them intoxicating substances. Some of these forms of sexual exploitation represent more (qualified) forms of criminal offenses precisely because of the abuse of the victim's condition.
- *Child pornography* is a form of sexual exploitation which in the widest sense encompasses abuse of children for pornographic purposes (Wolak, Finkelhor, & Mitchell, 2005). It means sexual images of children, defined by international documents: Convention on the Rights of the Child (UNICEF, 1991), Convention on Cybercrime (Council of Europe, 2001), Council of Europe Convention on the Protection of Children against

Sexual Exploitation and Sexual Abuse (Council of Europe, 2007) and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography (2011). Documents correlate the concept and elements of pornography as a visual representation of a minor who is subject to sexually explicit behavior. Child abuse is covered by the concept of sexual grooming, which is the process in which an adult prepares the child and the environment for sexual abuse of the child (Škrtić, 2013).

- *Pedophilia* is a sexual disorder that is reflected in sexual attraction to the same or opposite sex or both sexes. It is a kind of sexual perversion in the form of a tendency toward children, form of sexual abuse and violence against children in the function of satisfying the lust and sexual urges of adults. According to medical concepts, pedophilia belongs to a group of diseases called paraphilia, as a category of related mental disorders in the group of disorders of sexual preference (Braun, 2007). Pedophiles are, as a rule, male, which sexual excitement is achieved by physical or sexual contact with the children of the pre-puberty, with whom they are not related. They can be heterosexual or homosexual, unmarried, married, divorced and widowed. They are deviant, socially immature and irresponsible people who can not control their urges in an acceptable way. In cases of minor social danger there are no elements of criminal offenses and criminal responsibility of pedophiles, whereas in some cases these actions may be referred to as lascivious behavior (Kazneni zakon Republike Hrvatske, 2017). Sexual exploitation includes certain sub-categories related to the type and location of exploitation such as: street prostitution, so-called. window prostitution and brothels, strip clubs and bars, pornographic industry, so-called escort agencies, fashion agencies and massage agencies (European Commission, 2015).

FINDINGS

LEGISLATIVE FRAMEWORK FOR COMBATING SEXUAL EXPLOITATION

International Legal Framework. At the international level, there are several legal sources of importance for the suppression of sexual exploitation as a form for trafficking in human beings. We have systematized the sources on those of general character and *stricto sensu* specific sources for the area of sexual exploitation.

In the group of international sources of the general character of suppression of trafficking in human beings we quote: The Universal Declaration of Human Rights (UN, 1948), *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (United Nations Human Rights Office of the High Commissioner, 1949) and historical documents *Slavery Convention* (1926), *Forced Labor Convention* (International labour organisation, 1930), *Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe, 2005).

These documents point out the prohibition of trafficking in persons (Article 3 of the General Declaration), the right to life, freedom and personal security, the prohibition of slavery, the right to free movement, the crossing of borders and the right to asylum. *Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe, 2005) applies to all forms of trafficking in human beings within a single country and cross-border and provides the legal framework for combating trafficking in human beings (Derenčinović, 2010).

In the group of *stricto sensu* sources in the field of suppression of sexual exploitation we cite: *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (United Nations Human Rights Office of the High Commissioner, 1949), UN Convention against transnational organized crime (UN, 2000), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations Human Rights Office of the High Commissioner, 2000b), Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2007). In the second half of last century, more essential documents were adopted in this area and the Hague ministerial declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation (1997).

Of the most important solutions, we point to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, which prescribes the obligation to counteract trafficking in human beings in the legislation of the signatories. Actions such as recruiting, transporting, transferring, providing shelter, or accepting a child for exploitation will be considered as human trafficking even without the use of any means as a necessary element of trafficking in human beings (United Nations Human Rights Office of the High Commissioner, 2000b).

According to the Convention on the protection of children against sexual exploitation and sexual abuse states parties are obliged to adopt legal measures for criminal sanctioning of acts such as sexual assault, child prostitution, child pornography, moral corruption of a child and sexual exploitation of a child (Council of Europe, 2007). The Hague ministerial declaration on European Guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation (1997) affirms the multidisciplinary approach of the bodies, imposes the introduction of independent state reporters in the fight against trafficking in human beings, supervision of the work of state institutions and the psychosocial protection of victims of trafficking in human beings (Maderić, 2008).

Of the other documents we cite the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (United Nations Human Rights Office of the High Commissioner, 2000a), as well as the *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim* (2011), which replaces the *Framework Decision of the Council of the European Union on the Suppression of Trafficking in Human Beings of 19/07/2002* (2002).

National Legal Framework of Croatia and Serbia. Croatia is an EU Member State that has aligned its positive legislation with international documents and harmonized its national criminal legislation. The offense of trafficking in human beings for sexual exploitation is prescribed in art.106 (*Kazneni zakon Republike Hrvatske*, 2017), which consists of three constituent elements:

- *activities*, (recruits, transports, transfers, harbors or receives a person or exchanges or transfers control of the person)
- *means* (force, threats, fraud, deception, kidnapping, misuse of power or serious position or relationship of dependency, giving or receiving a monetary or other benefit)
- *purpose* (with the aim of sexual exploitation).

The victim is not guilty of perpetrating the offense and can not be held liable. This is evidenced by the jurisprudence that the victims of human trafficking are not charged with the failure to report the offense (Supreme Court of the Republic of Croatia, 2014).

The criminal offense of sexual expulsion, as a form of trafficking in persons, is considered to be formally completed when the perpetrator commits any of the incriminating acts with any of the aforementioned means. If after this there is also exploitation will be an aggravating circumstance, which will have implications in determining the sentence. At the beginning of the exploitation of the object of the act, it is considered that the criminal offense is materially completed. The victim's consent to sexual exploitation is without prejudice to the commission of a criminal offense (Kazneni zakon Republike Hrvatske, 2017).

The law provides for a prison sentence ranging from 1 to 10 years for a perpetrator who commits, transports, conveys, conceals or receives a person or a child, or exchanges or transfers a person or a child for the purpose of exploiting it for prostitution or other forms of sexual exploitation, including pornography, or to commit an unlawful or forcible marriage (Kazneni zakon Republike Hrvatske, 2017) as well as to use victim's services if they knew that it was a victim of trafficking in human beings (Kazneni zakon Republike Hrvatske, 2017). If a criminal offense has been committed against a child or in relation to a large number of persons or life of one or more persons has knowingly been endangered and if the offense has been committed by an official in the performance of his or her service, it is an aggravated form of the criminal offense punishable by a prison sentence of 3 to 15 years (Kazneni zakon Republike Hrvatske, 2017).

Incriminated is retaining, removing, concealing, damaging or destroying travel documents or identity documents of another person, as well as attempt at incriminating acts with the aim of facilitating the commission of the crime of trafficking in persons (Kazneni zakon Republike Hrvatske, 2017).

In addition to the Criminal Code, we also point to other regulations important for combating trafficking in human beings with the purpose of sexual exploitation. Thus, the Law on Liability of Legal Persons for Criminal Offenses (Zakon o odgovornosti pravnih lica za krivična dela, 2012) provides for the punishment of legal persons (caterers, tourist agencies) that are organized into a criminal activity of trafficking in human beings. The Criminal Procedure Act (Zakonom o kaznenom postupku, 2017) and the Law on Juvenile Courts (Zakonom o sudovima za mladež, 2015) provide opportunities for realizing the broader rights of victims of torture and the protection of vulnerable witnesses. The Law on Witness Protection (Zakon o zaštiti svjedoka, 2017) provides process protection to witnesses in criminal proceedings that contribute to the detection and sanctioning of trafficking in human beings. The Law on the Office for the Suppression of Corruption and Organized Crime (Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta, 2017) establishes the jurisdiction of USKOK and the State Attorney's Office for criminal offenses of trafficking in human beings.

Serbia is in a more unfavorable position because it is in the process of applying for EU accession, so it is only about to align legislation and other harmonization measures.

The criminal offense of trafficking in human beings is provided in Article 388 of the Criminal code of the Republic of Serbia (Krivični zakonik Republike Srbije, 2016) under the group of criminal offenses against humanity and other goods protected by international law - Chapter XXXIV. The criminal offense consists of three constituent elements:

- *activities* (recruits, transports, transfers, sells, buys, mediates in sale, hides or holds another person);
- *means* (forces, threats, fraud, deception, abuse of power or trust, relationship of dependence, aggravated position, difficult circumstances of others, or retention of personal documents or giving or receiving money or other benefits); and

- *purpose* (with a purpose of sexual exploitation, use for pornographic purposes and other forms of trafficking in human beings).

The law specifies qualified forms when: offence done against a minor with or without force and threat, grievous bodily harm to an adult or a minor, death of one or more persons (par.5), offence performed by a group or organized group, offence performed with knowledge of the status of the person - victim, minor (Krivični zakonik Republike Srbije, 2016).

The victim is not guilty of a crime and can not be held criminally responsible even in the case of consent to exploitation, slavery or similar status within the main offense, in the case of juvenile victims and part of a criminal group (Krivični zakonik Republike Srbije, 2016).

The criminal offense of trafficking in human beings for the purpose of sexual exploitation has been formally completed when the perpetrator performs any of the incriminated actions. If afterwards the exploitation of the victim occurs, this is an aggravating circumstance, which affects the sentencing. It is considered that the criminal offense is materially completed at the beginning of the exploitation of the object of the offense, while the consent of the victim to sexual exploitation has no influence on the commission of the criminal offense (Krivični zakonik Republike Srbije, 2016).

The law provides for a prison sentence of 3-12 years for a perpetrator who by one of these means of execution recruits, transports, transfers, sells, buys, mediates in sale, hides or holds another person for the purpose of exploitation for prostitution or other forms of sexual exploitation, including pornography. Penalties have been significantly tightened and range from 5 to 10 years in prison if the crime is committed against a minor, in the event of serious bodily injury, death of one or more persons, the execution of a group or organized criminal groups (Krivični zakonik Republike Srbije, 2016).

There is also a special form of trafficking in human beings known as trafficking in minors for adoption (Krivični zakonik Republike Srbije, 2016). In addition to the Criminal Code, we also point to other regulations important for combating trafficking in human beings with the purpose of sexual exploitation. Thus, the Law on Liability of Legal Persons for Criminal Offenses (Zakon o odgovornosti pravnih lica za krivična dela, 2012) provides for the punishment of legal persons (caterers, tourist agencies) that are organized into a criminal activity of trafficking in human beings. The Criminal Procedure Act (Zakonik o krivičnom postupku, 2014, and the Law on Juvenile Offenders and Criminal Protection of Minors (Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, 2005) contribute to the realization of the rights of victims of trafficking in human beings and the protection of vulnerable witnesses. The Law on Protection of Participants in Criminal Procedure (Zakon o programu zaštite učesnika u krivičnom postupku, 2005) provides for procedural protection for witnesses in criminal proceedings that contribute to the detection and sanctioning of trafficking in human beings.

ANALYSIS OF SITUATION AND TRENDS OF SEXUAL EXPLOITATION IN TRAFFICKING IN HUMAN BEINGS WITHIN CROATIA AND SERBIA

In the Republic of Croatia in 2016 a total of 30 trafficking victims were recorded. Most of the identified victims were Croatian citizens aged 22 to 30 who were exploited in Croatia by, mostly, Croatian citizens. These were forms of sexual (16) and labor (13) exploitation. There was also one victim of double (labor and sexual) exploitation (Table 1).

Table 1: *Number of victims of trafficking in human beings recorded by type of exploitation in Croatia in 2016*

Forms of exploitation	Trafficking in human beings in Republic of Croatia in 2016		Frequency
	Number	Percentage	
Sexual	16	53,33	1
Labor	13	43,33	2
Multiple	1	3,33	3
Total	30	100	3

Source: Ministry of the Interior of Republic of Croatia, 2017

We note in particular that the Republic of Croatia in the beginning was only a transit country, but recently is increasingly becoming a country of origin and final destination of victims of trafficking in human beings.

In Republic of Serbia, in 2016, a total of 57 victims of trafficking were recorded. In most cases, victims were sexually exploited (31), while a large number of victims were multiply exploited (11). According to the number of victims, second place is labor exploitation (7), then third forced marriage (4) and the fourth place is trafficking for adoption (2). Two victims were exploited for begging (1) and for coercion to commit criminal offenses (1) (Table 2).

Table 2: *Number of victims of trafficking in human beings recorded by type of exploitation in Serbia in 2016*

Forms of exploitation	Trafficking in human beings in Republic of Serbia in 2016		Frequency
	Number	Percentage	
sexual	31	54,39	1
multiple	11	19,30	2
labor	7	12,28	3
forced marriage	4	7,02	4
trafficking for adoption	2	3,51	5
begging	1	1,75	6
coercion into criminal activity	1	1,75	6
Total	57	100	7

Source: Center for Protection of Victims of Trafficking in Belgrade, 2017

Particularly interesting is the multiple exploitation that in most cases (6 out of 8) included sexual exploitation, associated with yet another form of exploitation. Forced marriages are linked with both begging and labor exploitation. In summary, out of 11 multiply exploited victims 4 were triple exploited, while 6 victims were double exploited.

To conclude, sexual exploitation as a form of trafficking in human beings is most represented (over 50%) in both the Republic of Croatia and the Republic of Serbia. It is interesting that the number of victims of sexual exploitation is twice as high in Republic of Serbia as it is in the Republic of Croatia, which corresponds to the total number of victims on all grounds, which is also twice as big.

COMBATING SEXUAL EXPLOITATION AS A FORM OF TRAFFICKING IN HUMAN BEINGS

The fight against organized crime, trafficking in human beings and sexual exploitation as its leading form takes place at the national and international level. By character and content these are measures and actions that are normative and operational (Nikač, 2015).

In the Republic of Croatia, the Ministry of the Interior - the Police Directorate and the organizational units of the Border Police and Criminal Police Directorate, then Customs, the judicial bodies (court, prosecution, judicial police), and the USKOK, are engaged in the fight against trafficking in human beings and sexual exploitation. Successful work on the fight against trafficking in human beings and sexual exploitation includes the multidisciplinary approach, collaboration and joint work, information exchange, joint operations and joint investigative teams.

The National Framework for the Suppression of Trafficking in Human Beings for the period from 2016 to 2020 (Ministarstvo unutarnjih poslova Republike Hrvatske, 2016), adopted by the Government of the Republic of Croatia, is the starting point for the implementation of the activities in the fight against trafficking in human beings and its forms. The essential elements of the Plan are: normative framework; identification of victims of trafficking in human beings; detection, prosecution and sanctioning of perpetrators of a criminal offense of trafficking in persons; assistance and protection of victims of trafficking in human beings; prevention; education; international cooperation and coordination of activities. In the function of the application, the Ministry of the Interior of RC has implemented the National Anti-Trafficking Program, which addresses the motives for trafficking in human beings, based on the suspicion that it is a criminal offense of trafficking in human beings and cites police activities.

There are specialized bodies in Serbia, the RS Ministry of Interior and the police in its composition - the Police Directorate and the Border Police Directorate and the Criminal Police Directorate, Customs and Judicial Bodies (court, prosecution, judicial police). Multi-agency approach, cooperation, information exchange, and the joint work of law enforcement agencies are the same operating "software". The RS Government adopted the 2017 Strategy for Prevention and Suppression of Trafficking in Human Beings, especially women and children and protection of victims for the period 2017-2022 (Strategija prevencije i suzbijanja trgovine ljudima, posebno ženama i decom i zaštite žrtava 2017-2022, 2017).

Regional cooperation between states and organizations is important in combating organized crime, trafficking in human beings and its forms and involves many countries. Police Cooperation Convention for SEE – PCC SEE2006 i Convention SELEC-Southeast European Law Enforcement Center 2011 have a special importance for cooperation in the Region (Božić & Nikač, 2016). Joint research teams are today one of the most effective tools for combating human trafficking and its appearance in the Region and at the EU level (Nikač, Božić, & Simić, 2017).

Bilateral co-operation between states is based on the conclusion of a cooperation agreement for the application of multilateral agreements and independent agreements on mutual police and criminal law cooperation (Nikač & Juras, 2015).

Significant part of the cooperation is also carried out through specialized organizations, Interpol and Europol. In combating trafficking in human beings, FRONTEX has an important role to play in coordinating border police cooperation between states and controlling migration flows at the EU's external borders.

CONCLUSION

Trafficking in human beings, mostly young girls, for the purpose of sexual exploitation is the leading form of trafficking in human beings as a criminal offense against humanity and human dignity. In the last two decades of this century, trafficking in human beings has gone to unforeseen heights, and the situation was further aggravated by the current migration crisis in the world. In addition to illegal migration, economic crisis in the world, the post-communist transition, the lack of jobs, poorly paid jobs, inequality of the sexes and the discrimination of women have also influenced the increase in the number of criminal offenses of trafficking in human beings.

The Republic of Croatia as a member of the EU has aligned its national normative legal framework with the EU legislative and international documents as well as the legal standards of the European Court of Human Rights. Concerning the implementation of the solution in practice, there is a need to establish better and more versatile law enforcement agencies, since the multi-agency approach provides the basis for more effective combating of trafficking and sexual exploitation. It is particularly important to intensify co-operation between police officers and state attorneys so that perpetrators and traffickers are timely detected and punished. The Republic of Serbia is currently in a disadvantage because it is not yet an EU member, but the submitted membership application obliges it to perform the harmonization of the national criminal code legislation. Serbia has an important role to play in controlling and stopping the current migrant waves, combating trafficking in human beings and sexual exploitation.

Victimological dimension of trafficking in human beings with the purpose of sexual exploitation puts victims in the foreground. A comprehensive approach to victims through a complete help, protection and security, while ensuring confidentiality of personal data in all phases, with an aim of faster recovery and integration / reintegration is of vital importance. In preventing trafficking in human beings and sexual exploitation, it is necessary to supplement the current techniques and methods of recruiting victims in order to better understand the problem of trafficking and its scope. In this context, special attention should be paid to the control of advertising of jobs and the conditions offered, in particular in relation to the fashion world, the summer season and the advertising on the Internet. Of crucial importance are public campaigns, education, studies and research with a view to raising the awareness of citizens about the problem of trafficking in women, girls and children with the aim of sexual exploitation. The repressive aspect includes prompt and effective response of state bodies and the development of methods for the identification of sexual exploitation.

Finally, it is important to note that international criminal law and police co-operation on the bilateral, regional and multilateral level is important in combating trafficking in human beings and sexual exploitation.

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**CRIME,
CRIME ANALYSIS
AND CRIME
PREVENTION**

CRIMINOLOGICAL AND LEGAL ASPECTS OF CROATIAN PORTS AND MARINAS SECURITY

Josip Pavliček¹, Adriana Vincenca Padovan², Marija Pijaca³

ABSTRACT

The article⁴ provides results of phenomenological research of criminal offences as the most severe forms of threat to security in Croatian ports and marinas. It also analyses legal norms related to security in ports and marinas. In particular, the study deals with criminological features of 981 offences committed in Croatian ports and marinas in a seven-year period. The research results confirm the hypothesis according to which there are significantly more criminal offences committed in ports open to public traffic compared to marinas. The crime mainly includes offences against property, predominantly theft (51%) and aggravated theft (21.6%), occurring mostly during summer tourist season. In relation to the research results, the authors analyse the relevant criminal, administrative and civil law norms aimed at providing legal protection to ports and marinas, as well as to their users. Special emphasis is placed on marina operator's liability for damage arising from criminal offences.

Keywords: security in ports and marinas, legal aspects of security, nautical tourism, criminal offences, maritime security

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INTRODUCTION

Amongst the most significant indicators of security in ports and marinas is the data on the type and number of criminal offences committed in those micro locations. There are numerous causes which pose a threat to ports security due to their transport, economic, tourist and other functions both in the Republic of Croatia and worldwide. However, marinas are primarily in the function of nautical tourism. Considering this tourism-related component which is common to ports and marinas, the article will put an emphasis on observing the analysed crime through the prism of its influence on tourism which is an important economic branch of Croatian economy. Apart from the natural beauties and kind personnel, personal security is among the most important factors which affect the level of satisfaction of tourists coming to the Republic of Croatia (Marušić, Čorak, & Sever, 2018). Furthermore, criminal offences, as the most severe form of threat to people's security, have the highest impact on the perception of one's own security (Garg, 2015: 4). That is where we have found the grounds for this criminological analysis because it is important, among other issues, as a foundation for making security assessments and designing an efficient crime prevention system. It should be pointed out that this is a very rare criminological aspect to consider since the search of the available scientific databases did not yield any scientific or professional papers analysing crime in ports or marinas.

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Furthermore, the paper will present an overview of the existing Croatian legal framework relating to security in the seaports, and particularly in marinas as special purpose – nautical tourism ports, considering their dominant role in nautical tourism in Croatia, and the fact that a majority of the total number of nautical berths are situated in marinas (Perko, 2017: 24). Due to the importance of marina industry for sustainable development of nautical tourism, the issue of marina operator's civil liability arising from adverse incidents such as criminal offences against property or persons within the marina is identified as relevant for the research. It is placed in relation to the matter of minimum security standards whether prescribed by law or legitimately expected by the clients based on berthing contracts. Therefore, we will shortly look into the standard business practices and berthing contract terms of Croatian marinas, as well as the relevant judicial practice dealing with marina operator's third party liability for damage arising from criminal acts against property or persons within marinas. Such analysis should show whether the prevailing business models relating to security in marinas strike a fair balance between the commercial interests of the marina operators and the legitimate expectations of their clients or whether there is place for improvement in the general interest of security and of sustainable development of this strategically important branch of economy in Croatia.

As a matter of terminology, Croatian Maritime Domain and Seaports Act (2004) (hereinafter: MDSPA) differentiates seaports open to public traffic and special purpose ports. Marina is a type of a special purpose port dedicated to nautical tourism. It is a port serving for the reception and accommodation of vessels, equipped for the provision of services to its users and vessels, and which businesswise, construction wise and functionally forms a unified whole (Regulation on the Classification of the Seaports Open to Public Traffic and of the Special Purpose Ports, 2004: Article 10). Marina is defined as a part of water space and of the shore specially constructed and arranged for the provision of moorings, accommodation of tourists on the vessels and other services in nautical tourism (Ordinance on the Classification and Categorization of the Ports of Nautical Tourism [OCCPNT], 2008: Article 10). It is operated by a single concessionaire, a commercial company (marina operator). On the other hand, seaports open to public traffic are operated on a landlord model, by the port authorities established by the state or regional government that are, *inter alia*, entitled to grant concessions and concession permits to providers of various port services or port facility operators.

AN ANALYSIS OF THE TYPES OF CRIMINAL OFFENCES IN CROATIAN PORTS AND MARINAS

The first part of the article is focuses only on the phenomenological analysis of criminal offences committed in ports and marinas. Etiological aspects have not been considered in more detail because of a foreseen limited scope of the paper.

METHODOLOGICAL CONSIDERATIONS

As mentioned above, the main features of the types of crime in Croatian ports and marinas have been selected as the problem of this research. The research is limited to the study of the criminal offences, whilst misdemeanours and other less severe forms of threats to security have not been taken into account. The sample consists of 981 criminal offences in the sea and inland ports and marinas on the territory of the entire Republic of Croatia from 1 January 2010 to 31 December 2016. The data includes all reported criminal acts committed

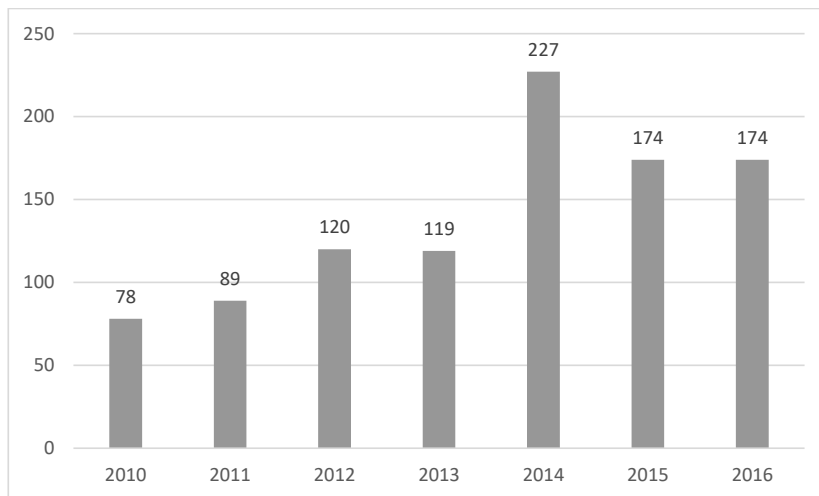
in ports and marinas in the mentioned analysed period. The focus is mainly on the sea ports and marinas because only four criminal acts against the property were committed in inland ports. The data on criminal offences was gathered from the records of the Ministry of the Interior. Due to a large overall number of the included criminal offences, data entry and processing started in mid-2017 which is why the data for this particular year was not available at the time of research. Based on the available data, a special survey was prepared and used to analyse each and every criminal offence. The collected data was statistically processed using the IBM SPSS 20 software tool.

The information regarding security in marinas and the standard terms of berthing contracts was collected through field research in marinas and interviews of marina management staff based on a questionnaire, covering 35 marinas in Croatia, 1 in Slovenia, 4 in Malta, 4 in Spain, 3 in Italy and the association of Italian marinas ASSOMARINAS.

The initial hypothesis of this research is that considerably more criminal offences are committed in ports open to public traffic compared to marinas and that most of these offences are crimes against property committed during summer season.

RESULTS AND DISCUSSION

The initial analysis focused on the distribution of criminal offences in the analysed period and it showed that in the first part of the seven-year period there was a rising trend of criminal offences committed in ports and marinas, concretely, from 78 in 2010 to 227 in 2014, which indicates that the figure almost tripled (Graph 1). The second part of the analysed period recorded a decrease in the number of criminal offences by 23% in 2015 and 2016.

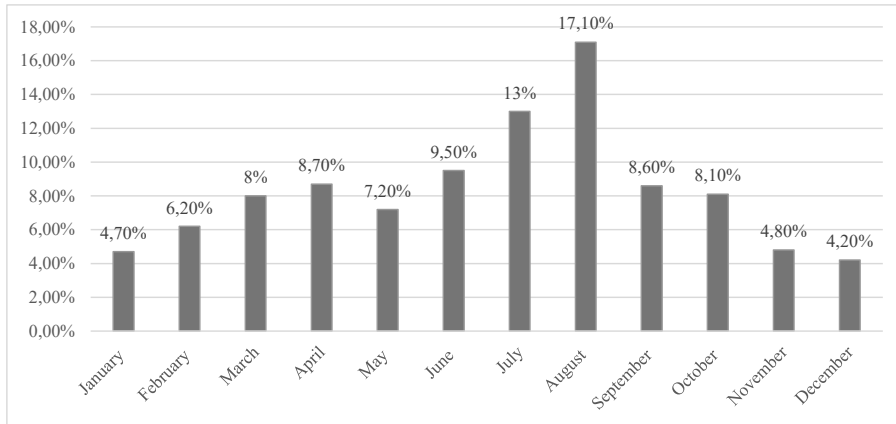


$$(\chi^2 = 1.225, df = 6, p < 0.001)$$

Graph 1: *Number of reported criminal offences (N=981)*

It should be clarified that the share of the analysed criminal offences is not too significant when compared to the total crime rate in the Republic of Croatia. The total number of criminal offences in the Republic of Croatia in the analysed period ranged from 75 620 in 2011 to 55 824 in 2016 (Ministry of the Interior, 2016) while the average share of the analysed type of crime amounted to less than 0.003% in the total crime rate.

If individual years are observed, the analysis brings us to a conclusion that an increase in the number of tourists and other users of ports and marinas over the year contributes to an increase in the number of criminal offences. Such impact, on the level of the entire tourist destination, is also confirmed by certain studies, as mentioned by Montolio and Planells (2013: 5). Accordingly, as expected, the largest number of criminal offences was recorded during summer tourist season, especially during its peak in July and August when almost a third of the analysed criminal offences occurred (Graph 2).



$$(\chi^2 = 1.766, df = 11, p < 0.001)$$

Graph 2: *Distribution of criminal offences per month throughout a year (N=981)*

Considering the time when the criminal offences occurred, 39.3% of them were committed during several day periods of absence of the owners from their vessels and other movable property against which the crime was committed. It has been established that 37.2% of criminal offences were committed in the evening or at night-time, while the rest (23.4%) were committed at daytime. ($\chi^2 = 43.835, df = 2, p < 0.001$)

If we analyse the territorial distribution of the analysed criminal offences in the Republic of Croatia more closely, we can establish that the majority occurred in Split-Dalmatia County (27.8%), Istria County (26%) and Primorje-Gorski Kotar County (20.9%) which are also the counties with the largest population and which have the highest number of tourists. ($\chi^2 = 1156.095, df = 9, p < 0.001$) The area of the city of Pula in Istria County stands out as a micro location because 12.9% of the total number of criminal offences were committed there alone.

The analysis also indicates that notably more criminal offences were committed in ports open to public traffic, amounting to as much as 69%, whilst only 16.9% occurred in marinas. This was expected since there are approximately 440 ports, harbours and small harbours along Croatian coast and on its islands (Perko, 2017:24) and about 100 sports ports (Luković et al., 2015:167). On the other hand, there are 57 marinas registered in the Republic of Croatia (Croatian Bureau of Statistics, 2017). Criminal offences committed in the streets or promenades alongside ports open to public traffic have also been considered. These public spaces are located next to or within the ports open to public traffic, and a total of 8.9% of criminal offences were recorded there. Considering that anchorages, mooring areas and unclassified nautical tourism ports are also in the function of nautical tourism, and in Croatia

there is an official record of 68 such facilities (Croatian Bureau of Statistics, 2017), another 5.2% of criminal offences were recorded in such places. ($\chi^2 = 1041.650$, $df = 3$, $p < 0.001$)

Apart from the distribution of criminal offences over space and time, the structure of crime in terms of types of criminal offences was also analysed. The results are in line with the expectations laid out in the main hypothesis. A total of 83.8% of the analysed criminal offences are exclusively offences against property which can be broken down into: 51% theft; 21.6% aggravated theft; 11.2% causing damage to other people's property and 2.3% embezzlement. The largest share in the aggravated theft category belongs to the cases of burglary (20.5%) and the cases of aggravated theft where high value items were stolen (0.7%). Aggravated theft cases where high value items were stolen mainly refer to the theft of very valuable vessels, while cargo thefts in ports worth millions, as mentioned by Frittelli (2005: 9), have not been recorded as a type of crime in Croatian ports. There are certain criminal offences on record which are less frequent such as drugs abuse related offences (3.7%), threats (2.9%), forgery of documents (1.4%) and customs control evasion (1.1%). Another 30 different criminal offences were committed in the analysed period which do not constitute a significant share in the crime rate or they are recorded as single cases such as extortion, unauthorized use of other people's movable assets, prostitution, illegal collection. ($\chi^2 = 2506.426$, $df = 10$, $p < 0.001$) If we compare this structure and the volume of criminal activity with the main threats to security in the other European ports, including transport of bombs by ships or using ships as bombs, narcoterrorism, weapons smuggling, human trafficking, illegal migrations and drugs, alcohol and cigarettes smuggling, as mentioned by Carpenter (2012), we can see that they do not fit in this scope. It is in fact the opposite, it should be emphasized that there were no serious single criminal offences committed in ports and marinas such as murders, robberies or terrorist attacks which would, considering their consequences, have a significant impact on the security of people and property.

As there is a high share of burglaries, the majority of items stolen from vessels are personal items, nautical gear, vessel equipment (30.3%). In terms of individual objects, in 13.5% of cases outboard engines were stolen from the vessels, while in 12.4% of cases personal documents, money and credit cards were stolen. From the criminological point of view, it is interesting that in 4.1% of analysed criminal offences metal parts of infrastructure in ports and marinas or parts of vessels were stolen in order to be resold as secondary raw material. ($\chi^2 = 1367.763$, $df = 15$, $p < 0.001$)

Thefts of vessels were analysed in particular. In the analysed period, there were 58 such cases or 5.9% in the total number of criminal offences. Mostly smaller vessels were stolen such as inflatable boats or small fishing boats, while there were only few cases where expensive yachts were stolen. In the majority of cases, yacht thefts were connected to unresolved ownership issues. Since there is a high share of criminal offences causing damage to other people's property, we have found that this most frequently includes damage to vessels, vessel parts or vessel interiors (in 64.6% of cases), damage to cars and motorcycles (in 13.6% of cases) and to immovable property in ports and marinas such as facilities, entrance barriers and similar infrastructure (in 10.9% of cases). ($\chi^2 = 3.091$, $df = 150$, $p < 0.001$)

From the security and crime prevention point of view, we can see that in future it will be necessary to implement prevention activities and programs focused on reducing crime against property. A reduction of crime against property is also largely connected to an increased presence of competent national authorities (port authority employees, the police), private security employees or marina staff in the risky zones. This certainly needs to be supplemented by adequate technical protection measures including CCTV, restrictions and

surveillance of movements in certain parts of ports and marinas, installing alarm systems, technical and anti-theft protection systems. Needless to say, self-protection measures are very important because adequate care for one's own property can considerably prevent this kind of criminal offences.

Most of the victims of the analysed criminal offences are natural persons. In 75.1% of cases criminal offences were committed against single natural persons and in 1.7% of cases against several natural persons ($\chi^2 = 838.532$, $df = 2$, $p < 0.001$). In 17.3% of cases criminal offences were committed against single legal persons and in 0.4% of cases against several legal persons ($\chi^2 = 1099.015$, $df = 2$, $p < 0.001$). There were only 4 cases where both natural and legal persons were victims of a criminal offence. In all other analysed criminal offences, there were no victims. These were criminal offences related to drugs abuse, forgery and alike.

It is important to consider the share of Croatian and foreign citizens among the victims of the analysed criminal offences. As expected, most of the victims of the analysed criminal offences are Croatian citizens i.e. in 76.4% of cases, while foreign citizens are victims in 16.8% of cases. Almost equal share of foreign citizen victims of these offences was recorded in ports open to public traffic and in marinas. If we analyse more closely the criminal offences committed against foreign citizens, we can find that the number of victims among foreign citizens in ports and marinas increases during summer tourist season: June 9.1%, July 17.1%, August 24.4% and September 12.2% in the total number of victims among foreign citizens. ($\chi^2 = 26.980$, $df = 11$, $p < 0.01$) Most of the foreign citizens were victims of the analysed criminal offences in the area of Istria County (42.7%) and Split-Dalmatia County (21.3%), they were equally affected in Zadar County and Primorje-Gorski Kotar County (14%) and least affected in Dubrovnik-Neretva County (4.3%), Šibenik-Knin County (2.4%) and Lika-Senj County (1.2%). ($\chi^2 = 26.669$, $df = 9$, $p < 0.01$) The fact that the largest share of these crimes were committed in Istria County can probably be linked to the fact that this is the leading tourist region in the Republic of Croatia which had, for example, 31% of overnight stays and 26% of tourist arrivals in 2012 alone (Ćorluka, Matošević-Radić, & Geić, 2013).

Table 1: Criminal offences and items affected by criminal offences committed against Croatian and foreign citizens

	Croatian citizens N (%)	Foreign citizens N (%)	All N (%)	χ^2	
Criminal offence (N=911)	Theft	401(53.7)	99(60.4)	500(54.9)	18.408*
	Aggravated theft	171(22.9)	41(25.0)	212(23.3)	
	Damaging property	101(13.5)	9(5.5)	110(12.1)	
	Document forgery	2(0.3)	0(0)	2(0.2)	
	Threat	27(3.6)	1(0.6)	28(3.1)	
	Embezzlement	15(2.0)	8(4.9)	23(2.5)	
	Fraud	7(0.9)	2(1.2)	9(1.0)	
	Bodily injury	6(0.8)	2(1.2)	8(0.9)	
	Other criminal offences	17(2.3)	2(1.2)	19(2.1)	
	Total	747(100)	164(100)	911(100)	
Subject of criminal offence (N=911)	Outboard motor	113(15.1)	19(11.6)	132(14.5)	39.241***
	Parts/interior of vessel	79(10.6)	7(4.3)	86(9.4)	
	Several items from vessel	228(30.5)	61(37.2)	289(31.7)	
	Fuel	50(6.7)	4(2.4)	54(5.9)	
	Documents, money, cr. cards	75(10.0)	35(21.3)	110(12.1)	
	Battery/electric generating unit	9(1.2)	3(1.8)	12(1.3)	
	Metal objects	36(4.8)	4(2.4)	40(4.4)	
	Car/motorcycle	20(2.7)	5(3.0)	25(2.7)	
	Physical and mental integrity	46(6.2)	6(3.7)	52(5.7)	
	Immovable property	16(2.1)	0(0)	16(1.8)	
	Tobacco/alcohol	8(1.1)	0(0)	8(0.9)	
	Weapons	2(0.3)	0(0)	2(0.2)	
	Vessel	57(7.6)	19(11.6)	76(8.3)	
	Bicycle	8(1.1)	1(0.6)	9(1.0)	
	Total	747(100)	164(100)	911(100)	

Note. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

If we observe these criminal offences in terms of whether Croatian or foreign citizens were affected (Table 1), we can see that foreign citizens are mainly victims of theft and aggravated theft and similar crime against property, and that they are extremely rarely victims of other criminal offences in ports and marinas.

A more detailed analysis of property subject to criminal offences shows that in the majority of cases involving foreign citizen victims (37.2%), various objects were stolen from their vessels because they left them in the exterior parts or there was a burglary into the interior, as well as they had their documents, money or credit cards stolen (21.3%) from the vessel or from them when they were spending time in ports and marinas. Outboard motors were stolen from foreign citizens in 11.6% of analysed cases. Whole vessels (usually auxiliary boats) were stolen also in 11.6% of cases.

Finally, it should be pointed out that the perpetrators were found in 23.3% of the analysed cases. This piece of information about a relatively low percentage of discovered perpetrators of criminal offences in ports and marinas raises the issue of responsibility for security in ports and marinas and their property but also for the potential compensation for damage caused by such criminal offences. Therefore, the second part of this article focuses on the relevant legislation relating to security in ports and marinas and the repercussions of security standards on the potential port operators' civil liability for damage.

LEGAL ASPECTS OF SECURITY IN CROATIAN PORTS AND MARINAS

According to the Article 3 of the Police Duties and Powers Act (2009), the tasks that are in the competence of the police are: protection of life, rights, freedom, security and inviolability of persons; protection of public peace and order, and property; prevention of criminal offences and misdemeanours, their discovery and collecting information on those acts and their perpetrators; searching for the perpetrators of criminal offences and misdemeanours which are prosecuted *ex officio*, and bringing them before the competent authorities. The police is authorized to implement these tasks throughout the territory of the Republic of Croatia and in relation to all persons within this territory, including ports and marinas. In terms of the organizational set-up of the police, three different organizational forms of the police are intertwined in ports. Local police stations are mostly competent for ports but since there are also border crossings in some ports, border police also carry out their tasks there. On islands where there are no police stations, maritime police officers are responsible, but they also carry out other maritime duties. There are other different solutions for security issues in Europe such as Port Police in Rotterdam which polices the water, docks and terminals and their tasks are divided into border control, local policing and criminal investigations (Marks, Van Sluis, Vervooren, & Zeer, 2013).

However, it is generally not realistic to expect from police officers to be in all places at all times. Therefore, legislation envisages the possibility of the individual legal or natural persons hiring companies or professional individuals authorized to provide private protection services. In essence, they consist of physical and technical protection of persons and property in a particular area. The Private Security Protection Act (2003) (hereinafter: PSPA) regulates the provision of personal and property protection services which are not provided by the state and which go beyond the scope provided by the state. Port operators, i.e. port authorities in the public ports and concessionaires in the special purpose ports or port facility concessionaires may engage private security companies. This possibility applies to marina operators as concessionaires in the nautical tourism ports. However, for reasons further elaborated herein, marina operators considerably rely on their own dock staff (mariners-watchmen) in the prevention of accidents and incidents within marinas, including also the prevention of criminal acts, and generally in respect of safety and security within marinas. The so-called mariners-watchmen service is prescribed as one of the mandatory requirements for all marinas according to the OCCPNT 2008. However, as Jović and Mudrić (2018: 241) correctly point out, their function should be regarded primarily in the context of safety of navigation and maintenance of the port order, rather than in the context of security protection of property and persons in marinas. Nevertheless, continuous presence of marina mariners within marinas certainly contributes to the overall security and prevention of incidents, in the interest of marina operators and marina users.

The main legislation regulating ports in Croatia includes the previously mentioned MDSPA and the Maritime Code (2004) with their respective subsidiary legislation. Accordingly, the entity responsible for the operation of a port (port authority or concessionaire) has a public duty and power to care for the safety, security, environmental protection and maintenance of the port order within the port. Port security is further regulated by the Security Protection of Seagoing Ships and Ports Act (2017) (hereinafter SPSSPA), the International Ship and Port Facility Security Code (2003) (hereinafter the ISPS Code) and the Regulation (EC) no 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (2004).

SECURITY PROTECTION OF SHIPS AND PORTS

The ISPS Code was first implemented in Croatia by the Regulation on Security Protection of Merchant Ships and Ports Open to International Traffic (2003) followed by the Security Protection of Merchant Ships and Ports Open to International Traffic Act (2004). As a part of the accession process, Croatia harmonized its national legislation with the EU legislation on port security, the result of which was the SPSSPA (2009). Finally, after the accession, the SPSSPA (2017) was adopted for the purpose of further harmonization with the relevant EU law, in particular with the Regulation EC 725/2004 and the Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (2005).

It should be emphasized that this legislation is based on the ISPS Code, which emerged in the wake of the 9-11 terrorist attacks on the United States (Kraska, 2016: 443). It is specifically aimed at prevention of terrorist attacks, armed robberies, piracy and similar unlawful acts against commercial ships and ports and their protection from such malicious acts. Port security assessments should evaluate important shipping infrastructure that if damaged could cause significant loss of life or damage to the economy and environment (Kraska, 2016: 448).

According to the SPSSPA (2017), it is a responsibility of the port operators to ensure port security by making port security assessments, developing port security plans implementing detailed security measures, designating port security officers (PSO) and port facility security officers (PFSO), ensuring that training of port security personnel and drills take place regularly and that security equipment is properly operated, tested and maintained. Regular security inspections of the ports and port facilities are in the competence of the harbour master's offices. Similarly, Benamara and Asariotis (2007: 282) describe the main obligations under the ISPS Code in respect of port facilities. A liaison officer is nominated by the Minister of the sea, transport and infrastructure with a task of coordinating the communication with the European Commission and the other EU member states related to maritime security.

The SPSSPA (2017) applies to ports and port facilities serving to passenger ships engaged on international voyages and to cargo ships of 500 GRT and above engaged in international trade. The mandatory port security risk assessments and plans are conducted by the recognized port security organizations compliant with the mandatory requirements prescribed by the SPSSPA (2017).

There are 6 major ports operated by the port authorities established by the Government, and each has at least one PFSO responsible for the ISPS/SPSSPA implementation. County port authorities are responsible for the smaller public ports that are home to small vessels and used for national passenger transport. Since the ISPS ships call at these ports only occasionally, only one PFSO is usually appointed per authority and is responsible for all the ports in the area (Zec, Frančić, & Šimić Hlača, 2010: 44). Privately operated ports, including marinas, if allowed to accommodate ISPS ships, must have at least one PFSO (Zec et al., 2010: 45). Currently, in Croatia there are 33 ISPS compliant ports including 54 port facilities (Croatian Parliament, 2017a, 2017b), and 4 recognized security organizations authorized to carry out the port security assessments and port security plans (Croatian Parliament, 2017a, 2017b). However, all marinas in Croatia currently fall outside the ISPS regulations (Zec et al., 2010: 45) and of the SPSSPA (2017). Therefore, marina operators are free to implement their own security policy which will be dominantly influenced by the commercial factors

and ultimately by their business model. In reality, security aspect is an important factor of competitiveness in the marina business which in Croatia is perceived to be on a good overall quality level (Luković et al., 2015: 98).

MARINA SECURITY

Due to the maritime domain regime, there is no marina in Croatia where public access has been entirely excluded. This means that they are freely accessible from the waterside, whilst access from the land is partly limited and controlled. The prevailing practice is that marinas are partly fenced, they have one or more entrance gates, the entry of vehicles into the ports is controlled, whilst access is free for pedestrians, only some marinas use locked gates at the piers limiting access to the moorings. Access to the open-air land areas of marinas and to shops, cafés, bars, restaurants, etc. is free to the public. Some marinas are located in the coastal towns forming their integral part in which case the open access may pose a considerable security issue. Piers, moorings and waterside are observed and patrolled regularly by the marina dock staff (mariners). Piers, operative areas, common areas, buildings within the marina and its infrastructure are secured by the 24/7 CCTV systems and most of marinas contract professional security companies in accordance with their specific needs. Professional security guards are physically present in most marinas, but there are marinas that use only their own mariners as watchmen and rely on the local public law enforcement.

The concession contracts do not provide for any details regarding security standards and solutions to be implemented in the marinas, neither is there obligatory legislation in Croatia prescribing minimum security standards for marinas, except that OCCPNT 1999 and 2008, as by laws to the Provision of Services in Tourism Act (2017) (hereinafter: PSTA), prescribe that to be classified as a marina, the facility must establish doorman service and the above-mentioned mariners-watchmen service. As explained, mariners-watchmen are marina dock staff responsible primarily for berthing assistance, safety of navigation and overall safety and order in the port (Petrinović, Mandić, & Milošević Pujó, 2018) and are neither trained nor licensed as security staff.

On the other hand, it is interesting to note that for dry marinas OCCPNT 1999 and 2008 prescribe a mandatory security guard service and a combined reception/doorman service. This may imply that dry marinas offering exclusively dry-berth or land storage on premises that are fenced and locked or indoor, which in most cases are not in the regime of maritime domain and where access is usually limited to the clients only, are generally perceived as bailees, which is not necessarily the case with marinas.

Security standards implemented in a marina are subject to the free business decision of the marina operator. Depending on the level of service, each marina will design its own specifically tailored security policy. The scope and quality of service will be reflected in the price of berth. In particular, if under the standard terms and conditions of berthing contracts marina undertakes to act as a bailee for the vessels berthed therein, it owes a duty of care in protecting the vessels and their equipment from theft, vandalism or similar criminal acts, unless it expressly excludes such liability under the contract. Marina operator opting for a business model based on bailment should implement stricter security measures, because of assuming liability for the care, custody and control of the vessels. On the other hand, a marina providing a safe berth on the basis of a contract similar to berth rental or lease will not be liable for damage caused by unlawful acts of third parties. Whilst it is a general practice worldwide that transit berth is purely a lease of a safe berth, the longer-term berthing contracts may imply a bailment relationship. The majority of marina operators in

Croatia apply a model of annual rental of a safe berth including a certain level of control of the vessel on berth exercised through patrols performed by marina mariners combined with continuous video surveillance and control of third party access to the marina.

Standard clauses found in the Croatian marina operators' berthing contracts contain clauses expressly excluding liability for third parties' malicious acts. According to some clauses, the exclusion does not apply if there is proof of lack of due diligence on the part of marina operator or its staff, whilst other require proof of their gross negligence or willful misconduct. Furthermore, there are examples of clauses implying marina operator's liability in case of burglary and theft of vessel equipment and stores from the locked compartments. However, this liability is made subject to the mutual acceptance of a written inventory list and vessel survey report upon subjecting the vessel to marina operator's control. Finally, there are examples of standard contracts of berth clearly based on the model of berth rental where there is no mention of liability for theft or similar unlawful acts. Accordingly, marinas applying berth rental model hold that private security guards primarily protect the marina premises and employees, that 24-hour surveillance through CCTV and by marina mariners is aimed at prevention of accidents and incidents, but marina does not warrant to protect the vessels from malicious acts of third parties and may not be held liable for such damage. Nevertheless, in practice marina staff observe the access to the vessels and require the owners' written authorization for boarding the vessels berthed marinas (e.g. maintenance people, custodians, skippers, etc.). On the other hand, marinas applying the model of contract of berth with the elements of bailment hold that 24-hour surveillance and security control is a responsibility of marina and that marina may be found liable for damage caused by third parties if there was a lack of due care to prevent such adverse event on the part of the marina. Croatian courts dealing with the civil law claims arising from the cases of yacht theft (Commercial Court in Rijeka, 2012), burglary into the vessel (High Commercial Court, 2006) and unauthorized taking possession of the vessel (Supreme Court, 2013) whilst on berth in a marina held that a contract of berth in a marina which includes marina's obligation of the custody and control of the vessel is a bailment contract, which as a nominate contract is regulated under the Obligations Act (2005). Furthermore, the courts held that such bailment can be contracted informally, therefore the mere fact that a vessel is berthed in a marina combined with the marina accepting the vessel's documentation and keys and payment of berthing fees proves that the bailment contract was concluded. Therefore, the position of the courts is that marina is presumed liable for damage caused to the vessel during the contract, unless it proves that as a bailee it performed due care in protecting the vessel from the possible accidents, incidents or malicious acts of third parties. Marina can expressly exclude its liability under the contract for damage arising from theft, burglary or other third parties' acts, except when there is gross negligence or wilful misconduct on the part of the marina. In addition, the courts recognize that bailment of the vessel's equipment and stores placed in the locked compartments of the vessel can be subject to the acceptance of a written and signed inventory list and of the survey report upon the handover of the vessel to the marina in the absence of which there is no marina operator's liability for bailment of the equipment and stores. Generally, it is submitted that judicial practice regarding marina operators' contracts of berth varies and sometimes incorrectly interprets the relationship as bailment. For more discussion on the nature and contents of the contract of berth, relevant judicial practice and autonomous law see Padovan (2013); Padovan & Skorupan Wolff (2017); Pijaca (2018); Skorupan Wolff & Padovan (2017); Skorupan Wolff, Petrinović, Mandić (2017).

In our opinion, it is of utmost importance to clearly define the scope of liability assumed by marina in accordance with its business model, by implementing well-drafted standard contract forms and general terms and conditions. Furthermore, marina operator should as a prudent businessman apply a solid policy of risk management including, *inter alia*, security risk assessment, security plan and associated standard operating procedures. A higher security standard is a comparative advantage for marina operators, and as such it may include the following: adequate lighting, effective fencing, measures for access control, calibrated and maintained CCTV system monitored by trained security staff, reasonably short response time in the event of an incident, facility actively patrolled by marina staff or professional security officers who understand marine operations (Ranslem, 2012). It is a good practice to have procedures to record and meet any deficiencies with an adequate processing system and to plan and execute an emergency response system in the marina (TransEurope Marinas, 2014.). Heron and Juju advise that every marina should consider including vandalism, theft and terrorist acts or threats in its business continuity and crisis communication plans (Heron & Juju, 2012). In developing and applying security policy, under Croatian law marina is bound by the PSPA (2003), and potentially by the Protection of Monetary Institutions Act (2015) if on its premises there are ATM machines, currency exchange offices or if in the course of its regular business it handles larger amounts of cash. However, an established marina security program does not relieve vessel owners of responsibility for their own protection (Gardner, 1995), including security awareness, cooperation with the marina staff and duty to insure the vessel, including *inter alia* the risks of theft, vandalism and unauthorized use. Security standards specific for nautical yachting tourism are generally on a considerably higher level in marinas compared to ports open to public traffic. The vessel owners' criteria for the choice of berth are examined by Perko (2017) who found that security standard is regarded as an important factor on the priority list of clients choosing a place for a permanent berth in a marina, whilst it is generally less important for transit berth. Furthermore, the study shows that vessel owners choosing marinas are willing to pay more for higher quality service. Security standard is far less important to the vessel owners choosing berth in the ports open to public traffic where location and price are decisive factors (Perko, 2017). However, security system and planning, especially crisis management and international cooperation become an indispensable part of business planning in tourism (Boban, 2016), and particularly in nautical tourism.

DE LEGE FERENDA INITIATIVES – YES OR NO?

When managing risk through legislation, regulatory assessment models are used to assess risk levels and examine the impact of policy options, usually in terms of the costs and benefits of a regulatory proposal (Bichou & Evans, 2007: 265). Therefore, any *de lege ferenda* initiative in the direction of new mandatory security standards in ports and marinas should be based on such cost-benefit assessment. However, we are more inclined to support the position of Zec et al. (2010) who submit that further developments should aim to promote better co-operation with neighbouring countries, introduce additional education and training requirements for all personnel with security related tasks, make access to data sources more efficient, improve communication between stakeholders having security related information and responsibilities, combine security related data sources and services with navigation safety, as notable advances can be expected when implementing these measures with ISPS non-compliant ports and marinas, where, as a final goal, adequate but invisible security protection should be in place.

FINAL CONSIDERATIONS

As opposed to criminological evaluations where Eski (2016) claims that ports suffer from different forms of crime and insecurity, starting from dangers related to work processes to strikes in ports, cargo and metal thefts, human and drug trafficking, illegal weapons smuggling, corruption among the high-positioned employees in ports who turn a blind eye to smuggling, piracy or terrorism, the results of this phenomenological analysis of criminal offences committed in ports and marinas show that they are not major focal points in terms of crime in the Republic of Croatia. It is obvious that a large number of criminal offences were not recorded in ports and marinas. However, it is well known that crime statistics do not always show the real situation and the dynamics of crime rate. Only if we take into consideration good quality assessments of dire crime figures can we get a more realistic picture of the situation regarding crime. Even now, a relatively low number of criminal offences recorded in ports and marinas should be an encouragement to look into this segment of crime. More efforts should be invested in terms of combating crime against property, with a focus on movable assets, personal items, documents, money and similar objects of port and marina users. Security of ports and marinas is a significant component of general security of citizens and tourists. Considering the general characteristics of criminal offences in ports and marinas is the foundation for preparing prevention programs which will include a more active role of the police, port authorities, local authorities, marina concessionaires, but will also include a satisfactory level of self-protection which should be exercised by citizens and tourists.

Ports and marinas have to pay particular attention to the issues of security as part of their tourism-related function because tourism implies carefree, relaxed behaviour of tourists who have a guarantee from the tourist destination that they and their property will be safe. Security measures need to be designed and implemented so that the usual behaviour of citizens and tourists is minimally disrupted without these measures becoming the so-called securitization as mentioned in the context of the United Kingdom ports by Malcom (2011) which include an excessive use of security standards aimed at protecting critical national infrastructure which certainly includes ports.

It should also be emphasized that the research confirmed the hypothesis that a significantly higher number of criminal offences is committed in ports open to public traffic compared to marinas and that these were mainly offences against property committed in the summer period.

LIMITATIONS OF THIS RESEARCH

To get a more complete insight into the phenomenology of crime in ports and marinas and thus create a more precise foundation for etiological research of crime in these locations, a more detailed insight into the complete documentation of criminal records composed by the police, and other competent bodies which take part in criminal proceedings, is necessary.

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PERCEPTIONS OF SAFETY/SECURITY AS FACTORS IN SELECTING A TOURIST DESTINATION: A COMPARISON BETWEEN PORTOROŽ (SLOVENIA) AND GELENDZHİK (RUSSIA)

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ABSTRACT

Today, tourism is a very popular and recognisable economic activity. The tourist industry considers the needs of tourists from every possible perspective. In the last decade, safety/security is becoming an increasingly important element of the tourist business. Even minor changes in the safety/security situation can cause irreparable damage to an 'unsafe' tourist destination. The study⁵ hypothesised that tourists' perceptions of safety/security threats influence their choice of a tourist destination. It was conducted in two highly developed tourist municipalities in Slovenia and Russia, i.e. Portorož and Gelendzhik, in May and June 2017. The aim of the study was to evaluate various factors influencing tourists' decision for selecting a tourist destination. The survey consisted of 29 items, while the total number of respondents in both tourist destinations was 437. Items related to the safety/security, the perception of crime rate and the presence of the police have the greatest impact on tourists' selection of a tourist destination. The results for both destinations are presented, compared and discussed.

Keywords: safety/security, tourists, perception, Slovenia, Russia

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INTRODUCTION

In the last decades, and particularly in the 21st century, travelling and tourism have become easy and widely accessible to everyone. In 2015, the 'travel and tourism sector', as one of the world's largest economic sectors, generated approximately 9.8% of the global GDP, which is about 7.2 trillion USD, and contributed to the employment growth by supporting 284 million jobs globally, as reported in the 2015 Travel & Tourism Council report (Wefersová, Wefers, Saxunova, & Szarková, 2016). The number of international travellers continues to increase. Moreover, despite slow economic growth in some advanced economies and geopolitical tensions in specific regions, travel and tourism have proved to contribute to the mitigation of such impacts globally. Wefersová et al. (2016) emphasise that according to the World Travel & Tourism Council "the travel and tourism sector is expected to continue growing at 4% annually, with the pace faster than the growth pace of financial services, transport and manufacturing".

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In parallel with the economic, social and technological changes around the world, changes in peoples' demands and preferences have also occurred with respect to tourism consumption patterns. Lately, tourists, travelling both individually or in small groups, prefer to be surrounded by nature and to visit the natural and cultural sights instead of enjoying the sun, sea and sand (Nazli, 2016). The so-called ecological tourism, rural tourism or sustainable tourism have emerged in the last century as a consequence of significant changes in tourist profiles, consumption patterns and the balanced use and protection of the natural and cultural environment (Collier, 2008; Kaypak, 2012: 11).

To be successful in the tourism business in the 21st century, one has to be able to develop the so-called 'seven charms' that include *safety/security, order, cleanliness, beauty, green surroundings, friendliness and building a pleasant memory*. Tourism contributes to the growth of a national economy by employing people, boosting the multiplier effect and increasing foreign exchange earnings, while also contributing to the positive balance of payments. Therefore, the developed and developing countries have incorporated tourism into their long-term economic development planning. However, tourism is vulnerable to crises, such as outbreaks, political turmoil and financial crises (Purwomarwanto & Ramachandran, 2015).

Kurež (2011) emphasises that despite social development, safety/security still represent the immanent element of every society. The problem of safety/security is present everywhere, and is, therefore, immanent to humanity (Kurež, Mekinc, & Anžič, 2009: 170). The concept of safety/security is changing together with the evolution of society. It can be represented as a living organism that continuously evolves, grows, complements and adapts to the environment.

Safety/security also affects tourism, particularly if one considers the latest terrorist acts and other political threats of the 21st century. The most obvious direct impact is observed in the redirection of tourist flows away from low-security areas. A link between security and tourism has been present since the beginning of the emergence of the modern tourism and travel industry and has been strengthening recently. As the modern global society is becoming ever more interdependent and interconnected, minor crises at one end can have a significant influence at another end of the world. Tourism is an essential branch of the economy which is particularly vulnerable to various crises. Political instability or outbreaks of war can dramatically change the established patterns of tourists' behaviour (Kurež, 2011). Recently, terrorism and other forms of violent extremism have increasingly been at the forefront of threats to safety and security, because they are scattered and difficult to predict due to the recent migration crisis in the Western countries.

This paper, which builds on the knowledge that even minor changes in the safety/security situation can cause irreparable damage to the 'unsafe'/'unsecure' tourist destination, aims to present a comparative analysis between two highly developed seaside tourist destinations in Slovenia and Russia, i.e. Portorož and Gelendzhik. The study hypothesised that tourists' perceptions of safety/security issues have a meaningful influence on their choice of a specific tourist destination. After a literature review and the description of the study, the paper presents the results and discussion of the main findings with the aim of suggesting potential improvements for improving the safety/security situation in the municipalities included in the study.

TOURISM AND SAFETY IN 21ST CENTURY

Tourism has become global and can be described as one of the world's largest industries. The globalisation of tourism has led to a rapid expansion of its business to an international

level, with the aim of expanding its market share and increasing profits. However, globalisation has exposed the tourism industry to a wide range of global safety/security threats (Purwomarwanto & Ramachandran, 2015).

Today, tourism is one of the essential economic pillars of many countries. Tourism accounts for 30% of world's total export in services and 45% in developing countries. It also generates roughly 7% of the total of global employment. Apart from contributing to the GDP, tourism also contributes to household income and government revenues through the multiplier effect and the balance of payments. Other benefits include the employment effect, foreign exchange earnings and infrastructure development (Cooper, Fletcher, Fyall, Gilbert, & Wanhill, 2008). Hence, tourism is one of the strategic sectors, which is crucial to the growth of economies in developing and developed countries (Purwomarwanto & Ramachandran, 2015). Tourism contributions to national economies are seen in greater employment opportunities, increased income through wages, interests, rent, sales and taxes, higher foreign exchange earnings and the multiplier effect, as well as in the improved balance of payment and infrastructure development (Chen, 2011; Purwomarwanto & Ramachandran, 2015).

People can afford to travel more than they did in the past and many use this opportunity. Modern means of transportation, especially cheap flights, give people an opportunity to reach previously unreachable destinations in less than a day. The world has become a global village. However, globalisation has made tourism vulnerable and susceptible to safety/security threats more than ever before (Kurež, 2011). Studies have shown that disease outbreaks (Harrison, 2001; Purwomarwanto & Ramachandran, 2015), political turmoil, such as coups and wars (Casado, 1998; Smeral, 2009), terrorism (Araña & Leon, 2008; Fletcher & Morakabati, 2008), natural disasters (Henderson, 2005), as well as financial crises (Purwomarwanto & Ramachandran, 2015; Smeral, 2010) have a negative effect on tourism. Studies on the impact of such crises on the tourism industry revealed that the demand for tourism was reduced due to the crises, lower safety/security and health concerns (Blake & Sinclair, 2003; Blake, Sinclair, & Sugiyarto, 2003; Chen, 2011; Hui, 2005).

Tsaur, Tzeng and Wang (1997) analysed tourist risks in their study. They divided tourist risks into two groups: physical risks and equipment risks, which were further divided into seven objectives including transportation, law and order, hygiene, accommodation, weather, sightseeing spot and medical support, and risk evaluation attributes, such as safety of transportation, convenience of telecommunication facilities, safety of driving, political stability, possibility of criminal attacks, attitude of inhabitants towards tourists, possibility of contracting an infectious disease, hygiene of catering conditions, hotel fire control system, hotel security system, difference of weather change, possibility of natural disasters, safety of recreational facilities, quality of the management staff, degree of assistance available in case of an accident, and completeness of the medical service system (Sabokbar, Ayashi, Hosseini, Banaitis, Banaitienė, & Ayashi, 2016).

All safety/security threats arising from the modern security environment have a direct or indirect impact on tourism. Kurež (2011) identified the main groups of safety/security threats in tourism on the basis of his review and analysis of relevant literature (Hall, Timothy, & Duval, 2003; Pizam & Mansfeld, 2006), which include crime, terrorism, war, social and political unrest, environmental problems and the spread of infectious diseases. Since the safety/security threats identified by Kurež (2011) were also tested in the study conducted in Slovenia and Russia, they are further explained in the following sections of the paper.

Crime is one of the most frequently encountered safety/security threats in a tourist destination. This fact is also confirmed by research demonstrating an increase in crime during the tourist season (Brunt, Mawby, & Hambly, 2000: 417). Such an increase in crime can appear due to either opportunistic or organised crime. In comparison with opportunistic crime, which is manifested as theft, robbery, rape, and murder, organised crime represents a greater problem for the development of tourism. By employing considerable financial resources that have been acquired through criminal activities, organised crime groups are able to strengthen their position in society and purchase tourism infrastructure which they gradually turn into a legal economic activity. Tourism activities and infrastructure are used to cover their 'original' activities, such as drug trafficking, prostitution, illegal migration, theft and smuggling of vehicles, money laundering, trafficking in human organs, etc. (Kurež, 2011).

Globalisation has caused a link between terrorism and tourism. Today, tourism is one of the largest global industries and an important target for terrorists. An additional advantage of tourism, that of being a terrorist target, was created by the mass media, which attribute significance to security problems in tourist destinations and report them extensively. The 'appropriate' terrorist targets include particularly aircrafts, larger ships, buses, restaurants and cafes, major events, cultural and sporting events, spaces visited by a large number of people and places where people are carefree and happy (Tarlow, 2006: 45-46).

Many attractive tourist destinations across the globe are located in politically unstable countries. Armed conflicts or wars are more likely to occur in unstable countries. Wars have a drastic and long-term impact on the reduction of tourist demand in the countries involved and often even in the broader region. Nevertheless, the fact that tourist agencies are offering cheap tourist arrangements in such destinations is irresponsible.

Similarly to wars, social and political upheavals emerging in the form of national strikes, violent demonstrations, uprisings and rebellions lead to a reduction in tourist demand in the affected countries and beyond. It may happen that the media, through their adverse reporting, actually lead to a decline in tourist demand even in cases where there are no real safety/security threats for tourists (Kurež, 2011).

In the past decade, the environment has become an increasingly important element in the development of tourism. People's reckless behaviour towards the environment causes climate change, which is the reason for many natural disasters. They affect tourism activities and infrastructure, as well as human lives. The key feature of environmental safety/security threats is their durability and irreversibility. Thus, environmental safety/security threats, such as pollution, hazardous waste and diseases, can destroy a tourist destination permanently.

Finally, the spread of infectious diseases is an even more critical threat to the safety/security in tourism. Recent cases of such diseases include SARS, foot-and-mouth disease, mad cow disease and avian influenza epidemics. The outbreak of such and similar diseases in tourist destinations reduces the tourist demand (Purwomarwanto & Ramachandran, 2015).

All threats to safety/security in tourism are made more evident due to the mass media and modern communication tools, which can transfer information about safety/security issues, such as instabilities in a destination, in real time from anywhere in the world. The slightest fluctuation in the safety/security situation in a tourist destination may result in changes or cancellations of already booked trips. If tourists present at the destination feel threatened, they develop a negative perception of the destination, which has a negative impact on the tourism industry and is reflected in a decline in arrivals (Richard, 2002: 577).

The safety/security perceptions are an essential factor in choosing a tourist destination (Rittichainuwat & Chakraborty, 2009: 411). Fortunately, today's tourists have so many opportunities to spend their vacation and travel, which means they can easily swap a potentially dangerous destination with a similar or completely different destination that does not present any safety/security problems.

DESCRIPTION OF THE METHOD, MEASUREMENT AND THE SAMPLE

The study was conducted in May and June 2017 in two highly developed tourist towns in Slovenia and Russia, i.e. Portorož and Gelendzhik. Portorož is the largest settlement in the municipality of Piran, which is the most developed tourist destination in Slovenia and is known primarily for congress, nautical, spa and casino tourism. The municipality borders with the municipalities of Izola and Koper and the neighbouring country of Croatia. It also has excellent links with Italy, since the town of Piran is located just 38 km from Trieste. The municipality includes 15 settlements, including Portorož, where the majority of tourism offer is concentrated. The municipality of Piran also has an airport and a marina. Piran is a temple of culture, history, art, nature, events and exhibitions. The municipality has a varied selection of at least 100 events throughout the year, including entertainment, sports, cultural and folklore events or festivals. Although Portorož/Piran is a coastal destination, it is a year-round destination, mainly due to well-developed health resorts and congress tourism (Maravić, Gračan, & Zadel, 2015). Gelendzhik is a tourist resort town in Krasnodar Krai, Russia, located on the Gelendzhik Bay of the Black Sea between Novorossiysk and Tuapse. Greater Gelendzhik sprawls for 102 kilometres along the coastline and covers an area of 122,754 hectares, although only 1,926 hectares fall within the boundaries of Gelendzhik proper (Russian Federal State Statistics Service, 2011).

The survey items used in this study are a part of a broader survey on the legitimacy of criminal justice institutions and safety/security issues in a tourist area, which was conducted in designated tourist destinations. The entire questionnaire was divided into seven parts and was adapted specifically for the tourist sector. We used the questionnaire from the Basic Research Project on the Legitimacy and Legality of Policing, Criminal Justice and the Execution of Penal Sanctions (2013-2016), which had been used by Meško and Tankebe (2015) and later by Meško, Flander and Eman (2016), and added a section on the safety/security in tourist areas. As described, the safety/security threats identified by Kurež (2011) were also included in a comparative survey in Slovenia and Russia.

For both studies, we trained graduate students to collect data under the supervision of researchers, who were present in both destinations during the data collection exercise. Data were collected by conducting face-to-face interviews with randomly selected tourists in both tourist destinations. Participation in the study was voluntary, and the anonymity of all participants was ensured.

A part of the study on the influence of various factors on tourist destination selection, used in this paper, was composed of a set of 29 items. A four-point scale ranging from 1 = *major influence*, 2 = *great influence*, 3 = *hardly any influence* to 4 = *no influence* was used to rate the answers.

A total of 437 participants was included in the study; 116 (39.6% male; 60.4% female) from Portorož and 321 (45.2% male; 54.8% female) from Gelendzhik. Respondents from Portorož were on average 35.5 years old (from min 18 to max 73), while the average age of respondents from Gelendzhik was 37.1 (from min 18 to max 79).

RESULTS

There are numerous factors influencing the decision to choose a tourist destination. Table 1 below lists 29 possible reasons for choosing a tourist destination, including safety/security items. The results for both tourist destinations involved in the survey are presented first, while the test of statistically significant differences between these two tourist destinations concerning the reasons why tourists decide for a specific tourist destination are presented later on. Table 1 shows the average values for individual items on a scale from 1 = *major influence*, 2 = *great influence*, 3 = *hardly any influence* to 4 = *no influence*.

Table 1: *Descriptive statistics – reasons for choosing tourist destinations (N = 437)*

Variables	M	SD	1+2% (great importance)
Climate conditions.	1.53	.79	89.5
Opportunities for rest.	1.76	.81	87.2
Destination image (e.g. overall cleanliness of the destination).	1.63	.78	86.3
Destination can be easily reached.	1.82	.84	84.6
Personal safety and security.	1.85	.84	84.0
Staff at this tourist destination are friendly towards guests.	1.86	.83	83.7
Available time to travel.	1.81	.89	83.3
Good value for money.	1.85	.87	81.1
Unspoiled nature.	1.94	.86	80.9
Quality of accommodation (hotel, motel, apartment).	1.90	.85	80.7
Destination infrastructure (good organisation of local transportation services).	1.96	.82	78.8
Perceived low risk of possibilities for being victimised.	2.02	.88	78.3
Perception of crime rate at the tourist destination.	2.05	.87	77.9
Attractiveness of the destination (e.g. tourist destination has a unique image; tourist destination is popular).	1.97	.94	76.6
Recommendations from friends and relatives.	2.00	.92	75.8
Attractions/amenities offered (diversity of cultural/historical attractions, architecture, tradition and customs).	2.06	.95	75.3
Friendliness/hospitality of the local people.	2.07	.89	75.3
Stability of the political situation in the county of destination.	2.09	.93	73.5
Police presence on the streets.	2.13	.91	73.1
Availability of sports facilities and recreational activities.	2.07	.96	72.2
Suggestions/reviews from other travellers (online travel communities).	2.26	.95	68.5
Balanced social structure.	2.24	.91	67.6
Wellness offer.	2.22	.98	67.5
Offer of local cuisine.	2.30	.93	64.0
Recommendations from travel intermediaries (tour operators/travel agents).	2.36	.98	62.9

Thermal SPA offer.	2.42	.99	60.5
Night life and entertainment.	2.35	1.05	59.6
Possibilities for shopping.	2.59	.99	51.7
Conference offer.	3.10	1.01	33.9

Note. 1 = major influence, 2 = great influence, 3 = hardly any influence and 4 = no influence.

Two out of the top five reasons for choosing a tourist destination are related to security. The most common reasons for choosing a tourist destination include favourable climate and the opportunities for rest, followed by the overall cleanliness of the destination (which can also be related to potential pollution, food safety and health problems) and the feeling of personal safety and security. Other security-related factors are also not negligible. Thus, 78.9 per cent of respondents considered the perceived low risk of being victimised as a significant factor in the selection of a tourist destination, followed by the perception of the crime rate at the tourist destination (77.9 per cent). To determine how individual items combine in the framework of more consistent content sets, the factor analysis (FA) was applied. The results of the FA (Principal Component Analysis) are shown in Table 2 below.

Table 2: *Factor analysis - impact on the tourists' choice of the tourist destination*

	Component					
	Safety and security	Destination feature	Activities at destination	Reviews of destination	Place and people	Business and pleasure
Personal safety and security.	.849					
Perception of crime rate at the tourist destination.	.803					
Police presence on the streets.	.681					
Perceived low risk of being victimised.	.653					
Destination image (e.g. overall cleanliness of the destination).	.441					
Available time to travel.		.728				
Destination can be easily reached.		.722				
Good value for money.		.555				
Wealth of the destination (e.g. tourist destination has a unique image; tourist destination is popular).		.549				
Climate conditions.		.545				
Quality of accommodation (hotel, motel, apartment).		.478				
Recommendations from friends and relatives.		.474				
Availability of sports facilities and recreational activities.			.744			
Opportunities for rest.			.704			
Thermal spa offer.			.609			
Nightlife and entertainment.			.484			
Wellness offer.			.483			
Suggestions/reviews from other travellers (e.g. online travel communities).				.701		
Stable political situation in the county of destination.				.662		
Balanced social structure.				.632		
Recommendations from travel intermediaries (tour operators/travel agents).				.572		
Offer of local cuisine.				.439		
Friendliness of the local people.					.780	
Unspoiled nature.					.685	
Attractions/amenities offered (e.g. diversity of cultural/historical attractions (architecture, tradition and customs)).					.549	
Destinations' infrastructure (e.g. good organisation of local transportation services).					.447	
Staff at this tourist destination are friendly towards guests.					.426	
Conferencing.						.767
Possibilities for shopping.						.721
Variance (total: 59.2%)	30.438%	9.133%	5.787%	5.195%	4.67%	3.836%
Cronbach alpha	.826	.797	.724	.768	.754	.678

Note. Extraction Method: Principal Component Analysis; Rotation: Varimax; KMO = 0.891.

We found that the factors influencing the individual's choice of a tourist destination can be combined into six content sets explaining 59.2 per cent of the total variance. The factor explaining most of the total variance (30.5%) is 'safety and security', which included all five variables related to security/safety considerations. Among these five reasons, the most important two are the feeling of personal safety and security and the perception of the crime rate at the tourist destination. Therefore, we can conclude that the factors related to the perception of safety/security are essential for the selection of tourist destinations and, as such, represent a part of the inseparable whole, which must be considered by the managers responsible for tourism activities. For tourists, the 'safety and security' factor is as important as the attractiveness of the destination or the general offer at the destination. In relation to safety/security perceptions, the 'Reviews of the destination' factor, which includes arguments, such as the 'Stability of the political situation in the county of destination', should also be mentioned.

The following section presents the results of the analysis of the perception of the importance of safety/security factors for the selection of a tourist destination. Samples in Portorož and Gelendzhik were tested for statistically significant differences. The mean values of items that were included in the 'safety and security' factor were then compared. The results of the comparison are shown in Table 3.

Table 3: *Safety as a factor for choosing a tourist destination: comparison between Gelendzhik and Portorož*

	Place	M	STD	(1 + 2) % great influence	t-test P	Cohen's "d" test
Personal safety and security.	Gelendzhik, Russia	1.82	.80	68.8%	/	0.16
	Portorož, Slovenia	1.96	.92	75.9%		small/none
Perception of crime rate at the tourist destination.	Gelendzhik, Russia	1.97	.802	83.6%	-3.19	0.34
	Portorož, Slovenia	2.28	1.01	61.6%	.002	medium/small
Police presence on the streets.	Gelendzhik, Russia	1.93	.81	83.6%	-8.07	0.85
	Portorož, Slovenia	2.68	.96	43.4%	.000	Large
Perceived low risk of being victimised.	Gelendzhik, Russia	1.98	.85	82.0%	/	0.15
	Portorož, Slovenia	2.12	.97	67.9%		small/none
Destination image (e.g. overall cleanliness of the destination).	Gelendzhik, Russia	1.55	.77	87.7%	-3.66	0.40
	Portorož, Slovenia	1.86	.77	82.1%	.000	medium/small

Note. 1 = major influence, 2 = great influence, 3 = hardly any influence and 4 = no influence.

We can conclude that tourists have identified safety/security-related factors as very important for selecting Portorož and Gelendzhik as their tourist destinations. The results show that the 'safety and security' factor is more important in Gelendzhik than in Portorož. In three out of five items, we found statistically significant differences; respondents in Gelendzhik believed the perception of crime rate at the tourist destination to be a more important factor for the selection of a tourist destination in comparison to respondents in Portorož. The same applies to the overall cleanliness of the destination and the presence of police on the streets. The last column in Table 3 presents the calculated statistically significant differences between answers provided by respondents in Portorož and Gelendzhik; Cohen's

“*d*” test was applied due to the difference in the size of the two samples⁶. After using Cohen’s “*d*”, we can conclude that the “police presence on the streets” factor is much more important for tourists in Gelendzhik than in Portorož. For other factors, the differences are much smaller.

DISCUSSION

Tourism is essential both in terms of the economy as well as the quality of everyday life for an increasing number of individuals. In 2016, 1.235 billion international tourist arrivals were recorded worldwide and tourism generated approximately 9.8% of the global GDP. In the study, we confirm the results previously presented in the analysis conducted by Rittichainuwat and Chakraborty (2009) demonstrating that the safety/security perception is an essential factor in choosing a destination. 78.9 per cent of our respondents considered the perceived low risk of being victimised as a crucial factor in the selection of a tourist destination, followed by the perception of crime rate at the tourist destination (77.9 per cent). Purwomarwanto and Ramachandran (2015) defined the conditions for success in tourism as the so-called ‘seven charms’, which include safety/security, order, cleanliness, beauty, green surrounding, friendliness and building a pleasant memory. Safety/security is not mentioned as the first charm without a good reason. The results of our study reveal that two of the five most common reasons for choosing a tourist destination are related to safety/security and that the “safety and security” factor explains the majority of the total variance for selecting a particular destination. Among the five safety/security-related reasons included in the study, the feeling of personal safety and security, and the perception of crime rate at the tourist destination are the most significant. For tourists, security is as important as the attractiveness of the destination and thus represents a part of the inseparable whole.

This study is also important for sciences dealing with the provision of safety/security, such as criminal justice studies, security studies and criminology, and the economy of tourism. Our study presents the comparison of responses obtained from tourists in the northern Mediterranean (Adriatic) and the Black Sea resort. For both Portorož and Gelendzhik, we can conclude that tourists identified safety and security-related factors as very important in their choice of the tourist destination. The only significant difference was observed in relation to the “police presence on the streets” item, which was much more important for tourists in Gelendzhik than in Portorož. For other factors, the differences are much smaller. Therefore, we can conclude that the perception of safety/security is a universal factor, regardless of the location of tourist resorts or types of tourists.

‘Safety and security’ are the fundamental prerequisites for the development of a tourist destination. Therefore, different stakeholders, from tourist facility managers, local governments and security providers (Bennett, Newman, & Sydes, 2017), need to do their best to reduce safety/security threats. However, managers of tourist facilities must first be aware of the significance of safety/security for their business. Therefore, they are the ones who need to take the initiative for a joint action in the provision of safe and secure tourist destinations. Security-related issues must be addressed in a systematic, integrated, interconnected and global manner (Araña & León, 2008), while the proposed solutions for addressing such issues must be based on pre-prepared (proactive) crisis management

6 Though the values calculated for effect size are generally low, they share the same range as the standard deviation (-3.0 to 3.0) and can thus be quite large. Therefore, interpretation depends on the research question. The meaning of effect size varies according to context, however, the standard interpretation offered by Cohen is: .8 = large; .5 = moderate; .2 = small (<https://researchrundowns.com/quantitative-methods/effect-size/>).

plans. Given that the identified safety/security threats in tourism are, by their very nature, predominantly transnational, they cannot be confronted individually or merely at the national level. Such an approach would prove inefficient and only have short-term effects. The involvement of a broader community of actors at the international level would provide greater success in dealing with the safety/security threats and produce more effective and longer-lasting results.

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CRIME MAPPING IN BOSNIA AND HERZEGOVINA APPLIED ON THE MUNICIPALITY OF STARI GRAD IN SARAJEVO

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ABSTRACT

Geographic information systems use computer-processed geographical maps to visualize and access large amounts of data that are stored in specific databases. This way, police agencies can more easily access information and events regarding the volume and trends of criminal activities. This paper will analyze the possibilities of crime prevention through three aspects in terms of GIS: crime mapping, criminal analysis and investigative and pre-investigative actions. In addition, the possibilities provided by these systems in improving crime control will be applied on the municipality of Stari Grad in Sarajevo. In a previously conducted research relating the usage of these systems in police practice in Bosnia and Herzegovina, the authors noticed that police agencies are partially using or not using these technologies at all. In conclusion, the authors will indicate the possibilities and prospects of developing GIS technologies and using them on a daily basis in police agencies of Bosnia and Herzegovina.

Keywords: crime mapping, Geographic information systems, law enforcement agencies, Bosnia and Herzegovina

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INTRODUCTION

Traditional systems of operational and analytical work are having more and more difficulties to respond to the challenges of the contemporary forms of crime, in particular in terms of accuracy and speed of getting usable data for prediction and decision support at various levels of the formal social control. Geographic information systems (GIS) are using computer processed maps to aid in the visualization and access to a large amount of data in the respective databases. In this way, significantly facilitate and speed up the identification of critical information and events related to the occurrence and trends of crime by law enforcement agencies, as well as their timely response. Therefore, GIS is an important link in the fight against crime by providing tools for mapping and analysing crime. In addition, it allows the analysis of complex and seemingly unrelated events and display of layered, spatial maps.

As for the prevention and combating of crime GIS can be used at three levels: mapping of crime, crime analysis and investigative and preliminary investigation, in this paper the authors will address all three aspects of the use of these systems, with particular emphasis on the opportunities and benefits that such systems provide in improving institutional

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responses to crime. Theorizing the current state of the specified issues in Bosnia and Herzegovina (BiH), in the conclusion it will be emphasized the possibilities and prospects of development of these technologies and greater use in the daily work of police agencies.

MAPPING CRIME IN CRIMINOLOGY

The study of crime from the perspective of its spatial distribution is an integral part of the emergence and development as well as modern empirical endeavour within criminological science. Although the indications of the debates that are based on the geographic spread of undesirable behaviour can be found in the oldest historical sources, however, as the first systematic work in this area is usually associated works of Adolphe Quetelet (1796-1874), who, among other things, in analyzing statistical demographic indicators from the mid 19th century claimed that there were significant statistical differences in the phenomenology of crime in the way that there are distinguished categories of youth, men, poor and unemployed and less educated members of the population. Most prominent among his thesis are the one on geographical distribution of crime, according to which the less crime was in places where poor people were prevailing with high unemployment rate, and that the crime was much more manifested in the places where richer inhabitants lived and where the rate of employment was higher (Net Industries, 2018). Quetelet's contemporary, Andre-Michel Guerry (1802-1874) also dealt with the issue of distribution of crime in different geographic areas, particularly in terms of the relationship of crime of natives and newcomers (Ignjatović, 2007). As significant scientific legacy of Guerry, detailed maps showing the distribution of crimes against property and violent crimes in certain regions of the then France are listed.

Modern criminology, especially concepts that rely on known and confirmed theoretical definition from the beginning of the twentieth century, such as the range of the theories of social organization (or social structure, as is also frequently cited in the literature), develops models to verify the hypothesis that in the focus of analysis of criminal phenomenon are placing environment or space in which the crime is "played out". Schmallerger (2006) in the structure of sociologically oriented theory emphasizes, in this regard, the theory of social disorganization, that as basic concept develops and relies on, among others, to the category of social ecology and ecological theory, the Chicago criminological school, delinquent areas, and especially cultural diversity which molds the criminology of place, ambient criminology, defensible space and the concept of "broken windows".

On this occasion, the authors will refer to the thesis that are set in the criminology of place,⁵ as it is presented by Weisburd, Groff, & Yang (2012), which can be used in developing the research background of this paper. This theoretical concept in the literature is often referred to as ambient criminology as part of the environmental criminological theoretical base. In developing thesis established by theories of routine activities and situational crime prevention, this concept emphasizes the importance of geographic location and architectural characteristics of prevalence in criminal victimization. As a result of study, focal points (hot spots) of criminal activities are being determined, including neighborhood, some streets, as well as individual residential and commercial facilities (Schmallerger, 2006). Thus, taking into account and referring to the earlier studies of Shaw and McKay, Stark (1987) stresses that there must be a significant relationship between space and maintenance (level or rate)

5 The Criminology of Place, present in many titles dealing with linking spatial and geographical categories of criminal behavior, which is usually trying to detect and clarify focal point of criminal behavior in the urban areas. For more information, see Weisburd et al. (2012).

of crime. Consequently, he developed the concept of deviant neighborhoods through 30 important points of which he particularly emphasizes categories of poverty and population density. It is believed that communities with these characteristics will set the condition of major challenges for the crime outside the houses (the poor) and especially the youngest categories that are facing a lack of control by adults and weaker results in the school that diminish the adequate conditions and prospects for a successful life. In such communities (deviant neighborhoods) there are increased chances of access to the sites that offer the opportunity for criminal activity. Afore mentioned categories constitute integral structure of analytical content that are defined in modern instruments for crime mapping, which enables an exceptional potential for application of results of modern criminological research in this area for acquiring new knowledge in the field of phenomenology and aetiology of crime and the effectiveness and efficiency of institutions of social reactions to criminal behavior.

Modern law enforcement agencies, by using the theory of routine activities including the concept of environmental criminology, are developing techniques of situational crime prevention in combination with the spatial analysis of crime. As one of the concepts, Mapping and Analysis Program (MAPS) in the National Institute of Justice is used. Mapping of crime, which is used with application of GIS, allows effective use of the capacity of law enforcement agencies, by directly assisting police agencies in the distribution of police forces in places where it is most needed (Schmallager, 2006: 223-224). Several studies suggest the use-value of system of crime mapping, as well as in our neighborhood. In the Republic of Slovenia, Eman, Györkös, Lukman and Meško (2013) emphasize the importance of the latest achievements in the field of crime mapping for the purpose of police work in Slovenia, i.e. Meglič and Eman (2015) indicate the extraordinary possibilities of practical applicability in reducing theft of motor vehicles. The interpretation of findings presented on the maps is simpler and more comprehensible, just like mapping also enables the presentation of different factors on selected maps. This facilitates comparison and the establishment of mutual impacts of demographic, environmental and other factors for researchers (Hacin & Eman, 2014). The greatest advantage of GIS is the possibility to see and recognize a new relationship between the analyzed crime and other data via the created map. For the police, crime mapping enables precise placement of hot spots or hot areas, and consequently more efficient planning of police operational activities (Eman, Györkös, Lukman, & Meško, 2013).

In the analysis of crime, GIS is relying on a number of categories of data, so in addition to the distribution of crime in the area, the most commonly used data are one on seasonal and temporal characteristics of the crime as well as the distribution of crime according to the characteristics of the perpetrators. In terms of spatial distribution, crime can be traced from the global point of view, regional as well as a distribution on the rout village-city, as well as the ecology of crime in urban areas. Crime mapping, according to numerous scientific and professional and practical analyses, is helping to make decisions when managing law enforcement, and in formulation of quality control strategy of crime and the tactical analysis to predict the movements of criminal groups and their geographical profiling. As one of the most important field of use of GIS, criminological research emphasizes the importance of monitoring criminal activities, where two areas of use are differentiated, in order to help police services and to create and monitor policies relating crime combatting. In this regard, it is particularly important the value in use at higher levels, considering the fact that in many cases is confirmed that by the application of these methods it is easier to control and more efficiently monitor the crime, and reach more precise forecast of the illegal phenomena.

GEOGRAPHIC INFORMATION SYSTEM-TERM AND HISTORICAL DEVELOPMENT

GIS are a tool that allows the classification of selected events in space and time. In other words, assists in the collection, storage, retrieval, transformation and presentation of spatial and time data of selected (criminal) events (Klinkon & Meško, 2005: 133, Eman, Györkös, Lukman, & Meško, 2013). The very acronym can be used for the Geographic Information Science (Lynch & Foote, 2017). GIS applications are tools that allow users to conduct searches of data, analyse spatial data, enter and change data on maps, and present the results of these actions (Clarke, 1986; Maliene, Grigonis, Palevičius, & Griffiths, 2011). The science of geographic information, among other things, deals with concepts, applications and systems related to the concept of GIS (Goodchild, 2010).

Father of modern GIS is considered to be Roger Tomlinson, in whose work from 1968 titled „*A Geographic Information System for Regional Planning*” this term was used for the first time (The 50th Anniversary of GIS, 2012; Tomlinson, 1968). Historically, the first use of spatial data and geographical representation for the purposes of visualization dates back to the 19th century when Picquet used epidemiological data, the percentage of deaths from cholera in Paris using different shadowing (Picquet, 1832). Shortly thereafter, one of the earliest successful application of geographical methodology was the use of spatial data to discover the causes of cholera in London’s Soho. Marking a location on a map of London where infected people died and linking them in clusters John Snow was able to discover that the cause of the infection is local spring (Gunn & Masellis, 2007).

The advance of technology has led to a steady increase in the possibilities of use and visualization of spatial and geographic data. In early 20th century, a process of photo zincography was used that allowed the display of maps with different layers for data presentation. This characteristic of display of data in layers, is the most important characteristics of modern GIS. It must be emphasized that presentation of the data in this way cannot be considered as independent GIS, but in order for that to happen, it is necessary that the data are presented in layers and on the maps, and practically connected with appropriate databases, rather than having independent photos (Fitzgerald, 2007). The development of computer systems, particularly related to the development of nuclear weapons, in the early 1960s of the last century, led to the first system that had the basic characteristics of modern GIS for general use (Fitzgerald, 2007), and the first real GIS named Canada GIS is developed in 1960 in Canada and served for planning of agricultural crops.

Ongoing advancement of information technology and development of the Internet has led to possibility, in the late 20th and early 21st century, that various types of GIS data can be searched through the Internet. It has been developed and a series of so-called open source GIS platforms that can run on various operating systems and various devices which led to the growing availability of various geospatial data via the world wide web (Fu & Sun, 2010), and the development of web mapping. Web mapping is the process, by which maps are used, created by GIS and within WWW technology. Maps are, thorough this technology, available to users for viewing, but also for modifying and input of spatial data. In this way, web mapping is more than just a web cartography, this is a service by which users can choose what type of data will be supplied to them. When planning a web GIS platform, especially important are aspects of data processing which is more related to the problem of data collection and server infrastructure and planning, as well as data storage and algorithms work, than to the type of data that the user will enter (Kraak, 2001). The World Wide Web

(abbreviated WWW or the Web) as a technology is an information space where documents and other web resources are identified by Uniform Resource Locators (URLs), interlinked by hypertext links, and accessible via the Internet (W3C, 2004).

In recent years there has been an increase in the use of GIS platforms that are available for use as well as to easily available applications for mapping. Some of them have a programming interface that allows users to create custom applications and access to huge amounts of geographic data (street maps, satellite images, data for geocoding, data transport, etc.). Web mapping is enabled and group entering of geodata (Goodchild, 2007) in projects, of which the most popular is OpenStreetMap, a free map of the world.

POSSIBILITIES OF APPLICATION IN LAW ENFORCEMENT AGENCIES

GIS use computer-processed maps to visualize and access large amounts of data that are stored in specific databases. In this way, by use in the law enforcement agencies, it can be more easily and almost instantly spot the critical information and events related to the occurrence and trends of crime. The procedure that is, when it comes to research in criminology and criminal purposes, directly associated with the use of GIS is called geographic profiling (Lee Lerner & Wilmoth Lerner, 2005). According to the same authors, this method consists of psychological and geographical profiling, and as the term is created by the Canadian criminologist Rossmo and involves the use of computers to attempt predictions of the places where crime will be committed by serial perpetrators in relation to their permanent or temporary residence.

GIS is an important link in the fight against crime by providing tools for mapping and analyzing crime. Ability of agencies to respond to crime often rely on different data from multiple agencies and sources. The ability to access and process data through visualization in space and time, allows agencies appropriate and timely response. GIS platform helps to coordinate the massive amounts of data from multiple sources.

GIS allows the analysis of complex seemingly unrelated events and display of layered, spatial map. One very good example of the use of GIS is a prison institution, where this system can provide analysis and mapping of the prison population as well as equipment and space and thus ensure the safety of inmates, by separation of gang members, identifying high-risk or potentially violent inmates, and identifying dangerous places within space plan of this institution. According to Carter (2003), Garson and Vann (2001), Paulsen (2004), Ratcliffe (2004), Vann and Garson (2003), Wilson (2007), etc. this reduces the possibility of internal violence with better command and control. Furthermore, GIS, combined with the possibilities of location devices such as Global Positioning System (GPS) makes it easier to track the movement of high-risk inmates or endangered staff across the institution.

GIS systems are used by many law enforcement agencies around the world for so-called hot spot analysis, by which the place of execution of different types of crimes (such as murder, car theft etc.) are drawn on maps. Such programs in such cases help the police to classify the crimes and identify hot spots, and thus identify areas for their future activities (intensive supervision or different types of so-called secret operation police activities). It should be noted that the hot spot analysis identifies the location at which the offenses were committed while the geographic profiling aims to identify the person who committed criminal offense.

In the prevention and fight against crime GIS can be used at three levels: mapping of crime, crime analysis and investigative and preliminary investigation. In combination with GPS, GIS can be used to track the movement of criminal offenders on probation. GPS receivers installed in police cars can help more efficient deployment and use of police officers in preventing and combating crime. In 2005, some police units in San Francisco were equipped with Personal Digital Assistants (PDAs) by which police officers can use certain information from the GIS while on patrol (Lee Lerner & Wilmoth Lerner, 2005).

In order to adequately describe the role of GIS in the work of police and related agencies, first should be defined what are the key roles and services provided by such organizations and try to offer the appropriate level and type of improvement of these services through GIS platform.

Beck (2014) states that the role of police agencies (including adaptation to a police system) can be reduced to the following services and responsibilities: The answer to the calls for response (emergency calls and calls related to quality of life); detection of the offense and finding the culprits (intelligence and investigative work and analyst of the offense); public order (protection of special events and control of protests and gatherings); application and coercion of criminal and other laws (search, detention and control); preventive work (proactive/intelligence work, community work and reporting to the public).

Below are listed just some of the areas of police work in which GIS can offer better and more efficient work. When it comes to logistical support to modern policing and the organization, through GIS platform is easy to monitor and manage the work of the Closed-Circuit Television (CCTV) system, direct and plan the route of the vehicle, i.e. to manage the complete vehicle fleet, manage load of employees, etc. In the area of planning and analysis, using GIS can be performed so called hot spot analysis of crime, planning in case of special events (concerts, political rallies, etc.), to plan critical infrastructure and to perform virtually all types of predictive analysis. When talking about the management of field work, it can be planned and monitored process of taking statements and locations of witnesses, tactical planning, set alarm based on location, to provide field support to investigative actions, have virtually real-time information on all aspects of the field work of members of the agency (Tennant & Bichler-Robertson, 2001).

GIS platforms in analysis and visualization of data provide invaluable help. Using them is possible to visualize the data in real time and on the basis of these data to create presentations for informing the officials and the public, conduct performance evaluation of agencies and individual teams and officers, to monitor developments in real time which is especially important when it comes to the extraordinary events as concerts, festivals and similar types of gatherings where the security situation can change very quickly. It is necessary to emphasize the role of GIS in monitoring social media, which is very important in the fight against terrorism (Beck, 2014).

When it comes to law enforcement agencies, data that are usually entered into a GIS are: violations, calls, detention, going out to the site, data on persons on probation, critical infrastructure, location of cameras, location of the position of the vehicle and more recently information from social networks (Beck, 2014). In this way, GIS supports a wide range of users and agencies such as analysts, investigators, officers, administrators, officers for relation with media and the public, and of course management of staff at all levels.

Modern GIS in the fight against crime, strive in their work as much as possible to facilitate and provide information for police work in several fields such as: predictive and preventive police work (geographic profiling, time patterns, weather conditions, information about

the field risk, socio-economic indicators and repeating patterns of events); The analysis of data related to mobile systems and GPS (location of base stations, linking call data with the locations of base stations and pass of calls and mobile device in relation to a base station and connect the path); Integration with systems for criminal intelligence analysis (finding and analysis of links, identification of key events and optimize the use of geospatial platform); The development and use of control panels; Increased mobility (maps available on all devices, the ability to access and without an active connection and data transfer in all directions in real time).⁶

THE POLICE STRUCTURE IN BIH AND POSSIBILITIES OF GIS

The police system in BiH is a complex organization. The same is basically divided into state and entity level (the Federation of BiH and the Republika Srpska). Additional level is the Police of Brčko District of BiH, which represents independent organizational structure of police, according to Sijerčić-Čolić & Radičić (2015). At the state level, there are following police agencies that formally, as independent police organizations are under the jurisdiction of the Ministry of Security of BiH: State Investigation and Protection Agency, Border Police, the Directorate for Coordination of Police Bodies of BiH, Foreigners Affairs Service, the Agency for forensic examination and expertise, the Agency for education and professional training and the Agency for police support. Police organizations in the Federation of BiH entity is decentralized police structure consisting of the Ministry of Interior of the Federation of BiH (which in its structure, as an independent organizational unit, contains the Federal Police Directorate and Ministries of Interior of the ten cantons (each in its organization has the Police Directorate). Ministry of Interior of the Federation of BiH and cantonal Ministries of Interior have strictly separated competencies that are prescribed by the Constitution of the Federation of BiH and the Law on Internal Affairs of the Federation of BiH and of each of the cantons.

Police organizations in the entity of Republika Srpska is centralized police structure which is composed of eight organizational units, and the most important is Police Directorate. Police Directorate performs its work through organizational units at the headquarters and six Public Security Centres. Public Security Centres are implementing their work through the public security stations, police stations and police sections. From April of 2017, the new organizational structure is in place, that instead of the existing Public Security Centres introduced the police administrations, and now there are ten of them (The Republic of Srpska Ministry of the Interior, 2015).

From the above-mentioned fact, it is evident that the police organization in BiH is incoherent and differently organized structure. This does not present a difficulty for the implementation of GIS platforms, since GIS in its initial stages is primarily tied to the place and manifestations. In this case, it means that such activities may be linked to the scope of work of concrete police agencies, and therefore the same, depending on its scope of work and concrete operational interests can use this kind of platform, depending on their specific needs. At a later stage after collecting larger amounts of data, as well as, on the basis of the same, getting new knowledge, such knowledge and information can be shared with other police agencies. Because of possible future data exchange, it would be good to take into consideration compatibility of applications (in cases that law enforcement agencies

6 More on GIS usage for data visualization from and for police agencies, see Boba (2005), Burnett, (2007), Clarke and Eck (2014), Harries, (1999), etc.

purchase such applications independently). Also, with the exchange and storage of such data is necessary to take into account the existing legal provisions (primarily in the field of personal data protection), and, if necessary, consider the introduction of additional bylaws (regulations, instructions, guidelines, procedures, etc.).

According to available sources of information in BiH, GIS is used in many areas such as cartography, spatial planning, water supply and electrical infrastructure, etc. When it comes to law enforcement agencies, and specifically police agencies, this is not the case. In fact, in many police agencies, there are ideas for using GIS in specific operational actions. In particular, the Directorate for Coordination of Police Bodies of BiH for a long time had an idea to implement GIS in operational activities within their competence. However, in actual policing in BiH, GIS is not used.

From the above presented facts, it is clear what are the benefits of GIS platform. Also, it is clearly visible possible future direction for use of such platforms in BiH and that all functionality of the above-mentioned platforms can be well applied in BiH police agencies. Given the scope of the possible ways of applications in the initial stages, when it comes to operational policing, it would be most appropriate to implement the so-called hot spot analysis, but when it comes to controlling and managing the use of police forces and resources it would be most appropriate to start with activities of mapping of locations of movement of the police force in combination with GPS data.

When specifically talking about the area of the municipality that is the subject of this research, the same falls under the jurisdiction of the First Police Directorate of the Ministry of Interior of the Sarajevo Canton which is one of the seven police departments in the area of the Sarajevo Canton (Sarajevo Canton Ministry of the Interior, 2015).

THE METHODOLOGICAL FRAMEWORK

The paper focuses on GIS, their historical development, concept and importance of system security. The objectives of the paper are arising from the subject of the paper, primarily related to the analysis of registered crimes in the municipality of Stari Grad Sarajevo in 2017, and the identification of “hot spots” for certain types of criminal activities, and identifying possible trends of these forms of crime, and making proposals for preventive activities of the police authority.

In order to achieve defined goals, a limited and focused theoretical research of mapping crime category was conducted, including a review of the positive norms that deal with this issue. Elementary methods used are: content analysis, method of description, classification, specialization and compilations. In addition, an empirical research of secondary data from the official records of the Police Administration of the Ministry of Interior of the Sarajevo Canton was conducted. In this section, we have applied descriptive statistics method i.e. frequencies with related visualizations (heat maps). Theoretical basis of the paper is set to theses which are highlighted in the criminology of place or, as is more often called, environmental criminology, without excluding other theoretical concepts of criminology and concepts of other sciences outside or within criminology.

RESEARCH RESULTS AND DISCUSSION

Basis of the research are data on movement of crime in the municipality of Stari Grad, obtained from the Police Administration of the Ministry of Interior of the Sarajevo Canton. These data include total crime statistics registered by the 1st Police Department (Sarajevo Canton Ministry of Interior, 2015)

Municipality of Stari Grad is one of the four municipalities of the city of Sarajevo. According to the Department of Cadastral of Municipality Stari Grad Sarajevo, the surface of the municipality is 57.07 square kilometers with an average altitude of 541 meters. Based on the results of the census held in October 2013, Stari Grad municipality has 36,976 inhabitants.

Crime data were initially analyzed with an intention to divide proper types-forms of crime, according to the manner of commission of the offense. After that, individual data are entered to an appropriate Google Maps in order to spot crime trends or detect hot spots.

Although there is a large number of both commercial and proprietary software as well as software under one of the licenses for free and open use, we decided to use Google Maps in combination with Fusion Tables.

There are several reasons to use Google Maps in this work. Most programs, especially those with specialized crime mapping modules, are of a commercial nature, and we were focused on free and open platforms. Furthermore, Google Maps is not a GIS application in the traditional sense, and we felt that the use of Google Maps is a good indicator of the underlying technology and availability of the spatial data visualization systems.

Even using such basic and simple technology provides a clear insight into the spread and patterns of criminality, and we think that this is a good argument for the introduction and active use of GIS in the police agencies of BiH.

Before the graphic with explanations is displayed, we will briefly discuss the official statistical data on registered forms of crimes in the selected spatial and temporal framework of the research. So, in the municipality of Stari Grad Sarajevo, during 2017 the competent police institution has in the records a total of 456 cases that have been registered as statutory offenses. In Table 1, by using the method of counting, it is presented the structure of offenses under the chapters of the Criminal Code of the Federation of BiH, in which the values are reported in absolute numbers and through relative numbers in percentages, in which are visible ratios between registered forms of crime by groups or by legally protected form of value. Thus, it is quite visible the absolute dominance of registered illegal behavior against the property, which make up almost three quarters of the total of registered crime in the territory of the observed municipality, which means that law enforcement agencies at the local level are most engaged with this type of crime. Following this type of crime are crimes against human health, and criminal offenses against marriage, family and children, while all other registered forms make up less than 5% of the total registered crime in this police institution during this period.

Table 1: *Criminal offenses in BiH*

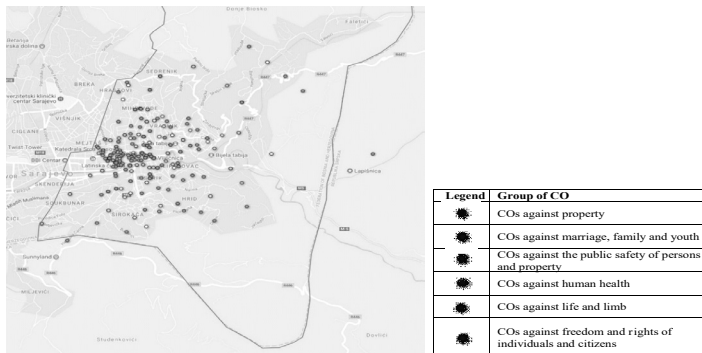
Group of Criminal offenses (COs) in accordance with FBiH CC	Frequency	Percent	Valid Percent	Cumulative Percent
COs against life and limb	10	2.2	2.2	2.2
COs against freedom and rights of individuals and citizens	20	4.4	4.4	6.6
COs against marriage, family and youth	23	5.0	5.0	11.6
COs against human health	35	7.7	7.7	19.3
COs against property	340	74.6	74.6	93.9
COs against the public safety of persons and property	9	2.0	2.0	95.8
COs against traffic safety	16	3.5	3.5	99.3
Law on the Acquisition, Possession and Carrying of Weapons and Ammunition	3	.7	.7	100.0
Total	456	100.0	100.0	

Source: 1st Police Department of the Ministry of Interior Canton Sarajevo, 2018

The first graphic (Figure 1) illustrate the territorial distribution of registered criminal offenses in the municipality of Stari Grad Sarajevo according to the type of the crime or group of crimes of the current criminal law.

The following map (Figure 2) shows the intensity of load of registered criminal offenses in some parts of the Municipality of Stari Grad Sarajevo. With this, it is clearly evident that the highest concentration of registered crimes is in the central, and most urban areas of the municipality.

Last geographical illustration (Figure 3) shows the intensity of the load of property crimes. These forms of crime are shown due to the fact that it is the most evident type of the crime in this municipality, as we have pointed out in previous analysis of official statistical data of registered crime.

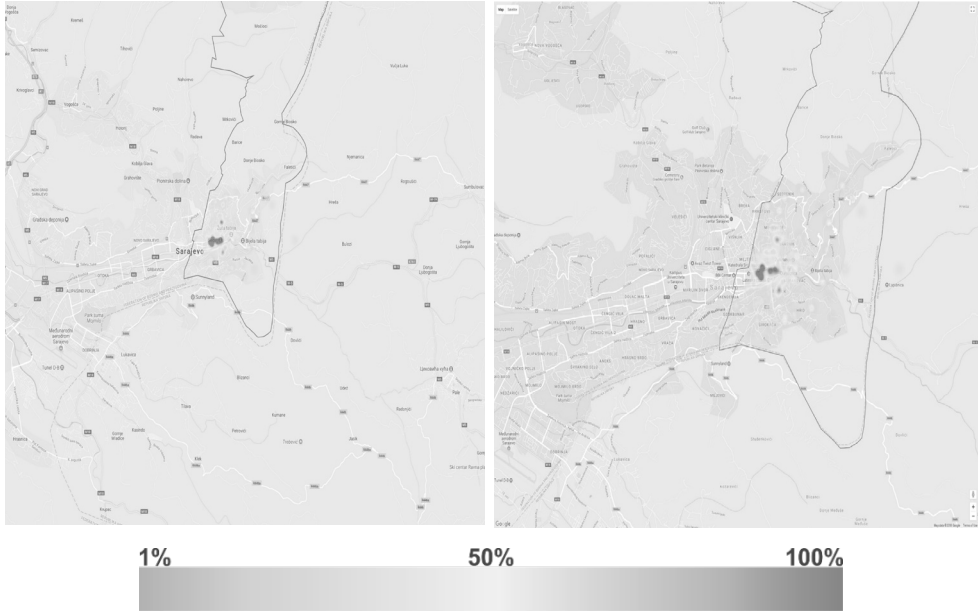
**Figure 1:** *Territorial distribution of registered criminal offenses*

Source: 1st Police Department of the Ministry of Interior Canton Sarajevo, 2018

Last geographical illustration (Figure 3) shows the intensity of the load of property crimes. These forms of crime are shown due to the fact that it is the most evident type of the crime in this municipality, as we have pointed out in previous analysis of official statistical data of registered crime.

Figure 2: *The intensity of load of registered criminal offenses*

Figure 3: *The intensity of the load of property crimes*



Source: 1st Police Department of the Ministry of Interior Canton Sarajevo, 2018

We believe that the results of the conducted research confirm that better results can be expected from GIS-based analytical and operating systems, in terms of accuracy and speed when obtaining useful police management data, thus supporting the main thesis of this paper.

The obtained results support the thesis that it is possible to conduct analyses of complex and unrelated events on the example of selected police management reports and show everything in different layered maps of the chosen area. The institutional response to criminality can thus be significantly improved by mapping techniques, both in the criminalization process as well as pre-investigative actions.

We hope that this paper will look at social and scientific significance at the local level, and that it will be applied in a broader scientific context in this area. Additionally, we believe that the results are partially limited because of quality constraints of the data obtained from official police management analytical services. However, this objective disadvantage aims to the segments where it is possible and necessary to qualitatively improve the contents and collecting, analysing and presenting procedures of registered crime police records.

CONCLUSION

As a relatively new research tool in the prevention and suppression of crime, GIS today represent an essential factor in any policy of combatting crime. Their development, is not

even nearly finished. However, the techniques that are, as a part of this scientific discipline, developed and applied, significantly advanced the work of modern security services.

When it comes to BiH, according to available sources, GIS are used in many areas such as cartography, spatial planning, water supply and electrical infrastructure, etc. When it comes to local law enforcement agencies, unfortunately, this is not the case. Results of the study indicate that law enforcement agencies in their daily work, are using only basic analytical methods and tools.

From presented insights, numerous benefits of using GIS platform are visible. Also, the possible, future directions for the use of such platforms in BiH are clearly visible.

Law enforcement agencies in BiH have quality data but lack the sophisticated software and educational programs that would contribute to reaching conclusions in timely and appropriate manner. In addition, the current complex structure of the police organization in BiH potentially complicates coordinated approach to the implementation of this type of system in the work of law enforcement agencies, both in terms of procedure, and in the aspect of the possible incompatibility of data exchange between different agencies. In this regard, if they start with the application of these systems, it is necessary to make sure that applications that are used are mutually compatible. In the future use of GIS, it is necessary to adjust the existing procedures or laws and bylaws that regulate the methods of processing, use and storage of data.

So, the police institution that is responsible for the registration and reporting of crime, in their official reports stated that they are predominantly engaged with property crime, which represents 3/4 of the total number of registered crime.

When it comes to spatial distribution, it is noticeable that most of criminal offenses are registered in the urban area of the municipality, and in the central zone in which almost all major economic, tourist, cultural and institutional capacities are situated.

Based on the analyzed data, and on maps that are created according to that, it would be necessary to carry out analysis of existing plans of patrol activities and activities of the community-policing program of the police department, i.e. the implementation of these activities according to the distribution of crime on the territory of the municipality.

Through research it was determined that the software applications used to present the distribution of crime may be used for the analytical and prognostic work of concrete police agencies, and in the form of a proposal, will be offered to the local police agency.

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CONTEMPORARY METHODOLOGICAL CONCEPTS OF STRATEGIC CRIME ASSESSMENT – EXPERIENCE OF THE POLICE OF THE REPUBLIC OF SERBIA

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ABSTRACT

The subject of the work is different models/concepts of strategic analysis and strategic planning in the field of combating crime and their comparison in the context of the impact of the model of strategic analysis on the quality of the strategic planning. Considered two basic models of strategic planning and strategic analysis: the traditional model and the contemporary model known as SOCTA, which is applied in EUROPOL and EU countries. The subject of the analysis consists of four national strategic documents adopted by the Government of the Republic of Serbia and MOI. The research used a qualitative approach: content analysis and comparative analysis. In the analytical procedure, the basic categories and criteria of analysis are defined. The results of the research show that consistent and scientific application of the contemporary SOCTA model offers significantly more opportunities for raising the quality of strategic planning compared to the traditional model.

Keywords: strategic crime assessment, methodology, strategic planning, strategy, quality

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INTRODUCTION

During this century the Government, and the Parliament and the Ministry of Internal Affairs (MoI) of the Republic of Serbia (2017) adopted and published 12 strategies for combating crime (organized crime, illegal migration, trafficking in human beings, money laundering, narco crime, terrorism etc.). In the process of strategic planning in this area different models/concepts of strategic analysis and strategy formulation can be identified. Chronologically, in the first decade of this century, the traditional approach/concept of strategic planning was applied, which is the process of creating a more or less simple strategy concept, without clearly articulated strategic analysis, then a transient, combined concept involving some analytical techniques and in the middle of the second decade modern concept of strategic analysis and strategic planning, based on scientific methodology, i.e. recognized standards, procedures and instruments. The paradigm of this model is the model of the Serious and Organized Crime Threat Assessment or more known under the abbreviated name SOCTA, which is successfully applied in EUROPOL and developed EU countries.

In Serbia there are no scientific research and published scientific papers which include comparative observation of different concepts of strategic crime assessment and their impact on the quality of the strategic planning process and strategy formulation. Namely, it could be said that the implementation of a quality strategic crime assessment is an integral part of the main and general problem of strategic planning in the Republic of Serbia, which is a low level of effectiveness and efficiency in the implementation of adopted strategies, which rare records are available to the public. The aim of this paper is to describe and

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explain the mutual relationship and the influence of different concepts of strategic crime analysis and quality of strategic planning, with particular reference to their comparison and contemporary methodological concepts that are used in the practice of strategic planning in Serbia. Access to this research is qualitative. The methods used in the study are mostly: content analysis and comparative analysis, and others: analytical-synthetic methods, inductive-deductive methods, modeling and axiomatics. The subject of the analysis is the public strategic documents adopted by the Government and the Ministry of the Interior of the Republic of Serbia.

In the analysis matrix (tables 1 and 2), the basic elements/categories of strategic analysis (SA) are defined: (a) approach, technics, instruments of SA, (b) areas of SA, (c) risk & threats, (d) trends, (e) causal links, (f) prediction of crime, (g) focus on prevention, (h) the capacity of the society to combat crime, (i) results of the police work on current/previous strategy, (j) conclusions, (k) priorities, and (l) recommendations. Definition of the basic elements of SA is based on the definition of strategic crime assessment and its methodological aspects and, also, its key results that can be clearly identified in the analyzed strategies of crime. Thus, tables 1 and 2 are the creators of this work. The criterion for comparative analysis, based on SA elements, is the quantitative and qualitative representation of these elements in each analyzed strategic document. The results of the research show that consistent and scientific application of the contemporary SOCTA model offers significantly more opportunities for raising the quality of strategic planning compared to the traditional model.

STRATEGIC ANALYSIS AND PLANNING IN THE POLICE OF THE REPUBLIC OF SERBIA

Strategic crime assessment as a key term in this paper is a type of strategic analysis and strategy document, as its final product, named such as report, assessment, etc, which is implemented for a longer period of time with periodic updates, which provides information on the selection of strategic priorities and the creation of a strategic plan for their implementation. According to its content, the strategic crime assessment is a very complex strategic document and it contains: “an appraisal of the state of crime, cautioning trends and predictions about the future development of crime and future activities of crime groups, strategic risks and threats, conclusions and suggestions for priorities with recommendations for a strategy of countering crime” (Klisarić, 2016: 23). It describes, explains and predicts criminal events based on causal links. Also, a strategic assessment contains areas selected for results analysis within the report. It is, in particular, focused on proactive police work and ensures and implies cooperation between police and subjects on the national and international level. This primarily means creating a crime combating strategy which is focused on the elimination of causes and circumstances favorable to various types of crime, above all serious and organized crime. A strategic crime assessment also includes the current crime combating strategy - how it is working, i.e. police actions in the observed periods, from the aspect of effectiveness, efficiency and cost-effectiveness of treatment. A purpose of a strategic assessment is to: “drive the business of the strategic and co-ordinating groups (ST&CG), aid and support strategic business planning and resource allocation, assist the formation of the control strategy which will identify prevention, intelligence and enforcement priorities and define the intelligence requirement” (CENTREX, 2006). Strategic and operational crime analysis should answer the following questions: What? Where? When? Who? How? and Why? Answers to these questions give a full picture of the criminal environment, and “help security decision makers better understand the particular nature of crime and to formulate specific responses” (Vellani, 2007: 56).

As previously noted, the police of the Republic of Serbia have used different models of strategic planning and strategic crime analysis over the past two decades, from a traditional to a modern model based on a scientific methodology, which corresponds to the aforementioned definition and concept of strategic analysis.

MODEL OF NATIONAL STRATEGIES AND ACTION PLANS

In the period from 2008 to 2017, the Government of the Republic of Serbia adopted 12 strategies for combating crime and the same number of action plans for their implementation. Strategic crime assessment has not been developed as a separate document but forms an integral part of these strategies (Table 1).

Table 1: *Comparative view of the National strategy for combating organized crime 2009 and the Strategy for prevention of drugs abuse for the period 2014-2024*

Strategy elements/categories SA	National strategy for combating organized crime 2009 (NSCOC)	Strategy for the prevention of drugs abuse for the period 2014-2021 (SPDA)
Approach, technics, instruments of SA	Traditional, expert and experiential approach, without methods, techniques, statistics, graphics and indicators	Combined approach: Traditional and Scientific: use of research data of the Institute "Milan Batut", ESPAD etc.; SWOT analysis, comparative analysis
Areas of SA	Drug trafficking, human trafficking, corruption, money laundering, cyber crime, violence crime etc.	Reducing drug demand and, reducing drug supply, coordination, international cooperation, scientific research
Risk & Threats	Kidnappings, extortion, blackmail, violence, linking OKG, criminals specialization, economic losses from drug trafficking, treatment of patients, economic crisis, unresolved status of AR of Kosovo, decline of civil servants' morality etc.	Reuse of drugs, risk groups by sex and age, progressive development of OKG, emergence of new types of synthetic drugs, criminal acts of narcotic crime, progressive development of illegal drug labs, distribution of drugs in prisons etc.
Trends	No identified	Use of drugs, hospitalized persons, indoor marijuana cultivation, presence of OKG on the international cocaine market, reported criminal offenses of crime
Causal links	Civil war and a large amount of illegal weapons; the process of privatization allows money laundering by buying a company; Serbia's geographical position and transit routes for drugs and migration; change of the social system, poor people and organized crime; development of computer equipment for counterfeiting money etc.	Change of channels for heroin smuggling in relation to the territory of the Republic of Serbia, caused by the reception of Romania and Bulgaria in the EU and unilaterally proclaimed independence of Kosovo - smuggling channels directed towards the Schengen borders
Prediction of crime	No identified	No identified
Focus on prevention	Proactive approach based on intelligence, coordination of government services, strategic risk analysis and threats to be done, information linking of state authorities and cooperation with citizens	The focus is on: identification of capacities for the prevention of drug abuse, the relation of general and special prevention in Serbia, awareness raising of the community and the individual on the problem of drug abuse, ensuring coordination and cooperation of competent institutions on the local, national and international level, implementation of development programs and projects, scientific research, establishing an early warning system, controlling precursors, improving intelligence etc.

Strategy elements/categories SA	National strategy for combating organized crime 2009 (NSCOC)	Strategy for the prevention of drugs abuse for the period 2014-2021 (SPDA)
Results of the police work on current/previous strategy	No identified	An evaluation of the relevance, effectiveness, efficiency, impact and sustainability of the previous strategy has been carried out. The evaluation was carried out with the support of UNODC and EU experts. The results of the police work relate to the amount of drug seizures in the three-year period (2011-2013)
Conclusions	There are no relevant analysis conclusions	There are no directly derived analytical conclusions that would be clearly based on the premises, but rather more conclusions in the form of the proposed measures and goals of the strategy
Priorities	No identified	Priorities are set in each area of analysis; the National center for drugs monitoring and drug addiction is particularly important
Recommendations	The recommended measures in the fields of law, institutions, facilities, media	Recommendations are given in the form of general and specific goals of the strategy

The National Strategy for Combating Organized Crime 2009 (2008) was created the most closely to the Mintzberg School of Concept, according to which “the strategy is a process of *conception* rather than as one of learning” (Mintzberg, Ahlstrand, & Lampel, 1998: 33). This strategy is a product of the experience and thinking of strategic police managers, which was carried out without serious strategic analysis - risk assessment and threats from organized crime. The analysis in this strategy is based on a traditional approach, using experience and expertise of police managers. At the time of its creation (2008/2009), the strategic analysis of crime, as a process and organizational unit of the Serbian police, did not exist. Therefore, there were no scientific approaches, scientific methods, techniques and instruments at that time, which would make this strategy much more quality document and process. Existing elements of the analysis in the document are at the level of identification of elementary, without correlative connections and their interpretation. Therefore, it represents a more well-articulated statement of will and the determination of police leaders for combating organized crime, rather than giving a full picture of the state of organized crime, its extent and the appropriate reaction of the police and other state authorities. The strategy does not contain warning trends, causation, and relevant conclusions. Thus, it provides a superficial and fragmented picture of organized crime in Serbia, without a defined focus on prevention, prediction of crime, and logically derived priorities. The measures proposed in this document and its action plan are not formulated according to the SMART model, which makes it difficult to measure the effectiveness of their implementation.

The Strategy for prevention of drugs abuse for the period 2014 - 2021 (2014) have been made in line with the identification of the state of drugs and the current policies of the European Union. According to its process of creation and formulated content, this strategy could be categorized into a combined school of strategies arising from the analytical process and the process of conception (Klisarić, 2012). In relation to the NSCOC, this strategy represents a more advanced version regarding the quality of the implemented strategic analysis and the quality of the formulated strategy. First of all, strategic analysis in NSCOC is based on experience, while strategic analysis in SPDA is based on primary and secondary scientific research. Further, the NSCOC has no identified trends while the SPDA has, although these trends have been identified in a very short period of time, mainly for two years, which inhibit deeper consideration of the etiological dimension of the criminal phenomenon. In both strategies, the etiological dimension of the criminal phenomenon is

very scarce - there is almost no identification and analysis of cause-effect connections, and the fact that it is done is quite fragmentary and superficial. Given that in both strategies there is no scientifically based identification and analysis of crime trends and a causal link, it was not possible to draw conclusions about the prediction of the criminal phenomenon. Prevention in SPDA is more substantially and more precisely formulated, resulting from the application of a scientifically based analysis and more detailed data on the criminal phenomenon. NSCOC has no identified police results in combating organized crime, while the SPDA has a review of the results in implementing the previous strategy for the period 2009-2013. However, the results of police work have been presented very scantily and fragmentarily in terms of the amount of seized drugs in the three-year period (2011-2013), which is not enough to draw conclusions about the long-term effectiveness and efficiency of the police work in this area. Namely, "in order to get a clearer determination of the long-term effectiveness and efficiency of the police work in combating drug abuse, several important factors must be taken into consideration: (a) the trend of criminal offenses of crime within a certain period, (b) the trend of increasing or decreasing the number of drug addicts, (c) the trend of increasing or decreasing the age of those who become drug addicts, and (d) the trend of increasing or decreasing the price of narcotic drugs in the domestic drug market" (Skakavac & Klisarić, 2016). Evaluation of the previous strategy SPDA, conducted with the help of UNODOC and EU experts, is a unique example in the strategic planning of the Government of the Republic of Serbia in the new millennium. The current assessment of the situation in the area of drug abuse and the evaluation of the previous strategy served as a basis for defining the priorities and recommendations (general and specific goals) in the SPDA. NSCOC does not have relevant analytical conclusions or defined priorities, which is a consequence of the lack of a strategic analysis of the criminal phenomenon and exact data. SPDA has no directly derived conclusions that would be based on the premise of the argument, analysis of causal relationships and trends. There are several conclusions that are based on the evaluation of the previous strategy, formulated in the form of the priorities and goals of the strategy. Recommendations in the SPDA are given in the form of general and specific goals of the strategy, which are more numerous and more specific than the NSCOC. However, many of these specific objectives in their formulation do not differ from the general objectives, and therefore they do not have a SMART approach.

Based on the comparison between the SPDA and the NSCOC, it can be concluded that the application of scientifically based strategic analysis in the NSCOC led to a significantly better strategic document. However, the scientific approach to strategic crime assessment in SPDA was not fully and deeply applied, especially in the study of the etiology of the criminal phenomenon, which makes that this strategy also has its own specific shortcomings, mentioned above.

MODEL OF STRATEGIC ASSESSMENT AND STRATEGIC PLANS

Since 2015, the MoI of the Republic of Serbia in the context of development projects to join the EU, using modern methodological concepts in cooperation with experts from the EU, made two strategic assessment of crime and a strategic plan of the police of national importance, which represent a new qualitative approach to the practice of strategic planning of the Serbian police (Table 2).

Table 2: Comparative view of the Assessment of the threat from serious and organized crime and the Strategic assessment of public safety

Strategy elements/categories SA	Assessment of the threat from serious and organized crime (2015) (SOCTA)	Strategic assessment of public safety (2017) (SAPS)
Approach, techniques, instruments of SA	Scientific approach: EU and UN standards have been applied; planning process of collecting, processing and interpreting data, concluding and giving recommendations; questionnaire; use of records of MOI, UNODOC, Interpol, Europol, Fronteks, SELEC; PESTEL and SWOT analysis; statistical techniques, indicators, charts, diagrams and tables	Scientific approach: EU and UN standards have been applied; SWOT, PESTEL, stakeholders analysis, FMEA (Failure Mode and Effects Analysis), CIRAM (Common Integrated Risk Analysis Model); Tree of the problem; Gap analysis; statistical techniques indicators, charts, diagrams and tables; defined criteria for priority selection
Areas of SA	Drugs, Irregular Migration, Trafficking in Human Beings, Robberies, Motor Vehicles, Weapons, Economic Crime, Money Laundering, Cybercrime, Organized Criminal Groups (OCG)	Overall crime in Serbia, Organized crime, Classical crime, Economic crime, Corruption, Cybercrime, Terrorism and extremism, Traffic delinquency, Cross-border crime, Smuggling of people, Illegal migration and other areas of public security
Main Risk & Threats	The main risks and threats in each area of analysis are clearly identified and described	The main risks and threats in each area of analysis are clearly identified and described - defined as assessment priorities
Trends	Trends of organized crime (OK) are statistically and graphically presented only for criminal offenses: Usuary, Extortion and criminal acts with the use of firearms for the period 2010 - 2014, without linking with the factors of crime	The crime trends are statistically and graphically presented for each area and sub-area for the period 2011 - 2015, with linking to mainly situational crime factors
Causal links	They are defined as global and regional geostrategic, political and economic factors; Changing the channels of smuggling drugs of cocaine and heroin caused by the weak illegal market in Serbia, low wages and reduced risk of detection; increase in the number of OCG dealing with in human trafficking is caused by high profits and a reduced risk of disclosure; the high security risk of illegal migration (IM) is caused by the volume and intensity of IM and the infiltration of terrorists; the abuse of the Internet and social networks cause an increase in trafficking in human beings; the lack of physical and technical security and a low level of security awareness enables the robberies	They are defined as global and regional geostrategic, political and economic factors; Situational factors of crime and lack of social control: isolation and poor security of the object of attack, population density, concentration of capital and value, poor security culture of citizens, poorly lit parts of city districts, easy availability of protected values to certain categories of persons (e.g. employees), failures in professional security, lack of security control of certain regions and behavior of organizations and individuals, lack of educational process in families and schools, traffic accidents factors
Prediction of crime	For each area and sub-area of analysis of OK there are forecasts of further development	For each defined priority there is a prediction of the development of crime, formulated as a projection of movement
Focus on prevention	Cooperation of institutions at the national and international level; education, awareness raising and promotional programs; intelligence activity; Early Warning System; risk analysis; adoption of standards and procedures in the EU; development of organizational capacities; special prevention programs; enhanced hot spots control; development of Community Policing, control of border crossing; active participation in analytical files of Europol	Within the defined priorities, prevention measures are also defined in the form of recommendations: development of qualitative analysis of preventive programs; participation of the police in other crime preventive strategies; participation of police in projects and cooperation on national and international level; improving the integrity plan; raising public safety awareness; development of the concept of Community Policing, etc..

Strategy elements/categories SA	Assessment of the threat from serious and organized crime (2015) (SOCTA)	Strategic assessment of public safety (2017) (SAPS)
Results of the police work on current/previous strategy	The results of the police work only for the field of drugs are graphically presented	The results of the police work have been statistically described and graphically presented in almost all areas of analysis: seizure of drugs, weapons, cigarettes; solving the crimes of murder, robbery and theft; detection of smuggling of people and illegal migrants, improvement of student safety in schools, etc.
Conclusions	The individual and main conclusions are correctly formulated - based on statistical and other facts and premise	The individual and main conclusions are correctly formulated - based on statistical and other facts and premise
Priorities	No identified - the results of the assessment are the basis for determining priorities in the Strategic Plan of the Police	Eight priorities have been defined: OK, Drugs, Corruption, Cyber Crime, Terrorism and Extremism, Public Order and Peace, Traffic Safety, Irregular Migration and Smuggling of People
Recommendations	For each area, recommendations are correctly formulated	For each area, recommendations are correctly formulated

In 2015, the MoI of the Republic of Serbia, in fulfilling the objectives of the project “Strengthening Capacities for Strategic Analysis and Strategic Assessments” in cooperation with the police of Montenegro and FYR of Macedonia, published a document entitled “Assessment of the Threat from Serious and Organized Crime (Ministry of Internal affairs of the Republic of Serbia, 2015)”. The work on SOCTA was actively supported by the partners: the Government of Switzerland, the DCAF, the OSCE Mission to Serbia and the experts of Europol. SOCTA was created by Europol experts, and has been developed on the basis of standards set in the EU and UN. It is a basic document of national importance containing the phenomenological, the etiological and the victimological characteristics of serious and organized crime in Serbia. SOCTA is a comprehensive, systematic, overview, practical and informative document, written in an understandable language and style, with numerous and high-quality recommendations and a focus on proactivity. SOCTA methodological concept of scientific research is characterized by quantitative and qualitative approach, planned and systematic process of collecting, processing and interpretation of data, drawing conclusions and making recommendations (EUROPOL, 2013). Also, within the framework of this methodology, strategic analytical methods PESTEL, SWOT, causation and statistical method with indicators, charts, diagrams and tables were used, which resulted in the quality of the document being raised to a significantly higher level than in the case of two previously analyzed NSCOC and SPDA documents.

In addition to the undisputed qualities of SOCTA, there are several shortcomings, methodological and essential nature. Firstly, the areas of strategic analysis were not consistently methodologically treated. Specifically, the area of Corruption has not been analyzed at all, so, in addition to general remarks, there is no standard structure and recommendations. Taking into account the fact that the fight against organized crime and corruption is the first strategic priority of the MoI of Serbia in the list of priorities for the period 2015-2018 (MOI, 2017), as well as the worrying corruption index in Serbia (41 out of 100, or 77 place from 183 countries for 2017.), established periodically by the non-governmental agency Transparency International (2017) it can be concluded that the so-called Corruption area represents a significant shortcoming of the document. Secondly, trends of organized crime are statistically and graphically presented only for criminal offenses: usury, extortion and criminal acts with the use of firearms, but without linking with the factors of crime.

The application of the SOCTA methodology in this assessment made it possible to obtain an objective and complete picture of organized and serious crime in Serbia in the phenomenological dimension, while the etiological dimension of this criminal phenomenon is considerably weaker. Third, the results of the police are only presented in the area of drugs, in which the diagram shows the results of the five-year period. These results, as in the SPDA, are not assessed and brought into line with the key dimensions of the quality of police work: effectiveness and efficiency. Fourth, in SOCTA not included attitudes of Serbian citizens about the threat to the community, such as crime, corruption, drug crime and organized crime, for which there are researches of independent agencies: Ipsos Strategic Marketing, CESID and TNS Medium Gallup. At last, but not least, the recommendations have not been formulated in accordance with SMART scheme, as stated in the document.

The Strategic Assessment of Public Security (SAPS) is a comprehensive strategic document of the MoI, which was created in 2017 and consists of two parts: strategic analysis and strategic assessments. The strategic analysis shows the state and dynamics of crime, while the strategic assessment contains strategic priorities - their description, forecasting development and recommendations. By comparison, it can be concluded that the SAPS document is qualitatively better made from the SOCTA document. The methodological concepts of strategic analysis, by their content, are roughly equal in both documents, but the methodology in the SAPS document is deeper and more consistent. The area of corruption is equally treated in SAPS as with all other areas. Also, the etiological dimension of the assessment is deeper and more meaningful, as can be seen from the elaboration of situational factors of crime. The following qualitative advantages of SAPS are: (a) crime trends are statistically and graphically described in all areas of analysis and linked to situational crime factors, (b) SAPS also considers the distribution of crime according to different criteria (geographical, age, gender, etc.), (c) results of the police work are given almost in every area, (d) Modus Operandi is explained in many criminal acts, (e) the victim's dimension of assessment is significantly elaborated, especially in relation to the vulnerable groups, (f) the phenomenological picture of crime is more substantial and better structured, (g) risks and threats are better treated by listing the consequences/damages in the form of human victims and financial damages, and (h) the priorities are specifically separated and treated through the description and projection of movement and recommendations. However, SAPS has its own shortcomings, but significantly less than SOCTA, which are: (a) the etiology dimension still lacks the necessary depth and exactness, (b) prevention does not yet have the required level of specificity and cooperation with other subjects of society, (c) results of the police in the fight against crime are not assessed from the aspect of long-term effectiveness and efficiency, and (d) recommendations have not been formulated by the SMART scheme.

SOCTA and SAPS served as the information basis for the development of a special document called the Strategic Plan of the Police (SPP) for the period 2018-2021 (Ministry of Internal Affairs of the Republic of Serbia, 2018b). This document is designed on the basis of the defined priorities of the SAPS and the SMART scheme, thus enabling systematic and quantitative monitoring and evaluation of the results of the police work in the field of public security for a period of four years.

CONCLUSION

Based on the results of the analysis of strategic documents in this paper, it can be concluded that the quality of the strategic planning process in the field of combating crime and the quality of the final strategic documents in that area (strategies, strategic plans) largely depend

on the quality of strategic crime analysis/assessment. Likewise, the applying of the scientific approach to strategic crime analysis/assessment in the Republic of Serbia, in accordance with EU standards, and in particular the application of the SOCTA methodology, has led to a significant improvement in the quality of the strategic planning process and strategic documents. In this regard, it should be noted that the results of a strategic assessment are an information basis for formulation of the strategy/strategic plan, but to what level of quality the strategy will be formulated in the form of general and specific goals, it depends not only on the quality of the strategic assessment, but also from the skills and the will of strategic leaders and managers. In addition, in the applying of the current methodological concepts strategic crime analysis, there are two problem questions: (a) the consistent application of the principle of methodology and tool in all areas of analysis, and (b) the seriousness/depth of their applying. The inconsistency and methodological superficiality in certain areas of strategic analysis quite certainly significantly reduces the quality of the final product of the strategic analysis.

It is especially important, in order to strive for the excellence of strategic documents in the field of combating crime, that the police of the Republic of Serbia and other security agencies have a defined set of quality criteria/standards that would relate to the key elements of the strategic analysis and strategic planning process and their phases and final products. They would constitute a control mechanism for ensuring the quality of strategic documents, and “criteria for quality assessment should be defined as axioms, so that we cannot doubt in their epistemological and axiological dimension” (Klisarić & Bejatović, 2017).

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ELECTRONIC AND ELECTRICAL WASTE AS TRANSNATIONAL ENVIRONMENTAL HARM AND CRIME

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ABSTRACT

Human beings are deluged with ever-evolving electronic and electrical equipment, which is produced in enormous quantities and bought by consumers. Excessive consumption simultaneously yields electrical and electronic waste (e-waste). Around 80% of the yearly generated e-waste is inappropriately managed, recycled and illegally disposed of in developing countries. This causes significant harm to human health and the natural environment. In the case of acts of illegal shipment and trade at the international level, e-waste becomes part of the category of pollution crime and broader as one of transnational environmental crimes. This paper discusses transnational environmental crime and focuses on e-waste, its characteristics, toxicity and illegal trade. It is suggested that Clarke's situational crime prevention methods be used to curb illegal e-waste trafficking, since e-waste crime is driven by both opportunity and rational choice.

Keywords: electrical and electronic waste, e-waste, transnational environmental crime, illegal trade, situational crime prevention

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INTRODUCTION

Electronic and electrical waste (e-waste or WEEE), refers to all items of electrical and electronic equipment³ (e-equipment or EEE) and its parts that have been discarded by owners as waste without intended re-use (StEP Initiative, 2014). E-waste consists of valuable recyclable components (e.g. gold, platinum, and silver) and also contains non-negligible amounts of hazardous elements and materials (e.g. cadmium, lead and chromium) and is thus considered hazardous when improperly managed. United Nations Environment Programme (UNEP) (n.d.) researchers are warning that, given our growing appetite for e-equipment and products, combined with rapid innovation and ever-shorter product lifespans, e-waste has now become one of the fastest growing waste streams. E-waste can be a threat to our planet. Illegal and poorly managed e-waste is polluting our environment, harming human health and contributing to human-made climate change. The worst impacts are often in the countries that are least equipped to manage it.

These findings highlight the need for proper and safe recycling, along with smart management, given the large volume of e-waste generated worldwide annually. All the countries in the world combined generated a staggering 44.7 million metric tonnes (Mt),

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3 The Directive 2002/96/EC (2003) and Directive 2002/95/EC (2003) defined the term electrical and electronic equipment "as equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Annex LA and designed for use with a voltage rating not exceeding 1000 Volt for alternating current and 1500 Volt for direct current".

or an equivalent of 6.1 kilograms per inhabitant (kg/inh) of e-waste annually in 2016, compared to the 5.8 kg/inh generated in 2014. This is close to 4,500 Eiffel Towers each year. The amount of e-waste is expected to increase to 52.2 million metric tonnes, or 6.8 kg/inh, by 2021 (Baldé, Forti, Gray, Kuehr, & Stegmann, 2017).

Of those 44.7 Mt of e-waste, approximately 80% (35.8 Mt) goes undocumented, and the rest (20%) is documented, collected and properly recycled (Baldé et al., 2017). Improperly documented e-waste is illegally shipped to developing countries, where it is often not managed in an environmentally sound manner and thus poses a serious threat to both human health and the environment. The extraction of valuable materials contained in some products, like gold, copper, and palladium, can attract the involvement of organized criminal groups and evolve into transnational environmental crime.

Transnational environmental crime poses a challenge to new ways of thinking. High penalties are not enough to stop the relentless increase in crime committed against people and the environment. The main motivator for transboundary movement of e-waste is profit (Lundgren, 2012). Clarke's situational crime prevention techniques could be implemented to reduce the motivator – profit. Over the years, Clarke has designed 25 techniques for reducing the opportunities for crime. Using Clarke's techniques in dealing with environmental crimes (such as wildlife crime and endangered species conservation) has shown their potential for reducing criminal acts (Center for Problem-Oriented Policing, 2018).

The paper is organized as follows. First, we briefly describe the transnational environmental crime. Second, we describe the complexity of the e-waste problem and e-waste characteristics. Then, we focus on situational crime prevention theory and its application to the e-waste problem.

ENVIRONMENTAL DAMAGE AND CRIME ON THE TRANSNATIONAL LEVEL

Environmental issues have generated considerable research and public interest in recent years. Many criminologists (Adeola, 2013; Andersen, 2014; Eman, 2008; Eman & Meško, 2012; Heckenberg, 2009; Simon, 2009; Situ & Emmons, 2000; White, 2003) and other researchers have been trying to define the extent of the damage to and crime against the environment. Heckenberg (2009) defined environmental damage by referring to a wide variety of injuries and degradation linked to the use, misuse and poor management of the “natural environment”⁴, including such things as pollution, toxic waste and the killing of plants, soils, and animals. Environmental damage can be conceptualized as involving acts and omissions that are both “legal” and “illegal”.

Legal and illegal acts and omissions are deemed by the law and are defined as an environmental crime. The extent of environmental crime ranges from crimes of air pollution, crimes of deforestation, crimes of species decline and against animal rights, and crimes of water pollution, to hazardous waste and organized crime (such as dumping toxic and general waste in both legal and illegal ways (White, 2008). Eman, Meško and Fields (2013) additionally define the term environmental crime as a deviant act or irresponsible activity perpetrated by humans and causing any form of harm (an artificial change, worsening, burdening, degeneration or destruction) to one or more of eight elements (air, water, soft

4 The natural environment refers to an environment as close as possible to its natural state, such as wilderness, oceans, rivers and deserts. Although human beings may be present or traverse it, it is often seen as distinctive and “separate” per se (Heckenberg, 2009).

soil, mineral materials, human species, animal species, plant species, bacteria/viruses) that compound existing problems in the natural environment or interrupt the environment's natural changes. The act serves in the interest of either organizations – typically corporations – or individuals (Situ & Emmons, 2000).

To understand in depth the nature of environmental harm from a global perspective, we have to understand that harms to the environment are interconnected and intertwined in various ways. It is like the “butterfly effect”, which means that what happens at the local level has consequences for those on the other side of the planet (White, 2010). The extent of consequences is seen not only on a regional level but also on the global level. Environmental crime is expanding over international borders and is therefore perceived as a transnational crime (White, 2013).

White (2013) defines transnational environmental crime as any unauthorized act or omission that is against the law and is therefore criminally prosecuted and sanctioned; the crime involves a cross-border or international or global dimension and the crime is targeted against wildlife or is related to pollution (of air, water, and land). The nature of the environmental harm is the central subject of green criminology. This means identifying the types of environment, identifying the type of crime via specific case examples, investigating the nature of regulatory mechanisms and laws, and investigating the nature of the relationship between changes in or to specific environments and the criminalization process of environmental hazards (White, 2008).

Global environmental harm can be easily moved from one place to another because of the “Not in my back yard!” (NIMBY) syndrome. White (2010) mentions that some of the worst aspects of NIMBY syndrome involve the global trade in toxic waste (often under the cover of recycling), which is dumped in developing countries. The result is a massive movement of environmentally harmful products, processes and wastes to the most vulnerable places and most exploitable peoples of the world (White, 2013). We have to mention another aspect of NIMBY, which means the response of a community when it is faced with the prospect of hazardous waste. People feel threatened by hearing the word hazardous and with a connection to waste, which has the pejorative meaning of useless trash, they can think only of removing such waste out of their sight and mind.

Environmentally irresponsible waste management and pollution crimes are gaining more and more interest in the research community. Several studies have been done regarding illegal e-waste shipments to developing countries in correlation to the impact of toxic substances in e-waste on human health and contamination of the environment; economic impact on the formal recycling industry; e-waste legislation loops; and connecting illegal criminal activity with organized crime actors. A number of papers⁵ and articles have been published on the health and environmental impacts of e-waste recycling in China as a major importing country (especially cities Hong Kong and Guiyu) and India (especially city Delhi). Similar were researched and exposed Nigeria and Ghana (city Agbogbloshie), as two major African countries with exponential growth of illegal e-waste import. Another country exposed for researching emerging issue of e-waste is Pakistan (as a new country for hidden flow for e-waste import).

The important in-depth project researchers regarding illegal export and e-waste recycling were made by Huisman et al., 2015 - Countering WEEE Illegal Trade Summary Report of project Countering WEEE Illegal Trade; Rucevska et al., 2015 - waste report titled

5 Literature research is composed of searching for peer-review papers and articles in several literature bases (Academic Search Complete, COBISS, Emerald, JSTOR, SAGE, SCOPUS, Science Direct and Web of Science).

Waste Crimes – Waste risks, Gaps in meeting the Global Waste Challenge, and a deliverable EFFACE⁶ report titled *Illegal shipment of e-waste from the EU: A case study on illegal e-waste export from EU to China* by authors Geeraerts, Illes and Schweizer (2015).

NO HAZARDOUS WASTE IN MY BACK YARD

European Union (2010) representatives place great stress on the waste issue. They have reported that people living in the EU every year on average throw away around half a tonne of household rubbish. This is on top of the huge amounts of waste generated from activities such as manufacturing (360 million tonnes) and construction (900 million tonnes), while water supply and energy production generate another 95 million tonnes. Altogether, the EU produces up to 3 billion tonnes of waste every year. Within these wastes, e-waste represents the widest source of wastes with the highest growth rate per year (about 30–50 million tons of e-waste are discarded each year (Cucchiella, D'Adamo, Lenny Koh, & Rosa, 2015), consisting of materials that are both critical, and valuable and hazardous. The latter requires a dedicated recycling process to avoid, on the one hand, environmental and health problems and, on the other, environmental burdens associated with the extraction and refining of primary new materials (Cucchiella, et al., 2015).

E-waste is categorized as hazardous waste because of the presence of toxic materials, e.g. mercury, lead, and brominated flame retardants. INTERPOL (2014) representatives estimate that e-waste contains over 1,000 different substances, including toxic heavy metals and organics. However, e-waste does not only consist of hazardous materials and elements but also of precious metals such as gold, copper and nickel and rare expensive materials (such as indium and palladium). These precious and heavy metals could be recovered, recycled and used as a valuable source of secondary raw materials.

It has been documented that e-waste is shipped to developing countries, where it is often not managed in an environmentally sound manner, thus posing a serious threat to both human health and the environment. Many researchers (Bakhiyi, Gravel, Ceballos, Flynn, & Zayed, 2018; Chen, Dietrich, Huo, & Ho, 2011; Grant et al., 2013; Huo et al., 2007; Ni, Zeng, Tao, & Zeng, 2010; Puckett et al., 2002; Tang et al., 2010; Wong et al., 2007) have researched the negative effects causing damage in humans to the following:

- central nervous system⁷ - affected by aluminium, antimony, arsenic, beryllium, copper, lead, mercury, polychlorinated biphenyls – PCB and zinc;
- blood - affected by lead and mercury;
- digestive and urinary system - affected by antimony, cadmium, and lead;
- immune system - affected by dioxins and furans (polychlorinated dibenzo-p-dioxins – PCDD / polychlorinated dibenzofurans - PCDF) and PCB;
- reproductive and endocrine system - affected by arsenic, barium, brominated flame retardants, copper, manganese, mercury, dioxins, and furans (PCDD / PCDF) and lead;
- respiratory system - affected by arsenic, cobalt, hexavalent chromium, mercury, vinyl chloride⁸, polybrominated diphenyl ethers - PBDE, nickel, selenium, and silver;

6 EFFACE – European Union Action to Fight Environmental Crime. The second author was a scientific consultant in this project.

7 China is estimated that around 81,300 children born in period 1995-2013 have been affected in their neurological development as a result of e-waste exposure and have an average reduction of intelligence (Geeraerts, Illes, & Schweizer, 2015).

8 Vinyl chloride is used primarily to make polyvinyl chloride (PVC); PVC is used to make a variety of plastic products (Puckett et al., 2002).

- skeleton - affected by cadmium and lead; and
- skin irritation – caused by gallium, hexavalent chromium, lithium, mercury, selenium, silver, and tin.

Environmentally hazardous and improper e-waste dismantling and disposal (Ni et al., 2010; Puckett et al., 2002) affect water, soil, and air:

- lead, barium and other heavy metals leach into groundwater and releasing toxic phosphor;
- brominated dioxins, beryllium, cadmium, lead, and mercury produce hazardous emissions;
- acids leach into duck ponds and rivers, destroying fish and flora and also into rice fields, contaminating food;
- dioxins sediment in rivers which also affects water and its biodiversity;
- brominated flame retardants and PCBs are inhaled by animals living around waste recycling regions (studies have been done on bird species).

Despite the irreversible hazardous damage to human beings, the demand for inexpensive second-hand equipment and raw materials from e-waste is in constant in less-developed regions. Less-developed countries are becoming enormous backyard recyclers for e-waste shipped from developed countries. EUROPOL (2015) representatives are warning that an exponential increase in the quantity of e-waste has the potential to result in the emergence of e-waste as a major illicit commodity rivalling the trafficking of drugs in terms of scale and profits.

E-WASTE CHARACTERISTICS AND MOVEMENT

The illegal shipment of e-waste from the EU to third countries provides an example of a complex and serious transnational environmental crime. Over the past decade or more, cross-border transport of e-waste to third countries has increased significantly. The international Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal has been translated into European Union law via the EU's Waste Shipment Regulation (2006), which forbids the export of e-waste to third countries; nevertheless it is estimated that around 2 million tonnes of e-waste illegally leave Europe each year (Geeraerts et al., 2015). The latest research (Baldé et al., 2017) shows that on a global level, around 35.8 Mt of e-waste is not properly documented or unreported and therefore assumed to be illegally managed and recycled.

Massari and Monzini (2004) have divided the process of waste trafficking into three main stages, namely – country of origin, where the initial transfer starts; transit stage, where the waste is transported and stored, and final stage, the destination place⁹, where waste is recycled and disposed. Further on, Schlupe et al. (2009) have divided the e-waste recycling cycle into three main chronological steps: (a) collection, (b) dismantling and pre-processing and (c) end-processing for valuable material recovery. The first step happens in developed countries, the second is made after the illegal shipments of e-waste to be dismantled with primitive methods and the last step is to dump useless e-waste scrap.

The movement of e-waste is transnational, mainly from developed countries (e.g. United States, European Union, and Australia) to developing countries (e.g. Nigeria, Ghana, Pakistan,

⁹ Destination place is not only developing country, but can also be an illegal dumping of waste to unauthorized ground, such as small roadside dumps, natural caves, industrial sites etc. (Massari & Monzini, 2004).

China, Thailand, and Brazil). Lepawsky & McNabb (2010) have mentioned that developing countries are vulnerable to transboundary movements of hazardous waste from developed countries. Developing countries are framed as equally underprivileged and vulnerable in relation to transboundary flows of hazardous waste from developed countries, but not in relation to such flows between themselves or other developing countries.

Waste routes are strong and are tough to control and limit. Countries have tried to regulate this problem through signing international agreements. The major international agreement is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention, entered into force¹⁰ in 1992), which is the most high-profile international instrument for controlling e-waste disposal and regulates the transboundary movement and disposal of hazardous wastes. The principal aims of the Basel Convention are as follows: the reduction of hazardous waste generation and the promotion of environmentally sound management of hazardous wastes wherever the place of disposal; the restriction of transboundary movement of hazardous wastes, except where it is perceived to be in accordance with the principles of environmentally sound management; and a regulatory system applying to cases where transboundary movements (import, transit, and export) are permissible (Rucevska et al., 2015).

The Basel Convention defines an illegal activity - illegal trafficking in hazardous waste, as a crime and instructs all State parties to introduce appropriate national domestic legislation to prevent¹¹ and punish illegal traffic. In cases where illegal trafficking is identified, the exporting country has to take back the waste and dispose of it in an environmentally sound manner.

Alongside the Basel Convention are the Rotterdam Convention (1999), which obligates exporting countries to inform and receive the consent of an importing country prior to international shipping of a cargo containing hazardous chemicals and pesticides, and the Stockholm Convention (2004), which aims to protect human health and the environment from persistent organic pollutants contained in materials. These three conventions represent the three guardian pillars of global efforts to track and manage hazardous waste and chemicals.

Other countries, especially developing countries, which suffer from enormous quantities of imported e-waste, have made agreements similar to the Basel Convention. In Africa, countries have signed a regional agreement – the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa (1998) and countries in the South Pacific region have signed the Waigani Convention (Secretariat of the Pacific Regional Environment Programme, 2001).

In the European Union, member states signed Directive 2002/95/EC (2002) on the restriction of the use of certain hazardous substances in e-equipment and Directive 2002/96/EC (2003), a regulation on e-waste. In 2012, Directive 2002/95/EC was updated

10 To this date out of 186 parties, only Haiti and United States of America (USA) have not ratified Basel Convention. Puckett et al. (2002) and Schmidt (2006) have warned that USA shippers can legally export enormous quantities of e-wastes wherever they wish; this is within their law.

11 The upgrade of the Basel Convention restrictions is the Basel Ban Amendment (1998), which has not yet come into force (to this date the amendment has not been signed by more than ¾ of state members). The amendment is stricter and bans all forms of hazardous waste exports from the wealthiest and most industrialized countries of the Organization of Economic Cooperation and Development (OECD) to all non-OECD countries.

with Directive 2012/19/EU (2012)¹², also known as the WEEE Directive. The key purpose of the WEEE Directive is to contribute to sustainable production and consumption by, as a first priority¹³, the prevention of e-waste and, in addition, by the re-use, recycling and other forms of recovery of such wastes. The new RoHS Directive (Directive 2011/65/EU), which upgrades Directive 2002/96/EC, lays down rules on the restriction or tolerated concentration of hazardous substances (e.g. lead, mercury, cadmium, hexavalent chromium, PBB and PBDE) in e-equipment, with a view to contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of e-waste.

Despite the signing of these agreements, the e-waste trade has not decreased because another problem is a loophole in the convention for false declaration of e-waste as second-hand goods, which can legally be internationally transported. The WEEE Directive in Annex VI defines the minimum requirements for shipments, which are required from exporting member states before shipping. The minimal claim is that e-equipment is fully functional, properly packaged and have all the required papers (certificate of testing, proof of functionality). Schmidt (2006) has estimated that around 500 shipping containers loaded with second-hand e-equipment are transported to Africa¹⁴ each month. Each container can be packed, on average, with a load equal in volume to 100,000 computers, or 44,000 TV sets, and out of the whole load, anywhere from 25% to 75% of this material is useless.

Waste moves naturally from developed to less developed countries (Bernard, 2011). Illegal shipments of e-waste represent an economic opportunity to those involved, but those receiving the waste, particularly localized informal recycling practices carry significant environmental, social and economic risks (Geeraerts et al., 2015). Economic opportunity means direct profit with a multimillion-dollar turnover, and the globalization of the illegal e-waste trade has intensified corporate, or white collar, crime (Lundgren, 2012).

12 The WEEE directive sets a total of 10 categories of e-waste: (a) large household appliances; (b) small household appliances; (c) IT and telecommunications equipment; (d) consumer equipment; (e) lighting equipment; (f) electrical and electronic tools; (g) toys, leisure and sports equipment; (h) medical devices; (i) monitoring and control instruments and (j) automatic dispensers (Annex II to the Directive 2012/19/EU, 2012). After August 2018, e-waste will be reclassified into 6 out of 10 preexisting categories.

13 Prioritization of waste reduction is presented in a waste hierarchy (or Lansink's ladder) from the most favored option to the least favoured option for managing waste. Top priority is prevention-reduction, followed by re-use, recycling, energy recovery, and incineration, while at the bottom is dumping waste in landfills (Waste hierarchy, 2012). The WEEE Directive also provides a minimum harmonization for producers to take care of collection and ecologically-sound treatment of their products – the take back system (Bisschop, 2013).

14 In 2009, EEA reports that more than 15,000 tonnes of color TV sets were exported from EU to African countries (Ghana, Nigeria, Egypt) (EEA, 2009). Latest project named Person in the Port Project for measuring volumes and routes of used e-equipment import into Nigeria has shown, that around 18,300 t of used e-equipment were assessed to be imported per year in containers: around 8,800 t in containers without vehicles and 9,500 t in containers with vehicles (Odeyingbo, Nnorom, & Deubzer, 2017).

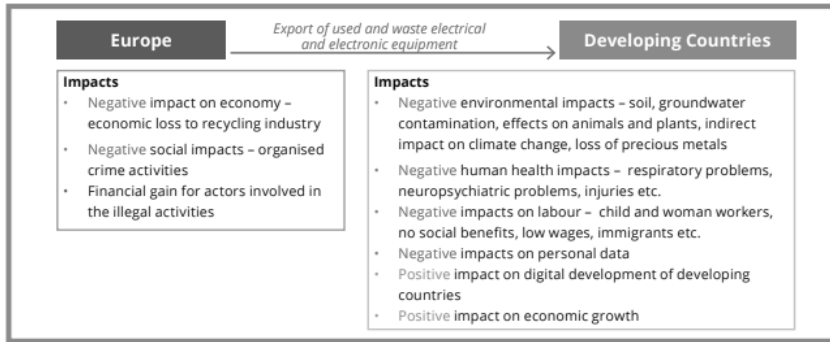


Figure 1: *Negative and positive impacts of e-waste*
 Source: Geeraerts et al., 2015

Figure 1 presents the negative impacts for developing countries and developed countries. For developing countries, there is a present negative impact from hazardous e-waste components on air, water, soil and human beings, as presented in the previous section.

One of the driving forces behind these transboundary shipments is the difference in treatment and disposal costs between North and South countries (Bernard, 2011). Another impact stems from the unregulated and unsupervised e-waste recycling process for recovering valuable materials. In 2016, Baldé et al. (2017) made an estimation of the potential value of all raw materials present in e-waste at approximately 55 Billion Euros in 2016.

Methods used to recycle e-waste are primitive (manual disassembly without safety protection, burning on open site around rivers and markets, using acid baths to extract the materials and pouring used acid into the soil and near water sources). People (mainly women, children and immigrants) are working in unsafe scrapyards to recover as much as possible of the valuable materials, which they sell to traders and dealers, who afterward sell it back to the production e-equipment manufacturers. This sale is the single positive impact on the digital development of production business and at the same time a negative impact on developed countries. Enormous quantities of e-waste are not being properly managed in developed countries, so producers miss out regaining precious materials, which could be reused in new e-equipment (Lundgren, 2012).

The negative impact for developed countries is the lost opportunity to gain valuable materials from recycled e-waste, and an even greater problem is the involvement of organized crime groups as illegal actors and legal actors (waste producers, distributors, consumers, collectors, refurbishes, waste management companies, transport and shipping companies, waste treatment operators, shipping agents, waste brokers and downstream vendors (Baird, Curry, & Cruz, 2014; Bisschop, 2013) in the waste crime cycle. Involvement in the illegal export of waste is often led by organized crime groups¹⁵, structured as mafia groups, which cooperate closely with the legitimate waste business sector (Baird et al., 2014; Bisschop, 2013, 2014; EUROPOL, 2015; INTERPOL, 2009, 2013, 2014; Klenovšek & Meško,

¹⁵ Slovenia is known as a transit country for organized crime groups, because of its special spatial placement. It presents the transition zone between the Western and Eastern Europe and the border between North and South (Meško & Eman, 2012). The main transit point is the Koper port where in the transboundary movement of products is frequently e-waste (Eman & Franca, 2016).

2011; Sahramäki et al., 2017). Criminal groups such as Italian mafia¹⁶ organizations and organized crime groups in Eastern Europe have a long tradition of being involved in the business of illicit ‘waste management’. Traditionally, waste trafficking involved the disposal of household and industrial waste at lower prices than legal waste management providers, by circumventing legislation intended to ensure environmental protection and fair competition (EUROPOL, 2015).

In addition to organized crime groups, there are also “waste tourists”, who come from developing countries to collect e-waste and profit from illegally shipping it to their home countries (Nordbrand, 2009). Brokers and traders are key players in this regard.

Another sector in e-waste business involves charities, which invite people to donate second-hand electronics (such as old mobile phones and other equipment). With increasingly sophisticated smartphones and computers being discarded, data sanitation is not performed and the technology can be used to gain sensitive information about users for later extortion (Rucevska et al., 2015).

Hopson and Puckett (2016) have studied e-waste problem in the US and discovered, that at least 25% companies with websites are in the chain of exporting hazardous e-waste, and are promoting affiliation with reputable organizations and government programs (some claim EPA affiliations, involvement in WasteWise programs). These affiliations are shown on the “front door” and may help to cloak a company’s actions with a reputable green aura, while irresponsible and likely illegal exports pass out the “back door”.

Baird et al. (2014) define waste crime as *white collar crime* because of the complexity of the businesses (involvement of legal and illegal actors in the waste business) and the nature of the waste. The nature of the waste has been researched by Baldé et al. (2015a, 2015b), INTERPOL (2009, 2013, 2014, 2016), EUROPOL (2015) and projects such as CWIT (Huisman et al., 2015) and European Union Action to Fight Environmental Crime (EFFACE) (2015, 2016), who discovered that e-waste can be falsely declared and shipped as non-hazardous waste or as second-hand equipment¹⁷, or can be mixed with other non-hazardous waste. The most common methods of export include the mislabelling¹⁸ and forgery of documents accompanying containers or the mixing of e-waste with legitimate shipments. EEA (2009) adds additional method - transporting waste without notifying the authorities of source and destination when such a notification is necessary.

Mislabelling and forgery of documents are part of the white-collar crime. In 1983, Sutherland defined white-collar crime as ‘*a crime committed by a person of respectability and high social status in the course of his occupation*’ (in Baird et al., 2014). Benson and Madensen (2007) suggest four characteristics of the white-collar crime. In the context of waste, these characteristics are as follows:

16 In Italy involvement of organized crime groups in environmental crime, especially waste trafficking is known as *Ecomafia* (Massari & Monzini, 2004).

17 The CWIT project estimated that around 1,3 million tons of undocumented waste (this is used e-equipment and e-waste) yearly leaves EU countries, from which it is estimated to be around 70% functioning second-hand equipment and 30% e-waste (Huisman et al., 2015).

18 In the ports of Amsterdam and Antwerp, serving as the Europe-Africa trade route, are used as gateways for illegal e-waste trade, with usage of different techniques, such as mislabelling as second-hand equipment or manipulation of customs at the ports (Lundgren, 2012). In 2012 INTERPOL’s Pollution Crime Working Group led an Operation Enigma, in collaboration with police, customs, port authorities and environmental agencies, to supervise ports in seven European and African countries. The results showed that illegal e-waste was discovered in one third of the cases (INTERPOL, 2018).

- The offender has *specialized access to the victim or target* by virtue of an occupational position. As research has shown, the e-waste recycling cycle consists of collaboration between legal and illegal business actors.
- The offender uses *deception or concealment* to hide the offence and its effects on the victim and on law enforcers. A key feature of white-collar crime is that the offender engages in a fraudulent transaction in which the victim is unaware of the offender's true intent or objective. E-waste is easily disguised as second-hand equipment, so waste producers are unaware that their e-waste was illegally processed.
- The offender has an *ambiguous state of mind* at the time of the offence. The offender's state of mind cannot be easily determined by his or her actions in the sense of criminal intent. The offender may or may not necessarily know he is involved in illegal activities and can commit document fraud with or without awareness.
- The offender may be *physically distant or separate* from the victims of the offence. White-collar crimes may arise out of transactions that occur electronically, over the telephone, or through the mail. There is often no need for offenders to come into physical contact with victims or their property. In the e-waste business, there are waste tourists, brokers, charities and other actors who will never come into contact with e-waste.

Push (forces that drive illegal transport of e-waste away from their origin or supply) and pull (forces that draw illegal transport of e-waste to their destination or demand) factors provide the motives and opportunities for actors to get involved in the illegal transport of e-waste (Bisschop, 2013). To sum up, the crime of illegal trade in and recycling of e-waste is based on individual's opportunistic desire and a rationalization that justifies the cost-benefit calculation to get involved in the illegal criminal act. Opportunities and desires can be alleviated not only by harsh punishments after the crime, but also by using prevention methods which reduce desires. Situational prevention can be applied to the illegal e-waste trade and other environmental crimes.

APPLYING PREVENTION TO ENVIRONMENTAL CRIME

Environmental crimes are being controlled via regulation, criminal law and traditional enforcement activities and methods. Researchers are seeking new alternatives to restrict and minimize harmful activities by implementing crime prevention. Meško, Bančič, Eman and Fields (2011) suggest the use of situational crime prevention (SCP), which, in combination with the raising of people's awareness of crime and other forms of threat, has proved to be quite an effective form of prevention.

Situational crime prevention (SCP) departs radically from most criminology in its orientation. Proceeding from an analysis of the circumstances giving rise to specific kinds of crime, it introduces discrete managerial and environmental change to reduce the opportunity for those crimes to occur. Thus, it is focused on the settings for crime, rather than upon those committing criminal acts. It seeks to forestall the occurrence of crime, rather than to detect and sanction offenders. It seeks not to eliminate criminal or delinquent tendencies through improvement of society or its institutions, but merely to make the criminal action less attractive to offenders (Clarke, 1997).

In 1980, Clarke developed the term *situational crime prevention*, which refers to a preventive approach that relies, not upon improving society or institutions, but simply upon reducing opportunities for crime (Clarke, 1992).

SCP comprises opportunity-reducing measures that are, (a) directed at highly specific forms of crime; (b) that involve the management, design, or manipulation of the immediate environment in as systematic and permanent way as possible; (c) so as to reduce the opportunities for crime and increase its risks as perceived by a wide range of offenders (Clarke, 1992).

SCP focuses on improvement of society, private and public organizations and agencies (schools, hospitals, transit systems, shops and malls, manufacturing business, pubs and parking lots, etc.) – whose products, services and operations spawn opportunities for a vast range of different crimes. Successful examples of involvement situational prevention measures are installing surveillance cameras for subways and parking facilities defensible space architecture in public housing, electronic access for cars and for telephone systems, alcohol controls at festivals (Clarke, 1997).

As shown above, these prevention activities combining SCP with other theories, such as theories of rational choice theory, routine activity theory, and lifestyle theory. Before committing a crime, the potential offender is a rational decision maker who seeks to benefit himself economically and otherwise through the commission of a crime (this is a rational choice theory). Routine activity theory focuses on three essential elements for crime to occur: a potential offender, an attractive target and the absence of capable guardians. Lifestyle theory asserts that the odds of falling victim to crime vary according to an individual's degree of exposure to high-risk situations – those that include potential offenders. Because the key variable in both routine activity and lifestyle perspectives is exposure, both imply an opportunity reduction approach to crime that is consistent with SCP (Rosenbaum, Lurigio, & Davis, 1998).

Clarke defined strategies for influencing the motivations and behaviour of the potential offender. First, he defined 12 strategies/techniques for three motivational concerns (Clarke, 1992), an approach which has gradually been extended to 25 strategies/techniques, which are summed into 5 clusters (Center for Problem-Oriented Policing, 2018):

- *Increasing the effort – techniques:* (1) Harden the target; (2) Control access to facilities; (3) Screen exits; (4) Deflect offenders; (5) Control tools/weapons;
- *Increasing the risks – techniques:* (6) Extend guardianship; (7) Assist natural surveillance; (8) Reduce anonymity; (9) Utilize place managers; (10) Strengthen formal surveillance;
- *Reducing the rewards – techniques:* (11) Conceal target; (12) Remove targets; (13) Identify property; (14) Disrupt markets; (15) Deny benefits;
- *Reducing provocations – techniques:* (16) Reduce frustration and stress; (17) Avoid disputes; (18) Reduce emotional arousal; (19) Neutralize peer pressure; (20) Discourage imitation;
- *Removing excuses – techniques:* (21) Set rules; (22) Post instructions; (23) Alert consciences; (24) Assist compliance; (25) Control drugs and alcohol.

This matrix of 25 techniques is testing “what works” in the context of reducing opportunities for committing a crime. From the start, the SCP has been used for “street crime”, further on it was used for terrorism, child abuse, crowd violence etc. (Benson, Madensen, & Eck, 2009). Van de Bunt and van de Schoot (2003) have researched a situational approach to the prevention of organized crime in relation to the hazardous waste problem. They have stated that the illegal trade in hazardous waste is connected with the behaviour of legal enterprises. The prevention approach is not primarily aimed at the perpetrators of organized crime, but rather at the various circumstances which facilitate an organized crime (van de Bunt & van de Schoot, 2009).

Researchers subsequently started to discuss the SCP role in the prevention of environmental harm - particularly for prevention of wildlife crime and endangered species conservation (illegal fishing, elephant poaching and illegal ivory trade and, parrot poaching (Huisman & van Erp, 2013; Wellsmith, 2008). Using SCP theory, researchers have examined the effectiveness of the ban on the international trading of ivory, poached from African elephants. They have found that while the international trading ban on ivory, as a situational prevention initiative to disrupt markets, has effectively disrupted ivory markets and thus reduced poaching in some African countries, unregulated markets continue to exist in other countries, opening opportunities for displacement of poaching. However, reducing poaching requires engaging local communities in conservation and generating revenues through alternative means of living, such as ecotourism or regulated trade, and employing poachers as rangers (Huisman & van Erp, 2013).

Huisman & van Erp (2013) analysed 23 criminal investigations of environmental offences in the Netherlands. These crimes varied from the pollution of the soil or surface water, violation of administrative requirements (falsifying documents) to illegal trafficking and export of waste (several cases involved shipping e-waste, concealed by hidden cargo or administratively disguised as commodities, to Asia (India, Indonesia, and China)). They also suggested that in the case of the e-waste problem, SCP techniques could be used to target the use of the second-hand goods status in the export of e-waste.

By asking ourselves the question “what works?” for the problem of the illegal e-waste trade, we can according to the description of Clarke’s SCP clusters, connect e-waste with these techniques:

- *Control access to facilities* – the customs service is our baseline for uncovering the illegal import, transition, and export of goods that are restricted or forbidden. With the knowledge of e-waste cases, which include document forgery, customs together with its inspectors, should place more emphasis on inspecting waste cargo.
- *Screen exits* – several studies have been done using the use of GPS trackers, which are installed in obsolete e-equipment in the country of export. The tracking showed a high percentage of illegally exported e-waste going in several developed countries. Customs should communicate on an international basis to use GPS tracking with the aim of restricting access to developed countries.
- *Extend guardianship* – with new studies regarding the toxic elements in e-waste, which with inappropriate dismantling can severely damage people’s health and the environment, extended guardianship is needed. Guardianship should extend from additional customs people, inspectors, environmental police officers, and people who supervise the loading of cargo (to ascertain whether loaded cargo corresponds to its description in the paperwork).
- *Reduce anonymity* – if producers are not recycling in an environmentally sound manner and are involved in illegal trading and selling of e-waste, they should be publicly exposed and shamed for their crimes.
- *Strengthen formal surveillance* – improving national legislation and also strengthening multi-agency cooperation between enforcement agencies (police, customs, prosecutors and other authorities).
- *Identify property* – e-waste contains useful data and other information that can guide us to the primary source or equipment user.
- *Disrupt markets* – international agreements must be supported by countries to permanently ban all e-waste export to any developing country. E-waste should be allowed to be

- exported only to those countries that have proper recycling equipment for recycling e-waste in an environmentally sound manner.
- *Reduce frustration and stress* – take-back systems have already been established, but some transporting businesses are charging for transport of obsolete e-waste from households to producers or recycling points. Customers who purchase new e-equipment should not be charged any costs for transport of old and new equipment; the cost should be charged to the producers (who have already included (but not admitted) this cost in the price of new e-equipment).
 - *Set rules* – there should be an internationally agreed definition of the term e-waste, and the illegal e-waste trade should be considered as a crime in all countries around the globe, and should be punished effectively (punishment should be harsher for white collar criminals than for individual person; a company should be even harsher punished if it was collaborating with organized crime groups). All individuals should be informed of the rules.
 - *Post instructions* – all e-equipment already comes with a sign, indicating that it should not be thrown in the bin. More instruction should be given to producing and selling companies to inform them about the dangers hidden in e-waste, if it is not properly recycled.
 - *Alert consciences* – the general public should be informed about the health hazard of improper e-waste dismantling and discarding in developing countries. They must understand that their acts (mostly NIMBY thinking) have an effect on people and the environment. Moreover, the 3R model (Reduce, Reuse and Recycle) should be promoted as the easiest solution to reducing the e-waste problem.

CONCLUSION

People tend to commit a crime if in their current situation it passes a cost-benefit analysis, where the risk of getting caught is considered low and they gain a profit, thus making positive sense to them. The SCP theory assumes that a low risk of detection increases criminal activity. The illegal e-waste trade may be prevented with techniques that make, the risk of getting caught greater while the target is made harder to get. Moreover, in this case, the reward of gaining profit would be lower. With an increase in numbers at enforcement agencies to strengthen surveillance, potential offenders will have less chance of transporting a cargo with falsified documentation or mislabeled containers with mixed waste. With public shaming and effective punishment, the circle of actors involved in e-waste crime should shrink. People in the production and recycling business (e.g. white-collar criminals, importers and exporters, e-equipment producers) will not be very enthusiastic about seizing the opportunity to commit a crime and risk their jobs and lives by getting caught.

Among the solutions e.g. toughening the law and prohibiting the trafficking of e-waste in all countries, we should also include raising awareness among consumers, recyclers, and e-equipment producers. As much as the producers saturate us, the consumers, with advertising for new products, they should also stimulate us to return used product and receive small gifts (potentially recycled gifts, such as recycled bags for groceries or recycled cases for phone etc.). One innovative idea for recycling e-waste emerged in Japan.

In Japan in April 2017 a project was launched named “*Tokyo 2020 Medal Project: Towards an Innovative Future for All*”, where one of the project beneficiaries, the telecom giant NTT Docomo, collected over 2,66 million used mobile phones. The project’s aim is to produce 100 % recycled medals for the Olympic and Paralympic Games in Tokyo, 2020 (The Tokyo

Organising Committee of the Olympic and Paralympic Games, 2018). They are receiving enormous quantities of used waste and can produce many recycled medals. This type of project could be replicated in other countries; along with producing recycled medals, they could produce other recycled gadgets, art, jewellery, etc. or they could just recover raw materials for the production of new e-equipment.

Meanwhile, Slovenia has not tackled the e-waste problem with innovative ideas like Japan. Dealing with e-waste problem in Slovenia is currently dealt on two ways; first is through an active participation of Slovenian enforcement agencies (police, customs, and inspectors) in global enforcement actions against waste crime and trafficking, organized by IMPEL representatives. These actions are successful for establishing a stronger connection between enforcement agencies and gaining new knowledge. A closer look at enforcement agencies shows an everlasting problem in a lack of properly educated and trained employed people for tackling waste and e-waste illegal trafficking. The additional problem presents soft punishments for the traffickers because it is an illegal act, punished as an offence and not as a criminal act, which should be punished with a prison sentence.

The second way of dealing with e-waste problem is organizing collection actions targeted on old and used e-equipment. Actions are organized mainly for Primary schools all over the country by e-equipment producers in collaboration with management scheme collecting institutions. The main focus of actions is raising public awareness regarding proper discarding of e-waste. Actions always receive a great positive attention from general public.

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FEATURES OF CRIME PREVENTION FOR MINOR INTENSIVE OFFENDERS

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ABSTRACT

Minor intensive offenders (hereinafter referred to as MIOs) represent an independent criminological category. This group of minor offenders (3-7%) makes from one to two thirds of all registered crimes of the age group in different countries. In different countries there are various criteria according to which juvenile offenders can be classified as MIOs, including minor age of the offender, commission of 3 and more crimes within one year, etc. Most of professional adult criminals started their criminal career at minor age. However special criminal policy on MIOs crime prevention is not being developed in every country. It is necessary to actively make use of positive experience of all countries to develop special measures of counteraction to MIO crimes, implementing it [experience] according to national, cultural and historical traditions of certain states. In this regard “Kurve krieges”, a special program for prevention of crimes by minor intensive offenders (Germany), deserves special attention.

Keywords: criminology, minor offenders, minor intensive offenders, prevention, crime

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INTRODUCTION

Minor delinquency has always been of great interest to scientists and practitioners of all countries. This is due to the fact that especially since to some extent it tends to characterize criminality in general.

Crime of minors has qualitatively and quantitatively heterogeneous character. At the same time, the analysis of English and German criminological literature shows that in most states (except the United States, Great Britain and Germany), minor criminals who commit numerous crimes before they reach adulthood as an independent criminological group are not singled out.

Thus, Russian researchers identify such types of minor offenders as random; situational; crimes committed as a result of antisocial orientation or in accordance with the criminal attitude of the individual, etc. (e. g. Burlakova & Krolacheva, 2003; Ilyashenko, 2003; Potapov, 2007). In Russia, the problems of re-offending and repeated crimes committed by minors are also examined, it is noted that for a certain part of minor criminals there is a high degree of criminal activity. However, Russian criminologists do not conduct targeted investigations of minor crime criminals. This topic is presented in Russian criminology only by some individual works (Sokol, 2015, 2016, 2017).

In turn, in the United States, Great Britain and especially in Germany, purposeful criminological investigations of minor criminals who commit numerous crimes have been actively conducted since mid-20th century. Thus, American researchers note that a relatively small proportion of minor offenders commit about half of all crimes of their age group (Chaiken & Chaiken, 1982; Farrington, 1997; Moffitt, 1993; Wolfgang, Figlio, & Sellin, 1972). In particular, T. Moffitt identifies a special category of minor delinquents (life-course

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persistent offenders), who begin their “criminal career” at an early age and continue it in adulthood.

As a result of numerous criminological studies in Germany, a relatively small number of minor offenders (3-7%) commit approximately one-third to two-thirds of all recorded crimes of their age group (Block, Brettfeld, & Wetzels, 2009; Dalteg & Levander, 1998; Posiege & Steinschulte-Leidig, 1999; Steffen, 2009). This relatively independent group of minor offenders is called in Germany “minor intensive offenders” (“jugendliche Intensivtäter” - germ.).

On the basis of a study of significant factual material by German researchers, the following data about MIOs were obtained: 6 out of 20 underage intensive criminals commit more than 100 crimes before reaching 20-25 years, 15 out of 20 commit 20 crimes per year (Hölderhoff, Braukmann, Mohr, & Resnischek, 2016).

The above confirms the importance of a comprehensive study and further use of the international positive experience of crime detection and prevention for minor intensive offenders, including the development of national concepts of criminal policy in the field of combating minor delinquency.

THE DEFINITION AND MAIN FEATURES OF INTENSIVE MINOR OFFENDERS IN GERMANY

Undoubtedly, minor intensive offenders stand out among other minor criminals of the corresponding age group with higher crime rates (the number of crimes committed by them) and a longer period of criminal activity. However, there is no single and universally acknowledged definition of the concept of minor violent criminals in the German criminological literature. Most often, the following criteria are the main ones for classifying a minor as a “minor intensive offender”: (a) the number of crimes committed by a minor within a certain period of time, most often 1 year; (b) the qualifications and severity of the crimes committed; and (c) a negative outlook for the continuation of further criminal career by minor violent criminals.

Thus, it becomes possible to differentiate intensive minor offenders from repeat ones. Therefore, the absence of a unified definition of the MIO is not always evaluated as a negative factor. In the various federal states of the Federal Republic of Germany, the content and application of this concept is ultimately determined by the relevant practice of law enforcement agencies, primarily the police, and depends on the characteristics of the federal land (population density, sex composition, urban / rural prevalence, crime status, available organizational, personal and other police resources, etc.). It is believed that in this way it is possible to take maximum account of specific for each federal land features and resources.

For example, in Berlin, MIOs were those who committed at least 10 crimes within one year and who were at risk of strengthening their further criminal career (Polizeiliche Kriminalstatistik, 2008); in Hamburg those, who committed at least 2 robberies qualified thefts or other crimes related to violence during the last year, and against whom a negative outlook for the continuation of their criminal activities was made (Block et al., 2009); in Bremen in 2010 those, who committed at least 5 violent crimes or crimes against property during one year and who habitually or professionally commit crimes that have a negative outlook for the commission of further crimes (Schwind, 2012).

In the world criminological literature, there are various theoretical models that explain the causes of delinquent and/or criminal behavior of minors. Numerous studies, including those related to long-term observations of the development of the criminal career of minor

offenders, point out various factors (conditions) of a biological, psychological or social nature conducive to or hampering the illegal behavior by minors.

When evaluating the identity of the MIO and investigating the causes of its criminal activities, a multifactor approach is applied. When predicting further criminal activities of an MIO both the negative risk factors for strengthening criminal career and the protective factors are taken into account. Increasing the effectiveness of protective factors enhances the positive impact on the personality of the MIO, prompting it to end a criminal career.

Risk factors include the incomplete family composition, lack of control and attention in the family, frequent relocations, absenteeism and aggressive behavior at school, lack of social leisure, alcohol and drug abuse, inability to empathize, aggressiveness, etc. (Landesrahmenkonzeption, 2014).

Protective factors include respect for the family, empathy, positive relationships with close adults, good academic performance, sports, music or other hobbies, etc. Factors that affect the personality of the MIO can be grouped into personal ones, those related to the family and social environment (environment) of the minor.

SITUATION IN RUSSIA

According to figures from the Prosecutor General's Office of the Russian Federation, in 2017 in Russia 967103 persons in total were proved to have committed crimes, of which 42504 are minors. That is 4.4% of all crimes (the whole number): 7% in 2009; 6.6% in 2010; 6.3% in 2011; 5.9% in 2012; 5.4% in 2013; 5.4% in 2014, 5.2% in 2015, 4.8% in 2016 (General Prosecutor's Office of the Russian Federation, 2018). Of those minors who re-committed the crime in 2017 11022 persons were identified, which is about 26% of all minors who committed crimes (20% in 2011; 22% in 2012; 23% in 2013; 26% in 2014; 25.4% in 2015; 26.3% in 2016) (Ministry of Internal Affairs of the Russian Federation, 2018). Thus, in fact, every fourth minor repeatedly commits a crime.

In turn, those who were previously convicted of crimes in 2017 made up to 38.5% (64% in 2011; 61% in 2012; 55% in 2013; 41% in 2014; 36.4% in 2015; 34.3% in 2016) (Ministry of Internal Affairs of the Russian Federation, 2018).

It is also important to note that official criminal statistics do not fully reflect the level of real minor delinquency, which has high latency in Russia.

An essential shortcoming of Russian criminal statistics is the lack of the ability to clearly define the quantitative and qualitative indicators of minor offenders who commit numerous crimes. The criminological characteristics of the personality of minors in Russian criminal statistics are not reflected in full.

The specifics of Russian criminal law, as well as the desire to avoid stigmatization of a minor offender, lead to the fact that in Russia there are records of newly committed crimes and persons previously convicted of crimes, but there is no record of the recurrence of crimes committed by minors. Thus, according to Part 1 of Article 18 of the Criminal Code of the Russian Federation, a relapse is a "committing of an intentional crime by a person who has a criminal record for an earlier committed intentional crime" (Criminal Code of Russian Federation, 2018). However, in paragraph "b" of part 4 of Article 18 of the Criminal Code of the Russian Federation it is stated that when recognizing the recidivism of crimes, "criminal records for crimes committed by a person under the age of eighteen years" are not taken into account (Criminal Code of Russian Federation, 2018).

In addition, very scarce criminological information about the personality of a minor criminal (socio-demographic characteristics, social-role characteristics, etc.) is reflected in the materials of criminal cases. Thus, the results of studying the personality of a minor

offender are reflected in no more than 15% of the sentences pronounced by the courts (Terentyeva, 2016).

Thus, the criminal statistics available in Russia do not contribute to the targeted registration of minor offenders who commit numerous crimes before they reach the age of majority, i.e. up to 18 years.

Taking the above into account after studying foreign literature on the crime of minor of violent criminals, since 2015 I have been conducting a research aimed at revealing and studying the peculiarities of the MIO in Krasnodar krai (Russia). For this purpose, the data of federal and regional criminal statistics were studied; materials of criminal cases against minor offenders, examined by the courts of Krasnodar krai; as well as interviews (written) and interviews (verbal) of minor offenders serving sentences related to deprivation of liberty in the Belorechensky penal colony for minor offenders.

The results of the study demonstrate a firm conclusion about the presence of an independent criminological group of minor offenders in Krasnodar krai who commit numerous crimes before reaching the age of 18.

Thus, according to the materials of the criminal case, it was established that at night (from 11 pm to 3 am) the previously undocumented minors Z. (16 years old) and S. (17 years old) entered the cars of citizens in a group of persons by prior agreement and committed theft of other people's property located in cars. In total, for the period from February 9 to May 17, 2014, they committed 17 thefts (paragraph "a", "c" part 2 article 158 of the Criminal Code of the Russian Federation) (Ministry of Internal Affairs of the Russian Federation, 2014a).

Minor T. (17 years old) after being released from an educational colony from serving punishment under an amnesty in the period from November 1 to November 4, 2014 committed 2 car thefts; a robbery (open theft of someone else's property), as well as a theft with breaking into the store, i.e. the crimes provided for by paragraph "a" part 2 article 166, paragraph "a" part 2 article 166, part 1 article 161, paragraphs "b, c" part 2 article 158 of the Criminal Code. T. was previously convicted three times for committing two thefts and a car theft (Ministry of Internal Affairs of the Russian Federation, 2014b).

As a result of studying the materials of criminal cases and convictions of courts in respect of 30 male minor offenders serving a criminal sentence involving deprivation of liberty in Belorechenskaya minor correctional colony, it was found that 21 minors (70%) can be attributed to the group of MIOs, as each of them committed three or more mercenary, mercenary-violent and / or other crimes.

In this regard, it is important to study the criminal biographies of the MIOs, the development of their criminal career and individual psychological characteristics, in order to form typical characteristics of the MIO (prototype, profile) on this basis.

In 2017, in order to determine the characteristics of the relationship of self-confidence and aggressiveness of the MIOs, serving time in Belorechenskaya minor correctional colony, a survey in the form of a blank test (questionnaire study of the level of general self-concept SC-2 and the questionnaire PA-1 assessment of the level of personal aggressiveness) was held. The selected category of subjects is 21 male MIOs at the age of 16-17 (10 people aged 16 years, 11 - at the age of 17 years).

Questionnaire SC-2 is based on a self-test of 12 questions, and reveals such important characteristics as a holistic attitude towards oneself, the level of overall self-esteem, level of self-esteem, estimation of one's own success, satisfaction with oneself and their quality of life, view of the world and their prospects. The sum of points on the SC-2 test is considered an indicator of the overall self-assessment and is characterized by the following scale: high level - level above average - average level - below-average level - low level).

The questionnaire PA-1 contains five diagnostic scales of aggressiveness (verbal aggression, physical aggression, subject aggression, emotional aggression, autoaggression). The sum of scores throughout the PA-1 test is considered to be an indicator of overall aggressiveness and characterizes its level on the following scale: high level - above average level - average level - below-average level - low level.

Based on the results obtained in the SC-2 test, the majority of MIO subjects (14 people, 66.67%) have a low level of self-esteem; one person (4.76%) - the level of self-esteem is below average; 4 people (19.05%) - the average level of self-esteem; one person (4.76%) - the level of self-esteem is above average; one person (4.76%) - a high level of self-esteem.

MIOs with low self-esteem are characterized by a low level of self-esteem, low esteem of self-success in various situations and degree of control over events; predominantly depressed mood, dissatisfaction with themselves and the quality of their lives, a pessimistic view of the world and their prospects; high probability of depressive state.

Inadequate self-esteem deforms the inner world of the individual, distorts his motivational and emotionally strong-willed spheres. With low self-esteem, minor delinquents often experience conflicts due to their excessive criticality. They are not only demanding of themselves, but even more demanding of others, do not forgive them for any slip or mistake, are inclined to constantly emphasize the shortcomings of others. Such minor adolescents often experience tense (conflict) relationships with other minor convicts and colony staff, as a result of which disciplinary measures are applied to them.

The study confirmed the relationship between self-esteem and aggressiveness of MIOs. MIO, serving a sentence of imprisonment, is dominated by a low level of general self-esteem (66.67%) and an increased level of general aggression (52.38%): 33.33% of the subjects have a high level of aggression; 19.05% - the level of aggressiveness above average. Moreover, among the subjects with an average level of general aggressiveness (38.10%), there is an increased level of its individual varieties (constituents). Only two people (9.52%) from the whole group of subjects (21 people) had a low level of general aggressiveness and a level of aggressiveness below the average.

Despite the fact that the MIOs are kept in isolation from the outside world and round-the-clock control by the administration of the colony, which includes measures of a psychological and pedagogical nature, the number of minor convicts with aggressive behavior remains stably high.

The results of the study show that self-esteem of minor offenders and their aggressiveness are interrelated: low self-esteem of minor offenders correlates with a high level of their aggressiveness.

So, of all MIOs who had a low level of overall self-esteem, 36% had a high level of general aggressiveness and 21% had a level of overall aggressiveness above the average. And only one person (7%) with a low level of general self-esteem had a low level of general aggressiveness.

In turn, out of seven minor delinquents who had a high level of aggressiveness, five people (71.4%) had a low level of general self-esteem; one person (14.3%) - the level of self-esteem below average; one person (14.3%) - the average level of overall self-esteem. Of the four minor offenders who had an aggressiveness level above the average, three minors (75%) had a low level of general self-esteem; one minor (25%) - the average level of overall self-esteem.

As a rule, in case of committing a new crime, the MIO is sentenced by the court to a punishment in the form of deprivation of liberty, where various educational measures are applied to them.

Thus, studying the activities of the Belorechenskaya minor correctional colony (Krasnodar krai, Russia), in which minor offenders are imprisoned, it was revealed that a whole complex of measures is applied to them, consisting of psychological, psychiatric and medical measures, social rehabilitation, including correction of their behavior, physical culture, sports, social and educational measures. In particular, for one minor convict there are about three employees of service personnel.

After serving the sentence, the MIOs, as a rule, return to the familiar environment with its minimal protective factors and numerous risk factors for continuing a criminal career. So, they skip classes at school, do not have rationally organized leisure, do not have social communication skills, have a high level of aggression and conflict with their parents, etc.

The conclusions that the MIOs are dominated by low self-esteem and an increased level of general aggressiveness indicate that they have accumulated long experience of social failures, negative reactions, conflicts, convictions and rejections from others, etc., which substantially deforms the inner world of the individual, his motivational and emotionally volitional spheres are distorted. This confirms the necessity of applying special individual psychological and pedagogical measures to such MIOs.

Effective MIOs crime prevention requires a comprehensive impact not only on the identity of the MIO, but also on their family and social environment (surroundings). Preventive measures should be applied as early as possible, have an individual focus, and be provided with a clear co-ordination of all interested state and social institutions.

SPECIALIZED CRIME PREVENTION PROGRAMS

Since the 1970s, active policing has been conducted in the Federal Republic of Germany with juvenile repeat offenders. To this end, the police created a special working group (speziellen Arbeitsgruppen) (Kant & Hohmeyer, 1999), as well as actively used various kinds of police programs aimed at combating crime MIO.

Of particular interest is the experience of the land police in North Rhine-Westphalia implementing minor crime prevention program known as «Kurve Kriegen» (“Catch in time” in eng.). This program was launched in 2011 in eight regions of North Rhine-Westphalia, and its first participants were more than 200 MIOs. The main goal of “Kurve kriegen” is to protect minor offenders from further criminal career. The main target group of this program are MIOs aged 8 to 15 years. The secondary target group of the program are the parents (legal representatives) of minor offenders, participating in this program. After the voluntary consent of an MIO and their legal representatives to participate in this program, face-to-face work with the minor and his family begins (Bliesener, Glaubitz, Hausmann, Klatt, & Riesner, 2015).

The program is based on the following basic principles (Bartsch, Bliesener, Glaubitz, & Hausmann, 2013):

- Early recognition of an MIO. Based on the consideration of his individual biopsychosocial factors contributing to the continuation of his criminal career, an individual prognosis is prepared for the future behavior of the minor offender and a proposal to assign him to the target group of the program is made. Special attention is also paid to the MIO's family.
- The formation of a competent, multi-professional, interdepartmental team comprising police officers, psychologists, teachers and other participants who, basing on the personality of the minor and their social context, develop individual measures designed to prevent the further development of their criminal activities. The specialists' activities

during the implementation of the Kurve kriegen program are considered to be a rational addition to the “classical” activity of the police and various child support services, combating the neglect of minors, ensuring the interaction of all the team members and their cooperation into a single network, with the coordinating role of the police.

- Systematic implementation of individual measures towards the MIOs and their family members. The choice of measures is within the competence of specialists and educators, and includes up to 40 different measures from five categories: (a) Pedagogical measures toward to MIOs; (b) Study assistance (tutoring); (c) Social training: self-mastery trainings, social competence trainings; (d) Parent training (legal representatives), including the issues of raising children, overcoming difficult life situations, etc.; and (e) Other measures: psychotherapy, group trainings, single service, etc.

The most common measures are competent trainings (for example, training against aggression, parental trainings – psychological counseling, single parent assistance, yoga, etc.), social communication skills training, integrated measures (for example, assistance in training - additional classes, tutoring, language courses), various consultations (for example, consultations on alcohol, drug or other kinds of addiction), sports offers (various sports classes), etc. (Bartsch et al., 2013).

Determining specific measures, specialists take into account the need to achieve such goals as the prevention of the criminal career of a minor; increasing the social competence of minor offenders (i.e, improving their communication skills, communication with peers and society, raising their self-esteem, etc.); improvement of individual life prospects of minor offenders. During the program, specific targets for individual minors and their families can be adjusted (Bliesener et al., 2015).

About 40% of the first MIO program participants did not commit any new crimes within the next 14 months, which indicates the effectiveness and overall positive result of this program, which confirmed by many experts, including the staff of the Christian Albrecht University in Kiel.

It is also important to note that the implementation of this program received a positive response from the society and contributed to enhancing the sense of security among.

In addition, it is established that every 1 euro spent under the program to prevent MIO criminal activities saves 3.23 euros, (this amount covers crime damage costs, costs of the activities of criminal justice agencies, indirect social costs, etc.), in case an MIO continues his criminal activity (Hölterhoff et al., 2016).

CONCLUSIONS AND FUTURE STUDY

To prevent the development of a criminal career of minor offenders it is necessary to conduct further targeted criminological research of such an independent criminological group of minor offenders as MIO. The main criteria for defining a minor offender as the MIO are: (a) the number of crimes committed by the minor within a certain period of time, most often 1 year; (b) the qualifications and severity of offenses committed by the minor; and (c) a negative outlook for the continuation of further criminal career by minor violent criminals.

In Russian criminal statistics MIOs are not present. Also, this category of minor offenders is not purposefully studied by Russian criminologists.

As a result of the study, it was established that there are minor offenders in Krasnodar krai (Russia), who can be categorized as MIOs. The peculiarities of the Russian MIOs are their low self-esteem and high aggressiveness.

At present, numerous scientific studies are being carried out in Germany, and effective crime prevention programs for this category of minor offenders are being put into practice. These programs take into account a variety of protective factors and risk factors for minor offenders to continue their criminal careers. These programs include actions to provide a combined effect not only on the MIOs, but also on their families and social environment (surroundings) through various pedagogical, psychological and other measures.

It is necessary to thoroughly study and use the international positive experience of the MIO crime prevention in order to develop a balanced, systematic and effective concept of national criminal policy in every country.

With the example of the methodical approach of the MIO crime prevention program "Kurve kriegen" (Germany), it is planned to study the peculiarities of MIOs in Krasnodar (Russia) and to conduct a comparative analysis of the results obtained in 2019.

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CRYPTOVIRAL EXTORTION AS A GLOBAL PROBLEM OF CYBERSECURITY

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ABSTRACT

Cryptoviruses are the one of the most important threats to cybersecurity nowadays. Cryptoviruses penetrate into computer systems through vulnerabilities and encrypt important files using symmetric key-based encryption algorithms with variable key length (Rijndael and Blowfish). Global cryptoviral attacks began last year: WannaCry in May, NotPetya in June; BadRabbit in October (Kaspersky Lab, 2017). Viruses spread automatically and forced information owners to pay a fee for the description. Mentioned viruses were created on the basis of the virus developments of the US National Security Agency (EternalBlue, DoublePulsar), stolen by the hacker group TheShadowBrokers. Counteraction to such global cybercrimes is possible only with joint efforts of most countries. The unification of criminal legislation on cybercrime of all participating countries including the criminal codes of Russia and Slovenia is required. At the present time, such cybercrime as cryptovirus extortion is not found in the legislation or in the law enforcement practice of most countries.

Keywords: cybercrime, cryptovirus, cybersecurity, virtual space

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INTRODUCTION

Computer technology has been involved in every sphere of human life. It turned to an indisputable condition for the life and state activity of modern society. At the same time, crime has also moved into the computer field, creating new forms of cybercrimes, which require an adequate response of criminal law. At present, one of the most serious cybersecurity threats are cryptoviruses, i.e., the cryptographic viruses that penetrate into users' computers in a common way, through vulnerabilities in operating systems and software (e.g., network worms, exploits, and backdoors). These viruses encrypt important files and documents (office program documents, databases, contact information, photos, and video). The encryption methods are based on the symmetric-key block cipher algorithm with variable key length (like Rijndael or Blowfish), in which an encryption key is generated such as to only an attacker had it. Modern technologies do not allow such ciphers to be decrypted for acceptable times (shorter than several years). Most of these viruses make sudden multi-vector attacks and demand a ransom to decrypt data, even from major companies and enterprises. Viruses of this type form the 5th generation of ransomware (Cooper, 2018).

The massive use of such viruses has been repeatedly observed over the last year. On May 12, 2017, the widespread WannaCry cryptovirus distribution started. This cryptovirus based on using the US National Security Agency's virus exploits was later stolen and published by the Shadow Brokers hacker group (the EternalBlue exploit and DoublePulsar backdoor (Goodin, 2017)). The first attack struck computers in Spain; then, computers in other European countries suffered; but most of the infected computers were localized in Russia, Ukraine, and India. This cryptovirus attack was initiated through a SMBv2 remote code execution in Microsoft Windows, although this problem has already been fixed by Microsoft

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on March 14 (Kaspersky Lab, 2017). Thus, obsolete operating systems became the main cause of cryptoviral infection. In total, more than half a million computers belonging to state bodies, institutions, and private individuals in more than 150 countries suffered from this cryptovirus attack.

The specified cryptovirus encrypted most of important files on a user's computer, selecting them by their extension, and offered a user to pay ransom for providing a key to decrypt corrupted files for \$300 for the first three days after infection or \$600 for the next four days. The funds had to be transferred to a recipient's anonymous wallet using the Bitcoin cryptocurrency. The use of such a cryptocurrency excludes the ability of tracking and identifying a wallet user by requisites, for an attacker to avoid disclosure and criminal prosecution.

On June 27, 2017 the mass distribution of the NotPetya cryptovirus began. This virus used the same vulnerabilities of an attacked computer system (including EternalBlue and DoublePulsar) as the WannaCry one (Russel, 2017), encrypting all files indiscriminately and blocking a system startup, and required \$300 in Bitcoin for restoring the access to the encrypted information. The email address mentioned in a cryptovirus message for correspondence concerning the ransom conditions and sending encryption keys was blocked by a provider immediately after the mass infection start. However, in contrast to the WannaCry virus, further analysis of the cryptovirus program code showed that the corrupted files could not be decrypted at all. This crimeware spread began in Ukraine through a popular accounting software. The attack affected the government websites, energy companies, Ukrainian banks, airports, and even the Chernobyl Nuclear Power Plant. This attack caused a threat of significant harm, which is not directly related to the cryptovirus activity. The Chernobyl Nuclear Power Plant electronic radiation monitoring system was disconnected, which forced employees to switch to manual radiation monitoring and control systems to prevent irreversible consequences (Griffin, 2017). Later, the cyberattack reached different companies all over the world, infecting computers in dozens of countries.

On October 24, 2017, it was reported about the Bad Rabbit cryptovirus, which attacked several companies in Russia, Ukraine, Turkey, and Germany, demanding 0.05 Bitcoin (about \$800, according to the Bitcoin course in October 2017) within 48 hours for unblocking computers.

The character of the attacks described, their suddenness, the advanced technologies used, organization of the attacks, and their actual impunity make it clear that the attacks cannot be countered alone or by a small team of individuals. This part of organized cybercrime has its financing sources, complex structure, and management bodies coordinating the criminal actions in different countries. Such a powerful system can only be effectively confronted by strong associations of law enforcement agencies of several countries.

HISTORICAL ASPECTS OF THE CRYPTOVIRAL EXTORTION

Contemporary history knows a great number of examples of using the cryptoviral extortion. The first well-known malware extortion attack was committed in 1989. The virus named PC Cyborg (AIDS Trojan) had a design failure, so it was no need to pay an offender. It hid files on the hard drive and encrypted only their names, displaying a message that asked for paying \$189 for a repair tool. The author of this virus was declared mentally unfit to be held accountable for his acts. Having analyzed the failure of the first malware of this kind, Von Solms and Naccache (1992) proposed to use anonymous payment systems for such extortion.

Later, the idea of using public symmetric-key encrypting algorithms for viral attacks was proposed by Young and Yung (1996), who introduced a cryptovirology term and spoke first about the extortion-based threats. They reported mainly on the engineering side of the offensive Cryptovirology problems. In contrast to the widespread misconception, they did not use a cryptoviral extortion term in their work, although they came directly to the formulation of this problem. They criticized the failed AIDS Trojan malware based on a fatal mistake that the decryption key could be extracted from a virus itself and implemented an experimental virus that used several algorithms simultaneously to encrypt victim's data.

Schaibly (2005) used a ransomware term to describe a malicious software that threatens to do another unlawful action unless a ransom is paid, as the latest cybersecurity threat. However, this term cannot be used in official legislation or international treaties on countering cybercrimes. The rapid development of antivirus systems since 2005 has reduced the cryptovirus threat, so the urgency of the problem seemed to be eliminated. At this stage of the cyberthreat development, the spread of crimeware could be prevented using timely updated individual anti-virus programs.

However, the encrypting ransomware returned in December 2013 with the propagation of the CryptoLocker virus, which used the Bitcoin platform to collect money for ransom. It was the first successful ransomware propagated via infected email attachments and botnet. It used the Gameover Zeus botnet, a peer-to-peer botnet based on using an encrypted peer-to-peer communication system to communicate between its units and command and control servers, which significantly reduces its vulnerability to the law enforcement operations. The CryptoLocker cyberattack occurred in the period from September 2013 to May 2014 and encrypted some types of files stored in local and mounted network drives using an RSA public-key cryptography, with the private key stored only on the malware's control servers. The CryptoLocker was defeated as late as in the end of May 2014 in the course of the Operation Tovar, an international collaborative operation carried out by law enforcement agencies from many countries, which took down the Gameover Zeus botnet (Dunn, 2014). The CryptoLocker and Gameover Zeus botnet operators successfully extorted no less than \$3 million in Bitcoin from the ransomware victims. The user's antivirus systems could not protect against the organized cyberattack.

Today, the threat of cyberattacks is so serious that a single union of police and law enforcement agencies of individual countries is unable to completely eliminate it and prevent tomorrow's global cyberattacks. Recent advances in computer and software, including crimeware, technology and the complication of cyberattacks make the conventional methods for fighting cyberthreats worthless. The international organized cybercrime can only be counteracted by a consolidated international law enforcement agency that would possess the required resources and powers, including coordination of activities of national law enforcement agencies. The evidence from practice shows that the available international law enforcement bodies fail to oppose the global organized cyber threat.

The efforts on counteracting the international organized cybercrime cannot succeed without the unification of national and international legislation in this area. There is a great number of dark web vendors that offer anonymizing technologies to organized cybercrime, so it is impossible to even identify a country where they operate, which raises the problem of applicable law. This problem can be solved, in particular, by defining the virtual space (cyberspace) as a crime scene (Tirranen, 2015), so that any country, an institution or citizen of which has suffered from an attack, could initiate an investigation. In addition, it is necessary to create the rule of law that would establish the unified responsibility for the attacks aimed at mass soliciting funds at the data encryption threat.

DISCUSSION AND CONCLUSIONS

Despite the repeated manifestation of the cryptoviral extortion problem, so far there has been a lack of grounds for legislation and international acts that would oppose the organized cybercrime in general and the ransomware in particular. Even the Convention on Cybercrime (Budapest, 2001) was not supplemented by this threat. There are two main problems that prevent the legislation actualization, which are proposed to be solved in several ways.

THE PROBLEM OF APPLICABLE LAW

Undoubtedly, it is necessary to establish whereabouts of cryptoviruses operators to prosecute them. Otherwise, it will be extremely difficult to initiate investigations. At present, however, many ransomware viruses and botnets use proxies tied to the Tor or I2P hidden services for connecting to the command and control centers, which complicates the criminal location tracing. Furthermore, there exist a lot of dark web vendors that offer the anonymizing technology as a service. This prevents even identifying a country where they operate and defining a state body that combats such crimes in this country. To solve a problem of the law applicable to the criminals that use global information and telecommunications networks (including the Internet) for crime commitment, it is necessary to define the virtual space (cyberspace) as a crime commission place. The virtual space cannot be included in the territory of any country, but it could allow a local legislation to be applied to cybercriminals that use any types of networks.

THE PROBLEM OF CRIME DEFINITION

Similar attacks have been systematically undertaken, with varying success, in the last thirty years. Cryptoviruses always spread automatically: after initiation of a primary infection, the operator cannot influence the nature and direction of the virus spread. Cryptoviruses penetrate into computers by exploiting vulnerabilities of an operating system; after that, they encrypt (in silent mode) or modify files and notify users about the need for ransom. An attacker does not intend to do determinate harm to a specific user with a virus spread pattern; moreover, it is highly probable that he will never be able to identify a user who was harmed by his virus. In this situation, we have to consider a criminal intent vague (indeterminate), since an offender has only a general idea about the features of committed criminal acts. In this case, the intent of a cryptovirus operator is directed primarily to the extortion, but in local legislation of some countries (including Russia and most countries of the Commonwealth of Independent States) the responsibility for extortion cannot be attributed, since not property, but only computer information was harmed.

This problem can be solved by introducing a cyber-extortion term, meaning the extortion in the field of computer information, together with the criminal responsibility for its commission. This will help eliminate the current void in legal regulation. *Corpus delicti* of cyber-extortion will include the requirement for ransom or commitment of other actions under the threat of destruction, blocking, or modifying computer information. A special case of cyber-extortion will be cryptoviral extortion, including the irreversible data encryption threat. The proposed description of the crime should fit into the applicable legislative concept of the description by the main object of criminal assault, combining the features of the main object of a criminal assault and the method of its commission.

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ASSETS-BASED COMMUNITY PARTICIPATION IN SLOVENIA – CASE STUDIES AND THEIR POLICY IMPLICATIONS

Boštjan Slak¹, Eva Bertok², Danijela Frangež³

ABSTRACT⁴

Teaching and empowering persons who have experienced traumatic events (war conflicts, any form of violence or abuse, any form of social exclusion) or are showing deviant behaviour themselves is unquestionably difficult, complex and surrounded by numerous issues. In the past, the so-called Asset-Based Approach [ABA] was recognised as a good approach for tackling these issues. In terminological sense, ABA is not recognised in Slovenia, however, in behaviouristic sense, it is frequently used. Two case studies of projects that are using ABA in their work with juveniles were analysed in order to assess its usefulness in the Slovene context and to document the gathered know-how for future use. These case studies have indicated that there are certain issues in this area of work; nevertheless, ABA is still recognised as a good practice for tackling problems and is often applied as a direct response to problems arising from inadequate legislation and policymaking.

Keywords: Asset-Based Approach (ABA), NasVIZ, CONA Fužine, juveniles

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INTRODUCTION

While the problems that a community or its individual members encounter can be diverse, ranging from safety, economic (or poverty), health and many other issues, there are always two basic ways of addressing such problems. Firstly, communities rely (call on) on formal state institutions to tackle the problem, and secondly, communities can address the problems themselves, usually by utilising the assets of a community and its members, therefore using an Asset-Based Approach [ABA] (see Kretzmann & McKnight, 1993). While the first approach, which could be considered as a needs-driven approach, is more frequently and widely used, it is the ABA that probably has greater sustainability (Kretzmann & McKnight, 1993). The Scottish Community Development Centre (2018) recognised ABAs as an “*integral part of community development in the sense that they are concerned with facilitating people and communities to come together to achieve positive change using their own knowledge, skills and lived experience of the issues they encounter in their own lives. They recognise that positive health and social outcomes will not be achieved by maintaining a ‘doing to’ culture and respect that meaningful social change will only occur when people and communities have the opportunities and facility to control and manage their own futures. In community development terms, asset-based approaches recognise and build on a combination of the human, social and*

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4 This paper is based on the work and data gathered during a project entitled Designing Collaborative Educational Resources (COERS) for Assets-Based Community Participation (ABCP) across Europe. ERASMUS+ grant agreement No. 2016-UK01-KA203-024403 (hereafter: the COERS ABCP project). Additional data will be available at ASSETSCOM: Community Open Educational Resources (n. d.), project web page, that is currently under construction.

physical capital that exists within local communities”. In this sense, the ABA can be interpreted as utilising the social capital⁵ and/or skillsets of individuals that compose a community (human capital) and/or actual physical resources owned by that community (Glasgow Centre for Population Health, 2012; Payne, 2006). “*That is, the development strategy starts with what is present in the community, the capacities of its residents and workers, the associations and institutional base of the area – not with what is absent, or what is problematic, or what community needs?*” (Kretzmann & McKnight, 1993: 9). Tackling a community problem as a coherent group helps the networking among community members by taking over and building on the distributive hetero-diverse traits of community members (Boudon & Bourricaud, 1989) and transforming them in a homogenous unity that strives to find a solution. The ABA represents the foundation for the Assets-Based Community Development (ABCD), which is also an approach allowing a community to tackle certain issues or just utilise the key strengths, know-how and skillsets of community members in order to improve the overall quality of life (Mathie & Cunningham, 2003, 2005).

By taking into the account the effects of globalisation and the development of communication technologies on the concept of community⁶ (Allan, 2006) and volunteering (Mesec, 2001; Raja-Yusof, Norman, Abdul-Rahman, Nazri, & Mohd-Yusoff, 2016), one could claim that the ABA has limitless possibilities. Nowadays, there are worldwide online communities that transcend geolocation limits and can have diverse effects on global society. These online communities can have a positive contribution to global society (e.g. online help/DIY/specific subject communities), as well as produce effects that are negative (e.g. internet crackers, “community” of spyware, malware developers, etc.) or somewhat in-between (e.g. Anonymous hack activism group(s)).⁷ It is essential to acknowledge that ABAs are not a substitute for state institutions and programmes, but rather a complementary approach (Blackman, Buick, & O’Flynn, 2016; Payne, 2006).⁸ The ABA can be used in a variety of ways tackling everything from health-related issues (Glasgow Centre for Population Health, 2012; Morgan & Ziglio, 2010), economic development (Kelly, McKinley, & Duncan, 2016),

5 “*At [social capital] heart is the idea that people can treat their connections with others as an important resource, which they are able to draw on for a variety of purposes. Individuals call on friends and family when they face problems or make changes in their lives*” (Field, 2006: 152). Ogden, Morrison, & Hardee (2014: 1076) state that “*The term refers to the (usually non-monetary) resources generated through social networking and involvement in community affairs (e.g. sense of belonging, trust and influence). Social capital can be accrued by groups of like-minded people within a community and is strengthened as those groups connect with other networks in pursuit of common goals*”. Similarly, Bagnasco (2006: 230) claims that “*Social capital*’ describes a resource that facilitates action which is neither individual, nor physical, but inherent in social relations”. Though the concept is considered as well-established in sociological, political and other fields of expertise, its perception and understanding are far from unanimous (Bagnasco, 2006; Field, 2006; Ogden et al., 2014; Payne, 2006).

6 Though the term *community* is a concept that needs no interpretation as “*At an everyday level, it is used to express ideas of common experience and shared interests. Its popular meaning(s) now not only convey traditional notions of shared locality and neighbourhood, but also ideas of solidarity and connection between people who share similar social characteristics or identities*” (Allan, 2006: 35), the concept’s complexity continues to eclipse in the background (Mathie & Cunningham, 2003), since “*The community does not constitute a primitive and simple social relation. It is complex, since it associates in a very fragile way heterogeneous feelings and attitudes; it is learnt, as it is only through a socialization process, which, strictly, is never completed, that we learn to take part in interdependent communities. It is never pure, since communal links are associated with situations of calculation, conflict, or even violence. That is why it seems preferable to refer to ‘communalization’ (Vergemeinschaftung) rather than community, and to find out how some ‘diffuse solidarities’ are constituted and maintained*” (Boudon & Bourricaud, 1989: 74).

7 In the future, there will probably be even more discussions on how globalisation, politics and technology affects ABAs. Some will be more philosophical than others (e.g. Could blockchain technologies be considered as an ABA? How much of an impact do online petitions and volunteerism actually have?).

8 However, it must be emphasised that in way, the necessity for the ABA is also deriving from the currently globally prevailing neoliberal mentality, which is causing a downgrade in the size and quality of social services, thus also transforming NGOs and other non-state actors into those who are tasked with taking care of community (Mathie & Cunningham, 2003, 2005; Rapoša-Tajnsšek, 1993). Paradoxically, the works of Raiser, Haerper, Nowotny, & Wallace (2001) show that trust in formal intuitions and social capital is linked with economic growth.

infrastructure or environmental improvements (Payne, 2006), indigenous affairs (Blackman et al., 2016) and, of course, pedagogy and working with the youth (Kretzmann & McKnight, 1993; Payne, 2006).⁹ In the scope of the latter issue, the ABA is applied in the form of using social and human capital and/or physical means in order to improve the quality of life of the youth. The ABA can be used in order to provide counselling, homework help, as well as a space and place where the youth “*hang out*”, activities for the less fortunate, etc.

ABA IN SLOVENIA

In the terminological sense of the term, the ABA cannot be found in Slovenia, it is, however, found when one looks for it from a behaviouristic perspective.¹⁰ All of the above-identified ABA trademarks (social capital, utilising social networks, joint community engagement, volunteerism) can be found in the Slovene culture (Habič et al., 2012; Rapoša-Tajnšek, 1993; Rus & Toš, 2005) and in the *modus operandi* of Slovene non-governmental organisations (NGOs). The volunteer fire-fighting associations that deal with a number of physical safety threats (fires, floods, storms, etc.) represent the Slovene NGO with the highest number of members. There are more than 1,300 volunteer fire-fighting associations, with 163,000 members (including children, women, and veterans), while 50,000 out of all members are considered operational assets (Uprava Republike Slovenije za zaščito in reševanje, 2014). This is an astonishingly substantial number, considering the small size of Slovenia.¹¹ Their associations and housing across Slovenia also act as a form of day centres where people meet. Children often participate in competitions in fire-fighting skills. Volunteers meet and train with them regularly, thus adding to a network strengthening characteristic. The Slovene cultural context represents a foundation for positive factors facilitating community-inspired programmes. Projects, such as the Slovene version of street (news) paper¹² entitled *Kralji ulice* (Kings of the Street), are well accepted (Dekleva & Razpotnik, 2005). Moreover, children, juvenile and adolescent programmes are well-developed and often go beyond one-on-one counselling, as they engage the broader community in their activities (Beočanin, Harej, Koren, Lozar, & Tomšič, 2010; Društvo za razvoj skupnostnih programov za mlade (Društvo SPM), 2018). Overall, the Slovene culture represents good grounds for programmes involving the establishment of partnerships between formal institutions and private businesses, inspection services and schools. The peer-violence prevention programme at the Novo mesto bus station addressing the problems of peer-violence and Roma children having clashes with non-Roma children, is a fine example of such programmes. A joint programme between the police, inspection services, bars, local schools and training centres succeeded in downsizing the problem successfully (Slak, 2017). Community policing research indicates that Slovenes are motivated for further strengthening the efforts aimed at jointly solving safety/security problems in local environments (Lobnikar, Prislán, & Modic, 2016).

9 The works of Kretzmann & McKnight (1993) provide more examples of the ABA and ABCDs.

10 In fact, it is difficult to find a uniform ABA terminology even in countries where the ABA terminology and what it represents are used most frequently (e.g. Scotland, United States of America). In these countries, terms, such as ‘community development’, ‘community engagement’, etc., are also used (Glasgow Centre for Population Health, 2012: 5). In the United States of America, the term ‘community wealth building’ is one of the term used (Kelly, McKinley, & Duncan, 2016). The fact that the ABA terminology is not widely used among scholars and in peer-reviewed journals can be troublesome. It questions the usefulness of the term and some attention should be devoted to the issue of the usefulness of such terminology in the future.

11 On the 1 January 2017, the number of residents living in a country covering a total of 20,273 km² amounted to 2,065,895 (Statistical Office of the Republic of Slovenia, 2017).

12 Street papers are a globally accepted and supported project, in which newspapers or magazines are sold by the homeless or the poor, thus gaining some subsistence funds. In some cases, the homeless are also the creators of the content printed in such papers (see also “International Network of Street Papers (INSP)”, n. d.).

According to available data, Slovenia is among the European countries with the highest numbers of civil society organisations per inhabitant (Habič et al., 2012; see also Rus & Toš, 2005). Table 1 shows statistical data regarding the number of Slovene NGOs. Considering Slovenia's size and population, the number of NGOs is quite high.

Table 1: *The number of NGOs in Slovenia*

type/year	2009	2013	2014	2015	2016
societies, associations	20,417	21,980	22,564	22,961	23,258
institutes	1,515	2,305	2,563	2,778	2,991
institutions	167	212	232	236	232
total	22,099	24,497	25,353	25,975	26,481

Source: CNVOS, 2018

There are, however, continuous issues related to the legislation and inadequate funding (Habič et al., 2012; Rakar & Deželan, 2016). It might be interesting to note that in 1990, a study, which was conducted among 32 states, indicated that Slovenia was among countries recording the lowest share of membership of its population in NGOs, other types of volunteer organisations (Rus & Toš, 2005) and having low social capital (Raiser et al., 2001). This is somewhat ironic, since socialist regimes, which Slovenia was part of for almost half a century, strongly endorse the collective “work spirit”. Vodopivec, (2014: 137) summarised the focal points of the Yugoslav regime excellently, when she stated that the idea of “*solidarity was the central concept of socialist ideology...*”. Concepts, such as work brigades, collective (peoples’) ownership of firms that gave back to the communities (e.g. see Vodopivec, 2014), reliance on community, social engagement, etc., were heavily propagated. Such a degree of focus on solidarity and collective civil engagement is somewhat logical, as Slovenes experienced three collapses of their State in the previous century and were somewhat reliant on a (self-) organised civil society (Rus & Toš, 2005). Furthermore, during the socialist period, informal markets and informal social networks were a reality of everyday life, also due to the limited availability of certain goods and services (Dobovšek & Meško, 2008; Guasti & Dobovšek, 2011), as they were utilised to gain access to those limited services. In fact, social capital is integrally dependant on social networks (Mathie & Cunningham, 2005). Researchers recognised different reasons for the 1990 “fall” in volunteerism (e.g. the change of the political establishment, when political parties saw themselves as part of the social service and thus discouraged (hindered) other civil participation; the “limited extent” of social capital in the communist/socialist period (Raiser et al., 2001) or the postmodern change in the role of social engagement; the influence of the Roman Catholic church and other factors) (see (Rapoša-Tajnšek, 1993; Rus & Toš, 2005). However, such a situation could also be explained as a type of lustration, an attempt of “shedding the socialist legacy” or engaging in areas where the “spirit” of the new establishment encouraged high human rights agendas and high social security attained via formal institutions. However, the new establishment also prompted the Western way of life, which promotes individualism, market liberalisation and neoliberalisation that is based on the idea that societal (and, thus, community) problems will be fixed by an appropriate economic (“free market”) agenda. The latter only rarely encourages altruism, volunteerism or, for that matter, doing anything for free (Kanduč, 2007).

RESEARCH

For the purpose of examining the Slovene community approaches to tackling problems in the sphere of juvenile and youth problems, a research study was conducted by analysing case studies of two Slovene initiatives using the ABA and having the ABCD trademarks, i.e. the NasVIZ project and the CONA Fužine initiative. The NasVIZ project was funded by the Norwegian Financial Mechanism and was aimed at tackling the issue of peer violence in a comprehensive manner through an active partnership *in* and *with* the local community. From February 2015 to August 2016, pupils from the Simon Jenko Primary School in Kranj and the Kranj Residential Treatment Institution, including its residential facilities (RFs) located in the vicinity,¹³ were engaged in a number of activities (e.g. joint activities with Scouts from Kranj, horseback riding, etc.). Although some of those working in the project were paid, the bulk of the work was carried out voluntarily by using the skillset of team members and utilising their personal social networks to implement ideas (Klemenčič, et al., 2016; Klemenčič, Karajić, Sitar, Muršič, & Filipčič, 2016; Muršič, Klemenčič, Zabukovec, Filipčič, Karajić, & Bertok, 2016).

The CONA Fužine project is one of the four continuing community projects for young people carried out by the Ljubljana Moste-Polje Social Work Centre. The project is designed to provide assistance and support to troubled youth. It is a form of a day centre, where counselors are available to the youth (Center za socialno delo Ljubljana Moste-Polje, 2017). The CONA Fužine project also enables children from economically weak families to engage and participate in activities otherwise unattainable to them. The CONA Fužine project is a direct response to the problems that the Fužine neighborhood had to face, which are otherwise not reflected in statistics (see Meško, Dobovšek, & Bohinc, 2003; Mori, 1998), including crime and delinquency involving adolescents and youth. These issues resulted from the fact that Fužine were a neighbourhood with the highest population density per square meter in Slovenia. It was “designed” or, in other words, *designated* for unskilled foreign (mainly Yugoslav) workers. A large number of low-skilled foreign residents were placed in a small area with limited socio-economic advantages, which, naturally, gave rise to certain issues. Later, these issues were additionally exacerbated by the outbreak of wars in former Yugoslavia in 1995, since the relatives of Fužine residents found refuge in Slovenia, thus causing an even greater increase in the low-skilled foreign residents in Fužine. Following its independence in 1991, Slovenia encountered some transition and globalisation problems (such as the emergence of drug-related issues, which were not a pertinent problem during the socialist regime). However, due to its size and the good overall economic situation, Slovenia was able to repel them rather quickly. Nevertheless, the poor socio-economic status of the Fužine residents persisted, thus contributing to the perseverance and even worsening of such issues in Fužine (particularly those related to drug addiction and drug-related crime). These issues contributed to the general perception that the Fužine neighbourhood was a

13 These included the residential facilities (RFs) in Kranj, Stražišče, Mlaka and Črnava. RFs are basically apartments “intended for children or adolescents, who attend primary and secondary schools, and whose upbringing is at risk. Care, upbringing, education, and training are carried out within the RF. Children and adolescents are placed in such RFs by the social work centres and the parent Residential Treatment Institutions. Placing a person in a RF group or parent institutions represents a form of complementary education otherwise provided by the Residential Treatment Institution, as it enables a soft transition from a more closed and structured environment of a Residential Treatment Institution towards independent life”. The Residential Treatment Institutions are “founded by the state and are intended for children and adolescents with behavioural and emotional disorders, who do not enjoy proper family protection, care and education. The legislation defines them as institutions for the education of children and youth with special needs, emotional and behavioural disorders” (Šoln Vrbinč, Jakič Brezočnik, & Švalj, 2016: 3–4).

crime ghetto. Such perceptions continue to be present today, however, to a substantially smaller extent. Nowadays, the Fužine area is one of the most resident-friendly neighborhoods in Ljubljana.

In time, the demographics of Fužine changed and the CONA Fužine project adapted to face new problems. Similarly to the NasVIZ project, the CONA Fužine project is based on volunteerism, where the originators of the project are employed by the Ljubljana Moste-Polje Social Work Centre, however, the bulk of its activities is financed by funds obtained through public tenders and/or from the municipality.

The application of the ABA requires certain steps and analyses to be carried out prior to its application. The so-called Asset Mapping represents the primary and first step, as it enables the identification of crucial assets that can be utilised later on (Glasgow Centre for Population Health, 2012; Kretzmann & McKnight, 1993; Mathie & Cunningham, 2003). While the identification of assets is often done inductively, certain analyses are still needed in order to properly identify assets and related know-how (Mathie & Cunningham, 2005).¹⁴ Though our research included some type of Asset Mapping, it was more guided by the specific set of research questions *into* the know-how, skillsets and social capital that were utilised within the identified ABA and ABCD projects.

METHODS

A desk research was carried out to gather some insights into the cultural, social and organisational trademarks of the environments where such ABAs were applied, as well as to prepare questions for identifying the know-how, skillsets and utilised social capital. Interviews were conducted with the relevant and key personnel, working *within* (e.g. project managers, counsellors in the CONA Fužine and NasVIZ projects) or *with* (e.g. a police officer working frequently with the CONA Fužine project or scouts working on the NasVIZ project) the analysed ABA and ABCD projects. The basic information regarding interviews is provided in Table 2. Interview questions were grouped around six crucial themes that included sets of questions aimed at distilling the crucial elements enabling the studied ABA to work. These themes included:

- Networking (a set of questions used for gathering data on the functioning of networks utilised and engaged in the project; networks are an integral part of (the application of) social capital (Bagnasco, 2006; Field, 2006; Ogden et al., 2014) and the ABCD (Kretzmann & McKnight, 1993; Mathie & Cunningham, 2003));
- Inclusion of target groups (a set of questions used for gathering data on the ways in which targeted groups were transformed from “usually passive” receivers to active team members; according to Arefi (2004), target groups (can) also have an impact on policymaking);
- Teamwork (a set of questions used for gathering data on the functioning of teams working on the projects, how were they composed, what were the problems or benefits of teamwork, etc.);
- Assessment and evaluation (a set of questions used for gathering data on the way the project work and outputs are assessed and evaluated); in some cases, the ABA functions inductively, i.e. by using common sense to “*work out a solution*” to community problem(s), while in other cases, these approaches resemble a trial-and-error approach

¹⁴ These analyses, however, do not need to uphold to academic or scientific standards, they can be as simple as collecting stories about good solutions (see Mathie & Cunningham, 2003).

and, therefore, there is no formal assessment and evaluation of the utilised approaches, which makes the evaluation of the successfulness of the ABA rather difficult (see also Glasgow Centre for Population Health, 2012);

- Resourcing and Funding (a set of questions used for gathering data on the way in which the project is funded, what resources are needed and how are they distributed; asset mapping was partly included here, as well); and
- Sustainability (a set of questions used for gathering data on the way in which the project continues to exist, i.e. does it “*struggle for survival*”).

Interviews were conducted by one of the authors in September and October 2017. They lasted from 20 to almost 90 minutes, depending on the number of themes that were discussed. All interviews were recorded, transcribed and then jointly coded by all three authors.

Table 2: *Information regarding interviews conducted with the COERS ABCP project**

Interviewee code	Project	Position	No.
RTI-K01	NasVIZ	Headmaster of the Kranj Residential Treatment Institution	
PSSJ01	NasVIZ	Vice headmistress of the Simon Jenko Primary School in Kranj	
RF-K01	NasVIZ	Former headmistress of the Kranj Residential Facility	
RF-K02	NasVIZ	Employee on the project at the Kranj Residential Facility	
RF-Č01	NasVIZ	Residential Facility in Črnava	
RF-ŠKL01	NasVIZ	Residential Facility in Škofja Loka	
RF-M01	NasVIZ	Residential Facility in Mlaka	12
USER-01	NasVIZ	User of the NasVIZ programme	
ANC01	NasVIZ	Head of the Association for Nonviolent Communication**	
PSSJ02	NasVIZ	Employee on the project at the Simon Jenko Primary School in Kranj	
SCOUT01	NasVIZ	Scout volunteering in the NasVIZ project	
SCOUT02	NasVIZ	Scout volunteering in the NasVIZ project	
CONA01	CONA	Head of the CONA Fužine project	
POL01	CONA	Police officer working with the CONA Fužine project	3
MOL01	CONA	Head of the Bureau for Youth at the Municipality of Ljubljana	
Total number of interviewees			15

Note. In order to safeguard interviewees' anonymity, only the most basic information on the interviewees is provided. Additional information is available with the authors and can be provided at the request and within the scope that was agreed to by the interviewee. ** The Association for Nonviolent Communication is the key Slovene NGO dealing with the prevention of violence in society and spreading the principle of nonviolent communication (“Društvo za nenasilno komunikacijo,” 2010).

FINDINGS

The results presented in this section are in summarised form and only include the most crucial points. More details regarding the procedure, results and additional data can be found in the IO2 COERS ABCP country specific project report (some additional resources will also be obtainable at ASSETSCOM: Community Open Educational Resources (n. d)).

NETWORKING

It was recognised that pre-existing social networks were utilised in analysed projects. Even though the aim of the projects was to bring together different stakeholders (such as schools, residential treatment facilities, scouts, NGOs, etc.), the core network on which the projects were built was already established beforehand. Volunteers had previously worked together or met through other social interactions. Though working on a project somewhat formalised their cooperation, a degree of informality remained both during the project and after it, as it is perceived to assist in circumventing the rigidity of administrative and bureaucratic protocols, thus enabling the work to be more efficient. With respect to the police, such semi-informality also helps to create a suitable atmosphere, as the youth accept a police officer as a friend and not only as someone “*who punishes them*” (Interviewee POL01). Another crucial message that was recognised during the survey also revealed that proper altruistic networking is extremely important.

INCLUSION OF TARGET GROUPS

Target groups are an integral part of the ABA. Often, motivating them to “*become involved*” represents a significant issue, which was recognised by the participants in the programme themselves (Interviewee USER-01). Individuals participating in the project usually adopt dual roles. On one hand, they were part of the clientele, however, when they were actively included in the project, they became an asset (e.g. The NasVIZ and CONA Fužine staff have been striving to equip the parents of troubled children with proper knowledge in order to include them into counselling therapies and workshops). Thus, they “*became*” someone with a certain set of skills, who could be of help to the project. However, if parents were reluctant to participate, the work and/or counselling has more difficulties in achieving the expected outcome. The importance of parents and family influence was also recognised in a number of other projects and approaches (e.g. Ivelja, 2017; Lorenci, 2017; Slak, 2017).

TEAMWORK

While part of the dynamic related to the establishment and composition of teams was already touched upon under the networking theme, this theme focuses specifically on the dynamic, benefits and troubles of working in a team. It was observed that teams, which were truly established on the basis of an altruistic notion and included volunteers in the truest sense of the term, functioned properly and team members had the necessary drive, even though they might have been exhausted at times. If, on the other hand, a team member was under social pressure because they were unwillingly assigned to the team, this had a negative effect on the quality and workload of the entire team.

ASSESSMENT AND EVALUATION

The funding reports, administrative reports, staff work meetings and diagnostic instruments are used as proxies for evaluating projects’ successfulness. The projects are of qualitative nature and, therefore, qualitative statistics (e.g. the frequency of the CONA Fužine visitors, the number of peer-violence cases¹⁵) are not a good indicator of their actual success. This

15 This could seem illogical, as the number of peer-violence cases should have decreased if the project was successful, and, in fact, empirical findings show that this has happened in the NasVIZ project (Klemenčič, 2016). However, it can also happen that if the project is successful, the problem of peer-violence is more openly discussed and more victims step up, since they are encouraged to do so. Yet, this, in turn, causes an increase in the peer-violence statistics.

was strongly emphasised by the interviewees. Nevertheless, the project's impact can still be felt. Interviewee MOL01, for instance, emphasised that positive changes in Fužine could also be attributed to the CONA Fužine project. Furthermore, interviewee PSSJ02 observed that working on the NasVIZ project improved the atmosphere among the pedagogical staff in general. All interviewees also emphasised that administrative and bureaucratic reporting required by the project took a great deal of time, which could be spent more usefully and dedicated to the project participants themselves.

RESOURCING AND FUNDING

Both analysed project utilise a mixture of funding methods. Those working on the projects were mainly employed¹⁶ in one of the organisations participating in the projects, however, the projects themselves and their activities were/are funded through grants obtained on public tenders. In this sense, the work carried out on the project represents additional work (after hours or overtime) for team members. Some of the project activities and resources rely on various types of community assets. The CONA Fužina premises, for instance, are rented from the municipality, which charges a symbolic rent. The Kranj Scouts, who participated in the NasVIZ project, have been doing so voluntarily and scout guides used their knowledge (assets) in the processes and activities conducted in the scope of the project.

SUSTAINABILITY

Since the activities that represent the core element of the projects are funded through tenders, this affects the question of sustainability. It also affects the quality of work, as it prevents some of the team members to focus fully on working with the youth, since they need to constantly seek ways to maintain funding and, in turn, engage in extensive administrative reporting. The second key problem is related to the workforce. Both CONA Fužine and NasVIZ were mainly driven by altruistic individuals, which means that upon their leaving or retiring, a major problem emerges with respect to the projects' future existence or effectiveness.

ADDITIONAL THEMES

After reading the transcripts, an additional theme emerged that was not as strongly exposed in the process of conducting the desk research. It has to do with policymaking. In tackling community problems, the ABA were inevitably linked to policymaking, as it is usually an inadequate policy that causes certain community issues or inappropriate behaviours of its members (e.g. inadequate immigrant (re)settlement policy that causes ghettoisation and crime) (see also Blackman et al., 2016; Kelly et al., 2016; Morgan & Ziglio, 2010). It was recognised that the CONA Fužine project was established in order to tackle juvenile crime and related issues, which emerged due to the high population density in this neighbourhood, the fact that children were left to their own devices because their parents were at work, inadequate immigrant policy, wars in the Balkans and Slovenia's modernistic, post-independence desire to uncritically enter capitalism (this particular sphere gave rise to a number of inappropriate economic and social policies) (Interviewee CONA01). However, the analysed projects are not just a response, but also a potential influencer on future policymaking. Here, "potential" is the key word, as there is a lack of interest, particularly from policymakers, to implement

16 In the NasVIZ project, two persons were employed on the basis of a part-time contract (Klemenčič, 2016).

the positive and much-needed corrections, for example, in the Slovene educational system. The NasVIZ project was a research-based project, where scholars and practitioners have accumulated a significant amount of knowledge, reports and data. Some of these were then forwarded to the Ministry responsible for educational matters. However, to no effect, as the gathered expertise was not used to influence any potentially positive changes with respect to the running of schools, their curriculum or future peer-violence prevention programmes (Interviewee PSSJ01). Similarly, the CONA Fužine employees, as well as employees of other residential facilities and institutions, encounter numerous problems in their work, some of which are directly linked to legislative and regulative frameworks and could be easily avoided or at least omitted with adequate policymaking, administrative and legislative changes (Ivelja, 2017; Lorenci, 2017; Interviewee CONA01).¹⁷

DISCUSSION

The implications that derive from the cases studies are twofold. Firstly, the communities' effective response to problems can be somewhat simple, e. g. merely providing space where the youth "can hang out" and providing motivated staff with the right qualifications. Nevertheless, this is easier said than done. Secondly, policymaking is an integral component of community well-being and, therefore, inadequate policymaking is the *raison d'être* for the need to apply certain ABAs to the community engagement. On the other hand, appropriate state and local government policies (such as tax initiatives, *pro bono* encouragements, providing infrastructure, etc.) also represent the foundations for the actual ABA development (see also Arefi, 2004; Payne, 2006; Rapoša-Tajnsček, 1993). The complex relationships between policymaking, communities and the ABA are portrayed in Figure 1.

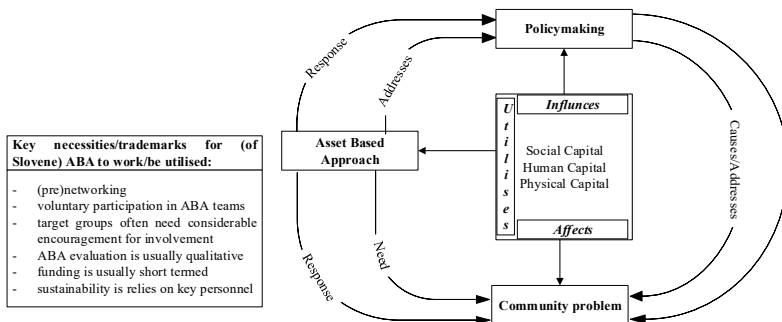


Figure 1: *The relationships between the ABA and policymaking and the key requirements of Slovene ABAs*

Policymaking (especially public policymaking) represents a combination of factors (e.g. scientific facts, legal issues, personal values, political realities) that are influencing the process of policymaking (Gentile & Anderson, 2008). Undoubtedly, this is a complex process (Keeley & Scoones, 1999), which is supposed to include the conceptualisation, adequate

¹⁷ Such changes range from modifications to funding policies, policies that safeguard and provide a regulative framework allowing the staff of residential facilities and institutions the authority to remove dangerous artefacts from children, policies that provide possibilities for tackling minor offences more efficiently, since young offenders observe that the current legislation disarms the prosecution against them and therefore feel protected from punishment, etc. Policies governing pedagogical orientations and faculty education must also be modified (Ivelja, 2017; Lorenci, 2017; COERS ABCP project interviewees).

policy development followed by implementation, as well as evaluation (Brock, Cornwall, & Gaventa, 2001; Keeley & Scoones, 1999). These policymaking processes are carried out by the formal and informal spheres of society (John, 2006). One must also consider the fact that the influence of civil and informal spheres on crucial (usually legislative) decisions is exerted only to a degree of power that the influencer or their social network actually has (see John, 2006; Keeley & Scoones, 1999). It is, therefore, not unusual for strong empirical scientific knowledge to have little or no impact on policymaking whatsoever, if the network of scientists that disseminates those facts is not strong and influential enough (Keeley & Scoones, 1999).¹⁸ In this context, networks, such as “old boys”, Ivy leagues or financial/banking networks have a much higher degree of power (and, consequently, more social capital) than other networks (Dobovšek & Meško, 2008; Guasti & Dobovšek, 2011; John, 2006; Payne, 2006).¹⁹ Social capital in itself is only a capacity without connotation. The connotation is determined through the use of the social capital and even then it very much depends on the standpoint of the “user” (see also Payne, 2006). If members of a smaller community within a bigger society are stigmatised and excluded from social, educational and economic opportunities, this will straighten their networking, thus establishing a dynamic of bonding and social capital building (see Ogden et al. (2014)). The social capital that will emerge from this situation will be used for the purpose of self-protection of the excluded group and not necessarily for the general well-being of society as a whole. The analysed cases presented in this paper show that the networks were broad and strong enough to complete tasks defined in the scope of the project, yet, they were unable to influence policymaking. In a way, the presented research study provides an indirect and analogous answer to critical remarks and questions presented by Bagnasco, (2006: 239) after reading the works of Putnam, Coleman and Fukuyama (see also Payne, 2006), who wondered whether politics truly “*consumes social capital*” and whether “*welfare systems have not helped to preserve or create social capital in Europe?*”. One could answer by stating that politics can indeed help create social capital when the community is either brought together due to inadequate policymaking and politics or when adequate policies that encourage volunteerism, community participation, etc. are culturally embedded in a given country. Similarly, the welfare system of a state also creates social capital either by encouraging individuals to strive towards extending their social network in order to improve their access to the welfare system or by simply enabling individuals (by providing life’s necessities) to develop their potentials or the potentials of the community.²⁰ The latter can be developed through a combination of volunteerism and public or other forms of funding available to various services and activities. However, addressing the complexity of social capital in the current neoliberal mentality and the neoliberal economic agenda (Field, 2006) is beyond the scope of this paper. Nevertheless, it should be done in the future, particularly since it also affects the upbringing, education and

18 History is laden with examples of science, “scientific” facts and their influence on policymaking. Scientific discoveries were questioned by the dominant policy throughout history, starting with Aristotle and Plato or Copernicus and Galileo. In recent history, the works of Friedman (2002) on the neoliberal economic policy have had an enormous effect on policymaking, thus affecting millions of lives (see Harvey, 2007; Kanduč, 2013).

19 Similar discussions take place with respect to the theory of formal and informal institutions (Helmke & Levitsky, 2004; Lauth, 2000, 2015) and their role as the setters of the societal “rules of the game” (Tonoyan, Strohmeier, Habib, & Perlitz, 2010: 804). According to Lauth (2015) and Winiecki (2004), (in)formal institutions can be defined as sets of internalised (e.g. religious, ideological, self-imposed codes of conduct) or social (laws, administrative) rules that affect the behaviour of individuals. While some of them have a positive effect on society (help between neighbours), and others can have a negative effect (e.g. corruption, clientelism, elite networks) (Guasti & Dobovšek, 2011; Thiery, 2011), it is the social capital that is utilised by (in)formal institutions in both cases (see Raiser, Haerpfer, Nowotny, & Wallace, 2001).

20 See also Ogden et al. (2014).

training of children. In turn, this will affect the work of schools, RTs and either increase or decrease the demand for a greater number of projects tackling peer-violence and other youth-related issues.

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LEGAL PERSPECTIVES

GENERAL DATA PROTECTION REGULATION (GDPR), THE DATA PROTECTION POLICE DIRECTIVE, AND THE CHANGES TO NATIONAL LEGISLATION IN THE REPUBLIC OF SLOVENIA

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ABSTRACT

On 24th May 2016 in European Union (EU) the data reform package (containing first vital changes since 1995), including The General Data Protection Regulation - GDPR (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data) and the Data Protection Directive for the police and criminal justice sector (Directive (EU) 2016/680), entered into force. Before the regulation applies on 25th May 2018, we have analysed the legislation with an emphasis on key changes represented in European legislative acts, and the national legislative act Personal Data Protection Act from 2004 (ZVOP-1) with proposals of new act (ZVOP-2), which was to come into force in 2018. The purposes of our research are to present the changes in the field of data protection and to evaluate the preparedness of the Republic of Slovenia to the reform package.

Keywords: data protection, legislation, GDPR, ZVOP-1, ZVOP-2

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INTRODUCTION

The protection of Personal Data is a constitutional right, as stated in the Constitution of the Republic of Slovenia (Ustava Republike Slovenije, 1991, Article 38, section II): “The protection of personal data shall be guaranteed. The use of personal data contrary to the purpose for which it was collected is prohibited. The collection, processing, designated use, supervision, and protection of the confidentiality of personal data shall be provided by law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.” As a constitutional right, it deserves a special attention, also recognized in the eyes of the European Commission, when setting foot on the reform path of the legislation, as early as in January 2012. An update and modernisation of the principles enshrined in the 1995 Data Protection laws was a necessity, as we explain in the section on reasons behind the reform.

It took four years, up until 4th of May 2016 for the results to be evident, when two key documents for new EU legislative framework on personal data protection were published in the Official Journal of the European Union (2016, Volume 59³):

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ([GDPR], 2016);

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3 Also published along with the mentioned two documents was the Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (2016).

- Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA ([the Directive], 2016).

Both documents entered into force in May 2016 and were applied in May 2018 (6 May for the Directive and 25 May for GDPR). Main objectives of new rule set are to forfeit the control over personal data back to the original owners - citizens -, to (re)build their trust in new data protection rules, digital economy and businesses it selves, and to simplify the data protection regulation for business usage, while keeping costs down and help business grow (The European Commission, 2010, 2012, 2016).

Through primary and secondary qualitative content analysis we present the reasons behind the reform and support them with public opinion findings, we analyse the content of GDPR and the Directive, and present the crucial changes and aspects of new legislature, along with the proposals of national legislature. Slovenia used the option of regulating the new legislative framework by adopting new Personal Data Protection Act, ZVOP-2, prepared by the Ministry of Justice. Seeing as the details of GDPR implementation in Slovenian legislation are not public yet - the proposal remained in the phase of government procedure even after the regulation's applying date -, we will focus our attention on the proposal from 23 January 2018 (Ministrstvo za pravosodje, 2018). Our main objectives are presenting the changes, brought by the data protection reform package, and evaluating the preparedness of the Republic of Slovenia.

REASONS BEHIND THE REFORM

GDPR and the data protection reform in whole are a result of the new challenges for the protection of personal data. As the European Commission (2010, 2) pointed out in the communication letter on comprehensive approach on personal data protection in the EU: “/.../ rapid technological developments and globalisation have profoundly changed the world around us, and brought new challenges for the protection of personal data. Today technology allows individuals to share information about their behaviour and preferences easily and make it publicly and globally available on an unprecedented scale.”

Rapid pace of technological change, globalisation, and a transformation of the way the personal data is being collected, accessed, used and transferred (Cloud computing) - along with the significant rise of data volume (Big Data) -, paved the path to the reform. In addition, “ways of collecting personal data have become increasingly elaborated and less easily detectable” (European Commission, 2010). We now live in an era when monitoring the behaviour, automatic data collection and constant presence of mobile devices with its geo-location option are an everyday occurrence. Name, address, health information, incomes, cultural profiles and more are collected, stored and used every day and basically everywhere. Whenever one wants to book a vacation, join a multitude of social network options, open a bank account and etc., vital personal information are being handed over to controllers and processors, often in a trans-border business dealing. The personal data is given by mere individuals and businesses and public authorities, and as such demand a sufficient attention and protection.

“Public authorities also use more and more personal data for various purposes, such as tracing individuals in the event of an outbreak of a communicable disease, for preventing and fighting terrorism and crime more effectively, to administer social security schemes or for taxation purposes, as part of their e-government applications etc.” is also a reason, why the EU deemed it necessary to ensure such personal data will enjoy a high protection standard all across the EU (The European Commission, 2010, 2-3). Furthermore: “Harmonized and renewed data protection legislation is essential for providing basic rights of individuals to personal data protection, for digital economy development and for a stronger fight against international crime and terrorism,” argues the Information Commissioner of the Republic of Slovenia ([Information Commissioner], 2018).

Intentions of the European Union. So in light of addressing the impact of new technologies, as well as globalisation and improving international data transfers, enhancing the internal market dimension of data protection, providing a stronger institutional arrangement for the effective enforcement of data protection rules, and lastly, improving the coherence of the data protection legal framework, required “the EU to develop a comprehensive and coherent approach, guaranteeing that the fundamental right to data protection for individuals is fully respected within the EU and beyond” (European Commission, 2010, 4). The derived key objectives being:

- strengthening individual’s rights (by ensuring appropriate protection for individuals in all circumstances, increasing transparency for data subjects, enhancing control over one’s own data, raising awareness, ensuring informed and free consent, protecting sensitive data, making remedies and sanctions more effective);
- enhancing the internal market dimension (by increasing legal certainty and providing a level playing field for data controllers, reducing the administrative burden, clarifying the rules on applicable law and Member States’ responsibility, enhancing data controllers’ responsibility, encouraging self-regulatory initiatives and exploring EU certification schemes);
- revising the data protection rules in the area of police and judicial cooperation in criminal matters;
- the global dimensions of data protection (by clarifying and simplifying the rules for international data transfers, promoting universe principles); and
- a stronger institutional arrangement for better enforcement of data protection rules (through the Data Protection Authorities, that being the Information Commissioner of the Republic of Slovenia) (European Commission, 2010).

GDPR and the Directive were viewed as “a strong and consistent legislative framework across Union policies, enhancing individuals’ rights, the Single Market dimension of data protection and cutting red tape for businesses” (European Commission, 2012). Following the actions by the European Commission, by the Article 29 Working Party (European Data Protection Board), which groups all national data protection authorities, including the European Data Protection Supervisor (working as the enforcers), the remaining steps for successful preparation and appliance of the new legislation include: member states to finalise the set-up of the legal framework at national level and to provide the necessary financial and human resources to national data protection authorities, which are to ensure that the new independent European Data Protection Board is fully operational, businesses, public administrations and other organisations processing data are to get ready for the application of the new rules and the stakeholders are to be informed. The European Commission will

then take further steps in addressing the need of cooperation with member states, financial support, empowerment, and will take stock of the GDPR implementation in May 2019, concluding with a report in 2020 (European Commission, 2018a).

Public Opinion on Data Protection. According to the Special Eurobarometer 431 from 2015, done in 28 member states (27,980 citizens were included in the survey), on the topic of data protection the majority (71%) of European citizens recognize the data collection process as a part of everyday modern life in the digital age they live in. Only three out of ten are indifferent when asked if they should give an explicit approval for the use of their personal information and only 15% of respondents who feel they have complete control over the information they provide online. Less than a quarter of Europeans trust online businesses, and a majority of citizens feel they lack the control over what happens when their personal data is out there. The report also shows widespread concerns about the consequences of personal data being misused. All points to an admission, that an update and improvement of the data protection regime is a must. Some crucial public opinion findings are presented below (European Commission, 2015b):

- On control over personal data: More than eight out of ten respondents feel that they do not have complete control over their personal data, and two-thirds of respondents are concerned about not having complete control over the information they provide online (most concerned about the recording of their activities via payment cards and mobile phones). Half of all Europeans have heard of recent revelations concerning mass data collection by governments for reasons of national security and the revelations have had a negative impact on the level of trust of most responders.
- On disclosure of personal data: 56 % agree that their national government asks them for more and more personal information. A majority of people are uncomfortable about online companies using their personal information to tailor advertisements.
- On rights and protections over personal data: Europeans overwhelmingly (89 %) believe they should have the same rights and protections over their personal information regardless of the country in which the public authority or private company offering the service is established, and furthermore - a relative majority thinks that the enforcement of rules on personal data protection should be dealt with at EU level.
- On management of personal data by other parties and perceived risks: 69 % of respondents think the collection of their data should require their explicit approval, and the same percentage is concerned about their information being used for a different purpose from the one it was collected for, almost all (91 %) wish to be informed in case of data breach (should their data be lost or stolen) and 65 % of respondents expect this to be done by the authority or company handling the data.
- On data collection and privacy policies: Only one fifth of respondents are always informed about the conditions of data collection and potential uses, when asked to provide personal information online, only one fifth of respondents read the privacy statements in full (most find them too long to read).
- On social network privacy settings: 42 % of Europeans use default privacy settings when active on online social networks, and about a quarter of them gave not done so, because they trust sites to set the appropriate settings.
- On risks and responsibilities related to personal information provided online: half of European Internet users are worried about becoming a victim of fraud through the misuse of their personal information, and 67 % deem online companies, individuals and public authorities responsible for protecting their online personal data (European Commission, 2015b).

In comparison – more than a quarter of Slovenians (26% in respect to 15% of Europeans) believe they have complete control over the information they provide online (ability to correct, change or delete), less are convinced authorities and private companies holding information may sometimes use it for a different purpose than the one it was collected for, without informing them (58% of Slovenians in respect to 69% of Europeans), providing personal information is not a big issue for 38% of Slovene population (in respect to 35% of EU), 81% of Slovenians are indifferent to having the same rights and protection regardless of the country of service establishment, most believe, the personal data protection should be handled on national level (45% for national level, 38% for EU level), and generally more trusting towards different authorities and private companies collecting and storing personal information (European Commission, 2015a).

GDPR

CONTENT OVERVIEW

At this point it seems suitable, to make an overview of the GDPR's content, and thus providing an insight at the scale of new law. GDPR (2016) initially provides a string of documents, on which The European Parliament and the Council of the EU have adopted the regulation, followed by a comprehensive and elaborative introduction in the form of 173 introductory provisions, all covering the ground concepts, rules and laws behind the GDPR itself. Foremost explaining the importance of data protection as a fundamental right, the intention of the GDPR, the reasons behind its acceptance and furthermore the essence of it. "The processing of personal data should be designed to serve mankind," as is stated in the fourth introductory provision (GDPR, 2016). It deals with sensitive data, consent, technological neutrality, data processing in all its aspects, all involved subjects and concepts. As such, "the principles of data protection should apply to any information concerning an identified or identifiable natural person," as stated in the 26th introductory provision (GDPR, 2016). The introduction includes the explanation of intentions, purposes, conditions, foundations and the possibilities of interpretation or rather usage, which are later accumulated in the form of eleven chapters of the regulation.

We provide an overview of the chapters and their contents (GDPR, 2016): Chapter 1 (Articles 1–4) General provisions: includes subject-matter and objectives, material and territorial scope, and definitions, including the definition of personal data: "‘.../ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person," and the definition of processing: "‘.../ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction" (GDPR, 2016, Art. 4); Chapter 2 (Articles 5–11) Principles; Chapter 3 (Articles 12–23) Rights of the data subject: includes five sections - transparency and modalities, information and access to personal data, rectification and erasure, right to object and automated individual decision-making, and restrictions; Chapter 4 (Articles 24–43) Controller and processor: includes five sections - general obligations,

security of personal data, data protection impact assessment and prior consultation, data protection officer, and codes of conduct and certification; Chapter 5 (Articles 44–50) Transfers of personal data to third countries or international organisations; Chapter 6 (Articles 51–59) Independent supervisory authorities: includes two sections - independent status, and competence, tasks and powers; Chapter 7 (Articles 60–76) Cooperation and consistency: includes three sections - cooperation, consistency, European data protection board; Chapter 8 (Articles 77–84) Remedies, liability and penalties: including right to lodge a complaint with a supervisory authority, right to an effective judicial remedy against a supervisory authority, right to an effective judicial remedy against a controller or processor, representation of data subjects, suspension of proceedings, right to compensation and liability, general conditions for imposing administrative fines, and penalties; Chapter 9 (Articles 85–91) Provisions relating to specific processing situations: such as freedom of expression and information, public access to official documents, national identification number, context of employment, archiving purposes, obligations of secrecy, churches and religious associations; Chapter 10 (Articles 92–93) Delegated acts and implementing acts; Chapter 11 (Articles 94–99) Final provisions.

According to our purposes and due to our limitations, we present the overview of key changes the GDPR brings to the market, the controllers or processors (in the shape of businesses) and subjects (individuals, whose personal data is being controlled or processed). In the next chapter we approach the benefits (for the whole market), obligations (for the controllers and processors), and rights (for the citizens whose personal data are handled) the GDPR presents.

CHANGES

European Commission (2015c) pointed out the positive impact of the reform package by realising the Digital Single Market potential through following concepts of GDPR:

- one continent, one law (unified data protection law regulation, replacing the current inconsistent national laws),
- one-stop-shop for businesses (one supervisory authority simplifies and reduces costs of doing business in the EU),
- EU rules for non-EU companies (the same rules for all companies, regardless of where they are established, and thus levelling the playing field),
- technological neutrality (by enabling innovative technology to continue thrive under the new rules).

Obligations and benefits for the companies further include (European Commission, 2012):

- strengthening companies' security measures to prevent and avoid breaches,
- notifying about data breaches to both the national data protection authority and the individuals concerned without undue delay,
- reinforcing data security, by encouraging the use of privacy-enhancing technologies (protecting the privacy by minimizing the storage of personal data), privacy-friendly default settings and privacy certification schemes,
- enhancing the accountability of those processing data, by requiring data controllers to designate a Data Protection Officer (DPO) in companies and in firms which are involved in processing operations which present specific risks to the rights and freedoms of individuals,

- introducing the “Privacy by Design” principle to make sure that data protection safeguards are taken into account at the planning stage of procedures and systems,
- carrying out Data Protection Impact Assessments for organisations involved in so called risky processing⁴.

Add to that removal of notifications, which is to lower the costs and remove obstacles to free flow of personal data within the EU, making it easier to expand the business, and changes in record-keeping. Small and medium-sized enterprises are not required to keep records of processing activities, unless the processing is regular or involves risky processing (Protection of personal data (from 2018), 2016).

Along with that the companies are to ensure the following two benefits for the citizens (European Commission, 2012, 2015c). Firstly, improving the means for individuals to exercise their rights, by strengthening national data protection authorities’ independence and powers, enhancing administrative and judicial remedies when data protection rights are violated. And secondly, improving individuals’ ability to control their data, by:

- ensuring explicit consent (freely given and based on a statement or on a clear affirmative action - opt-in rather than opt-out),
- equipping internet users with an effective right to be forgotten in the online environment (the right to have their data deleted if they withdraw their consent and if there are no other legitimate grounds for retaining the data),
- guaranteeing easy access to one’s own data and a right to data portability (a right to obtain a copy of the stored data from the controller and the freedom to move it from one service provider to another - Art. 20 in GDPR),
- reinforcing the right to information so that individuals fully understand how their personal data is handled, particularly when the processing activities concern children (to whom the GDPR gives a special attention).

That along with the right to know when one’s data has been hacked and data protection by design and by default, the reform package is to strengthen citizens’ rights with granting control of their own personal data and building trust (European Commission, 2015c).

Furthermore, the European Commission, the regulation itself, as well as Information Commissioner of the Republic of Slovenia (Informacijski pooblaščenec, 2017) all point out the high cost of non-compliance. The sanctions are to be “effective, proportionate and dissuasive”. They could represent up to 4 % of global annual turnover or up to twenty million euros. The controller or processor could get away with a warning, reprimand or a suspension of data processing (GDPR, 2016; European Commission, 2018b). Additionally, Information Commissioner (2018) points out the rights of data subject to lodge a complaint with a supervisory authority, the right to judicial remedy, compensation and liability (Art. 77 to 82 in GDPR). The administrative sanctions will be imposed by the national data protection authorities. Both the European Commission (2018b) as a law maker and Information Commissioner (2017) as a supervisory authority point out a few aspects, demanding higher attention or at least more cautious approach. That being the whole communication, consent, access and portability, warnings, data erasing, profiling, marketing, safeguarding sensitive data and data transfer outside the EU.

4 When new technologies, automatic, systematic processing and evaluation of personal information, large-scale monitoring of a publicly accessible area or a large-scale processing of sensitive data like biometrics takes place (European Commission, 2018b).

Mojca Prelesnik (2018), current Information Commissioner of the Republic of Slovenia, pointed out Article 5 from the GDPR as grounds for data handling (lawfulness of processing, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability): “Taking into account the latest technological developments, costs and nature, scope, circumstances and purpose of the processing, as well as the risks to the fundamental human rights, the operator or processor ensures an adequate level of risk-based security by performing appropriate technical and organizational measures, all of which he is capable of proving.”

If we take it a step further and see how one ensures compliance in our overview: educating themselves on what personal data is and set the basis for the analysis of their organisation would be a preferred step one, followed closely by informing themselves on the positive aspects of GDPR, and with that set the mental groundwork for compliance. Knowing the broadness of the business activities, processes and organisation as whole in light of the new reform, represents a first stepping stone to compliance. Keeping the protection of people’s rights in the front of their minds with a clear and simple two-way communication, taking care of legal framework of their activities, checking if they are obliged to assign a DPO and how they should take care of record keeping. All this should be done with an anticipation by impact assessments, including recognizing the biggest threats to the processes involving personal data, and GDPR as such should be taken into consideration when updating or building a new organisation or business.

THE DIRECTIVE

CONTENT OVERVIEW

Even though our focus is on the regulation’s part of the reform package, we can not dismiss the importance of the Directive for the field of criminal justice and security. In this regard, we present a short content overview and a few focal points of the Directive, but are aware that we are only scratching the surface with our contribution and see this as one of our research limitations. The Directive for the police and justice sectors is to be transposed into national legislation (by 6 May 2018) and will be integrated in the ZVOP-2, when accepted. As such we can not dismiss it in whole.

The Directive (2016) is designed similarly to GDPR, consisting of 107 introductory provisions (contextually the same as GDPR’s), followed by ten chapters: Chapter 1 (Art. 1–3) General provisions; Chapter 2 (Art. 4–11) Principles; Chapter 3 (Art. 12–18) Rights of the data subject; Chapter 4 (Art. 19–34) Controller and processor: consists of three sections - general obligations, security of personal data, DPO); Chapter 5 (Art. 35–40) Transfers of personal data to third countries or international organisations; Chapter 6 (Art. 41–49) Independent supervisory authorities: consists of two sections - independent status, and competences, tasks and powers; Chapter 7 (Art. 50–51) Cooperation; Chapter 8 (Art. 52–57) Remedies, liability and penalties; Chapter 9 (Art. 58) Implementing acts; Chapter 10 (Art. 59–65) Final provisions.

KEY POINTS

The Directive’s “rules deliver on the EU’s Agenda on Security, the EU’s strategy in the fight against terrorism, organised crime and cybercrime. The exchange of such data is essential in the fight against terrorism and cross border crime. Thanks to the new rules, sharing such data will be more efficient both at EU-level and international level. They will build

trust and ensure legal certainty cross border,” says Jourová (2016), the Commissioner for Justice, Consumers and Gender Equality. Under the new Directive, everyone’s personal data must be processed lawfully, fairly, and only for a specific purpose, a purpose that is always linked to the fight against crime. Legality, proportionality, and necessity, with appropriate safeguards for individuals, independent supervision by national data protection authorities, effective judicial remedies, and effective fight against crime through efficient and robust rules on personal data exchanges for stronger and easier international cooperation, as well as saving time and money, are crucial characteristics supposedly incorporated in the Directive (Jourová, 2016).

The Directive (2016) aims to “better protect individuals’ personal data when their data is being processed by police and criminal justice authorities” and to “improve cooperation in the fight against terrorism and cross-border crime in the EU by enabling police and criminal justice authorities in EU countries to exchange information necessary for investigations more efficiently and effectively” (Protecting personal data when being used by police and criminal justice authorities (from 2018), 2017).

The directive requires that the data collected by law enforcement authorities are “processed lawfully and fairly; collected for specified, explicit and legitimate purposes and processed only in line with these purposes; adequate, relevant and not excessive in relation to the purpose in which they are processed; accurate and updated where necessary; kept in a form which allows identification of the individual for no longer than is necessary for the purpose of the processing; appropriately secured, including protection against unauthorised or unlawful processing” (Protecting personal data when being used by police and criminal justice authorities (from 2018), 2017). It has a requirement towards EU countries to “establish time limits for erasing the personal data or for a regular review of the need to store such data”, towards law enforcement authorities to “make a clear distinction between the data of different categories of persons including: those for whom there are serious grounds to believe they have committed or are about to commit a criminal offence; those who have been convicted of a criminal offence; victims of criminal offences or persons whom it is reasonably believed could be victims of criminal offences; those who are parties to a criminal offence, including potential witnesses” (Protecting personal data when being used by police and criminal justice authorities (from 2018), 2017). The Directive gives the individuals the right to have certain information made available to them (by the law enforcement authorities). This includes the name and contact details of the competent authority deciding the purpose and means of the data processing, purpose of data processing, the right to launch a complaint with a supervisory authority, and the right to request access to, correction or deletion of their personal data or restrict processing.

National authorities are obliged to take technical and organisational measures to ensure a level of security for personal data that is appropriate to the risk. Automated data processing must include: “denying unauthorised persons access to equipment used for processing; preventing the unauthorised reading, copying, changing or removal of data media; preventing the unauthorised input of personal data and the unauthorised viewing, changing or deleting of stored personal data” (Protecting personal data when being used by police and criminal justice authorities (from 2018), 2017).

ZVOP-1 AND ZVOP-2 PROPOSALS

FIRST PROPOSAL OF ZVOP-2

As presented in October 2017 by one of the ZVOP-2 makers Peter Pavlin, secretary at the Ministry of Justice of the Republic of Slovenia, when discussing the first proposal, published 3 October 2017, the goals of ZVOP-2 are set in the spirit of GDPR - to provide legal certainty and protection, where possible maintain the personal data protection, make a useful legal act, and align it with the GDPR and the Directive. As Pavlin (2017) said, the Slovenian position was formerly against to changes, and according to Mojca Prelesnik (2018), the Information Commissioner, in ZVOP-1 Slovenia had one of the best legal acts in case of data protection.

The first proposal had a necessary focus on the individual and its personal data, the basic provisions were similar to ZVOP-1 from 2004, and some important parts were still to be aligned with EU legislative basis - such as terminology. Some terminology was successfully taken straight from the GDPR and the Directive, the supervisory authority was replaced with specific body, that is Information Commissioner, and the main points of further debate were the discrepancies in transporting GDPR to public and private sectors - each with its own requirements. In first proposal, the alternatives were proposed (Pavlin, 2017).

In case of children's personal data, ZVOP-2 took a broader approach than GDPR and went with a proposed 15 years as a minimum for processing with lawful person's consent (GDPR conditions child's consent within range of 13 to 16 years). Foreign (and domestic) legal acts and proceedings were used when drafting the first ZVOP-2 proposal, such as American law, German and French legislature and some well-known cases of data protection proceedings (such as *Copland v. the United Kingdom*, *Bărbulescu v Romania*), as well as Slovenia's Obligations Act and Information Commissioner's opinions (Pavlin, 2017).

One of the main difference is separation of data processing in case of criminal offences or the criminal penalties, which ZVOP-2 deals with in one document (one part after the other, first the general GDPR part, and lastly in Part IX the specific part of protecting personal data when being used by police and criminal justice authorities). The impact assessment requirement was to be done more in depth, the law makers have taken a more open approach regarding the scientific, historic, statistical and archival process purposes, in which the national legislature reform is probably needed, assessed Pavlin (2017). Some dilemmas were raised in regard to articles about the freedom of speech, as it is a fundamental constitutional right, and could be in conflict with the right to data protection. As such, the legal authorities must work hard to balance the two. "Unclear provisions could constitute a restriction of freedom of speech," stated Pavlin (2017), who specifically mentioned journalists and bloggers (the new age journalists) as affected parties in this case.

Regarding the DPO law makers found it a high priority when drafting a proposal, as it is a difficult point, along with the purposes of processing personal data. With DPO the priority was to focus on independence of the designated DPO, and the biggest obstacle presented in separating the conditions for public and private sectors. Multiple Articles in ZVOP-2 first proposal regarding the DPO were to be re-evaluated, rewritten and possibly even scratched from the final version. As far as codes of conduct goes, Pavlin (2017) mentioned them as essential for the private sector, not so much for the public sector. As for the cost of non-compliance, ZVOP-2 additionally proposes solving the data misuse with classical misdemeanour procedures and classic misdemeanour decision-making. High costs for non-compliance were argued as inappropriate for small countries, and best suited for multinational corporations (such as Microsoft etc.).

As far as the transferring of the Directive in ZVOP-2 goes, part of the rules was taken from Slovenia's Police Tasks and Powers Act. The draft also distinguishes between police, prosecutor's and judiciary part. Sectoral arrangements for biometrics, video surveillance, and entry and exit recording are part of the draft as well.

SECOND PROPOSAL OF ZVOP-2

Second proposal of ZVOP-2 includes introduction part with assessment of current situation and reasons for proposal acceptance, aims, principles and fundamental legislative solutions. The legislative technique of the ZVOP-2 is a partial novelty, since it partially implements GDPR's and the Directive's articles, combines them, and uses some as directly applied. The articles from both documents are referenced, copied, summarised and combined. The main legislative changes according to the ZVOP-1 from 2004 concern both general and special provisions as well as sectoral arrangements. The principles are aligned with GDPR, they follow constitutional arrangement, and some are based on other legislative acts and judicial procedures (Ministrstvo za pravosodje, 2018).

At this point we present a content overview of the second proposal, which includes: Part I - Basic provisions, Part II - Rights of the data subject, Part III - Operator and processor, Part IV - Authorized persons for the protection of personal data, codes of conduct and certification, Part V - The transfer of personal data to third countries or international organizations, Part VI - The supervisory body for the protection of personal data of the Republic of Slovenia, Part VII - Specific rules regarding the processing of personal data for scientific research, historical research, statistical and archival purposes, Part VIII - Protection of freedom of speech and access to information in relation to the protection of personal data, Part IX - The processing of personal data for the purpose of the prevention, investigation, detection or prosecution of criminal offenses, the exercise of the tasks and powers of the police, the security and the defence of the country and the enforcement of criminal sanctions, Part X - Regional regulations for the processing of personal data (with Chapter 1 Direct Marketing, Chapter 2 Video surveillance, Chapter 3 Processing personal data using biometrics, Chapter 4 Recording entrances and exits, Chapter 5 Public records and personal data protection, Chapter 6 Linking personal databases, Chapter 7 Professional supervision, Chapter 8 Public contact information and data for the organization of official events), Part XI - Penal provisions, Part XII - Transitional and final provisions. The second half of the proposal consists of the explanations of the articles (Ministrstvo za pravosodje, 2018).

As for the final version of ZVOP-2, the second proposal, issued 23 January 2018, is currently proposed to be discussed in accordance with the urgent legislative procedure. As Slovenia "acts as an operator or processor of personal data or transmits them across borders (e.g. in the police or criminal-justice and police field) there will be no clear legal basis for the processing of personal data, the processing of personal data for other (new) purposes, and the provision of security controls in the field of personal data protection and the related misdemeanour sanction," is written in the justification of the request for urgent procedure (Ministrstvo za pravosodje, 2018: 2). Thus, the aim of urgent legislative procedure is to prevent difficult to repair consequences affecting the functioning of the country. According to the information from Ministry of Justice, until 4 April 2018, only Austria, Germany, Slovakia and in part Denmark (only the Directive) transferred the reform package into national legislation. The French legislation also applies to the proposal for an implementing

law through an urgent legislative procedure, while the rest are expected to be predominantly adopted in April and May 2018, when the expiry date expires both legal acts, according to Ministry's assessment.

"The legal bases for the processing of personal data are still clearly structured, as they were in the ZVOP-1," are convinced the law makers (Ministrstvo za pravosodje, 2018: 2). Main legislative differences occurred when regarding the consent, as well as changes in the definitions and processing of new types of personal data, new arrangement were made regarding other purposes processing of personal data, impact assessment are included for demonstrating compliance of data processing, DPO is included as the authorized person for the protection of personal data, and does not enter as a regulated profession. Independent persons within the controller or processor advise on the coherence of the protection of personal data. The proposed conditions are more open-ended, since the required competences are not limited to work experience in the field of personal data protection, but also include for example experience from the field of banking (confidential information) or IT security. The appointing is easier, since the public sector (with an exception of Ministries) can attain DPO from public sector, a deputy can be appointed as well for the DPO etc.

ZVOP-2 still in details deals with direct marketing, even though it is somewhat controversial in the light of GDPR, which wants to regulate it, rather than leave it to unclear practice. Information Commissioner remains as an independent authority. The proposal also resolved the relationship between values from areas of freedom of speech to protection of personal data and values of access to public information to protection of personal data, in the interests of freedom of speech and access to information of a public nature (Ministrstvo za pravosodje, 2018).

After the adoption of the Proposal of the Law on the Protection of Personal Data in the Committee on State Organization and Public affairs of the Government of the Republic of Slovenia on 13 March 2018 and hearing at the session of the Government of the Republic of Slovenia on 29 March 2018, additional inter-ministerial and expert coordination were carried out, the result of which is the Proposal of the Law on the Protection of Personal Data - New material no. 2, which takes into account multiple comments from different ministries. The proposal presents an essential policy regarding the content of the new legal protection of personal data as determined in 2016 at the level of EU in GDPR and the Directive. The proposal is of connective nature and includes policies of sectoral arrangements (video surveillance, biometrics). "The system protection of personal data will not function properly - meaning there will not be sufficient legal certainty - without implementing binding provisions of the ZVOP-2," warns the Ministry of Justice of the Republic of Slovenia (Ministrstvo za pravosodje, 2018: 4) itself. Emergency legislation procedure was approved by the competent committee of the Government of the Republic of Slovenia on 13 March 2018.

CONCLUSION

With GDPR (2016) the companies are said to strengthen their security measures and avoid breaches, and in case they do happen, they are obliged to notify the national data protection authority and the individual, whose control over their data is said to improve. Giving the explicit consent, having the right to be forgotten in the online environment, guaranteeing easy access to one's own data and give the right to data portability, giving the full understanding about the handling of their data, and on top of that improve their means to exercise their rights, if we only name a few. The legal aspect of GDPR will be complemented

with reinforcing data security on IT level, with encouraging the use of privacy-enhancing technologies and privacy-friendly default settings. The enhanced accountability of those processing the data is obvious in requirement for DPO, privacy by design and by default principles and obligatory data protection impact assessments for organisations that meet certain criteria. Top it all with a hefty fine for non-compliance.

Along with that, there is the Directive (2016), which regulates the field of criminal justice and security, and is intended to improve cooperation in the fight against terrorism and cross-border crime in the EU, along with better protect the individuals' personal data when processed by police and criminal justice authorities.

Our research limitations (or rather opportunities for future research) lie in the surface analysis of both documents, since they are both so extensive they could be analysed separately and in greater detail, taking only a part of each as a research subject. On top of it all, we were focusing on implementation and transportation of both into national legislature. As such, we have only opened new field of controversies, seeing as just a few days or weeks before the date on which the Directive and GDPR start to apply, we are still at the stage of proposing the ZVOP-2, rather than using it. As such ZVOP-1 - which is aligned with Directive 95/46/EC from 1995 - still applies, and there are quite a few discrepancies with new EU regulation, that need to be pointed out at this point.

As such, ZVOP-1 is outdated and contradictory, meaning that the true regulative act is GDPR and not so much national legislative act. Seeing as the GDPR as directly applicable is negated in the latest ZVOP-2 proposal (for example the noted discrepancy of minimal age for children's consent), the current situation is unacceptable. Nataša Pirc Musar (2018), former Information Commissioner of Republic of Slovenia, questions even the proposal of the ZVOP-2: "Unfortunately, the latest publicly announced proposal has many provisions that are completely incompatible with GDPR, which will present additional legal problems and complications. For example, direct marketing is regulated in the ZVOP-2 proposal exactly the same as in the ZVOP-1, and as such contradicts the GDPR." She pointed out the situation is unfriendly for businesses: "The more ZVOP-2 is compatible with GDPR, the easier it will be for processors. In areas where the state will decide to regulate in its own way, perhaps even contrary to the GDPR, it will be extremely difficult to ensure timely and quality compliance, since all aware companies have been preparing for GDPR for some time, and any discrepancy with GDPR will cause not only legal uncertainty and confusion, but also new and not so small costs." Further she argues: "If only certain specific areas are specifically regulated, such as /.../ biometrics and video surveillance, it will not be so difficult /.../. For all other deviations, after 25 May 2018, there will be a huge emptiness, when the theoretical processors should adjust to GDPR, but different regulations in national legislature will only be evident after the adoption of the law. Many will not be able to comply with GDPR on day D." In her words - and we agree - the delay causes chaos, and the absence of clear rules does not help either. And in light of which act can the Information Commissioner even run procedures? Inspection Act is in some points also in contradiction to GDPR, points out Pirc Musar (2018).

It all looks like ZVOP-2 will not be accepted prior to fall 2018, and the Ministry accepts that some questions will remain legally unanswered until then. The research therefore lacks the final situation of preparedness of Republic of Slovenia in regard to data protection legislature. In addition, European Commission proposes two new regulations on privacy and electronic communications (e-Privacy) and on the data protection rules applicable to EU

institutions that align the existing rules to the GDPR (European Data Protection Supervisor, 2018). This will only add to the complexity of the field of legal regulation and the scope of the requirements for the security of personal data.

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A COMPARATIVE ANALYSIS OF THE LEGAL REGULATION OF WEAPONS IN THE REPUBLIC OF SLOVENIA, THE REPUBLIC OF ITALY, AND THE REPUBLIC OF CROATIA

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ABSTRACT

The possession and carrying of weapons (for purposes of protection) have become an exception rather than a rule in Europe in particular. There are two completely different, historically conditioned, concepts of the normative regulation of the manufacture, trade, and possession of civil weapons. The Anglo-Saxon concept gives an individual the right to keep and bear arms and originates in the constitutional right to effective self-defence, while the European concept treats the possession of weapons as a privilege. It can be concluded that the concept according to which the possession, carrying, and use of weapons is a (constitutional) right of individuals, and which requires that the state interfere to the least extent possible with individuals' right to acquire weapons, should not be followed. The completely opposite concept regarding weapons should therefore be preserved, namely that individuals' right to weapons be treated as a privilege.

Keywords: safety, possession of weapons, carrying of weapons, civil weapons, comparative analysis

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INTRODUCTION

Weapons have always accompanied and attracted people. Attitudes towards weapons is historically conditioned. The use of weapons cannot be avoided even in the current day. Regardless of an individual's motive for possessing or carrying weapons, the moment when he or she in fact acquires weapons is a turning point. Namely, the moment individuals acquire weapons their responsibility towards others increases significantly, as by using weapons they can cause great damage to their surroundings. They may be responsible for all manner of repercussions that can be caused by their weapons; they must continually ensure that their weapons are not used by persons who are not permitted to do so, and therefore they must demonstrate caution as to how and where they move about with their weapons, no matter whether they carry weapons or only transport them in accordance with legislation. Thus, a weapons document (of any kind) entails not only a privilege, but also a burden and a responsibility (Tomšič, 2009).

According to Savič, Glavina and Tadić (2011), opponents of weapons possession highlight the reasons due to which the negative effects of such are far greater than the positive effects, as the mere accessibility of the weapons impacts the incidence of serious criminal offences. The safety and security of citizens depend on a balanced relationship between sociological, policing-related, and economic ethos. The possession and carrying

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of weapons (for purposes of protection) have become an exception rather than a rule in Europe in particular.

There are two completely different, historically conditioned, concepts of the normative regulation of the manufacture, trade, and possession of civil weapons. The Anglo-Saxon concept gives an individual the right to keep and bear arms and originates in the constitutional right to effective self-defence, while the European concept treats the possession of weapons as a privilege. Such concept originates in the nature of weapons and the fact that the state, through its institutions, is tasked with ensuring national security, public order, safety, and the security of individuals, the protection of property, etc. The above-mentioned circumstances are also a condition for the existence of a just and democratic society. In addition to this somewhat global division, there is also a division as regards the rights that stem from weapons documents. There are two different systems regarding such. The first possibility is a single permit system, which allows an individual possessing a weapons document to carry and possess weapons and to purchase a certain number of weapons. The second is a double permit system, whereby an individual must always obtain two permits to acquire and possess an individual weapon – first a permit to acquire weapons, and thereafter a permit to possess or carry weapons. In both systems, for weapons with less firepower a declaration system is implemented, which entails that a weapon may be acquired without a permit, however, it must be declared to a person authorised to trade in weapons. Before handing over a weapon, a person authorised to trade in weapons must verify whether the buyer meets the conditions determined by law for purchasing such weapons. The weapons legislation of various European countries (including that pertaining to the three national models discussed herein) have several common features.

METHODOLOGICAL FRAMEWORK

The objective of this article is to present the legal regulation (*de lege lata*) in the field of weapons in the Republic of Slovenia, the Republic of Italy, and the Republic of Croatia from a substantive, normative, terminological, and, as far as possible, practical point of view. The article focuses on the regulation of weapons used in the civil sphere and not on weapons that, in accordance with special regulations, are acquired and possessed by state (security) bodies. Thus, this overview is limited to weapons that concern individuals.

In the first part of this article, the legal regulation of weapons in the Republic of Slovenia is outlined, followed by a presentation of the Italian and Croatian legal regulation of weapons. The comparative legal analysis of these legal systems as regards weapons discussed herein comprises the following:

- the classification of weapons;
- the competent authorities that decide in procedures concerning weapons;
- the conditions for the issuance or acquisition of weapons documents; and
- the justified reasons for issuing weapons documents.

For this purpose, a descriptive method, an analysis in terms of content, and an analysis of the primary and secondary written sources are applied. The basic premise of the article is a *de lege lata* analysis of the normative regulation (i.e. legislation) of weapons in the Republic of Slovenia, the Republic of Italy, and the Republic of Croatia. This concerns a research method that is primarily a combination of linguistic, teleological, and comparative legal methods.

A COMPARATIVE ANALYSIS OF THE LEGAL REGULATION OF THE SELECTED LEGAL SYSTEMS

The framework act regulating weapons in the Republic of Slovenia is the Weapons Act (Zakon o orožju [ZOro-1], 2005), which was adopted in 2001 and amended in 2005 and 2009. Article 1 of the Weapons Act (ZOro-1, 2005) determines that the Act regulates the rights and obligations of individuals, legal persons, and individual sole traders with regard to weapons, for the purpose of protecting the life, health, and security of people and public order. In the comparative model, i.e. in the legal regulation of the Republic of Italy, the field of weapons is regulated by a number of different regulations, one of the most important certainly being the Consolidated Law on Public Security (Testo Unico delle Leggi di Pubblica Sicurezza [TULPS], 1931), which was introduced into the Italian legal order through a Royal Decree (ital. *Regio decreto*) in 1926 and upheld by the Royal Decree of 1931, which is still in force. The mentioned legal source has thus far been amended several times. In the second comparative model, i.e. in the legal regulation of the Republic of Croatia, the key legal acts in the field of weapons are the Weapons Act (Zakon o oružju [ZO], 2007), which was adopted in 2007 and amended in 2008 and most recently in 2012, and the Law on Explosive Substances and the Manufacture of and Trade in Weapons (Zakon o eksplozivnim tvarima te proizvodnji i prometu oružja, 2017) of 2017.

In general, the sphere of weapons law falls within the competence of the national legislatures of the individual Member States of the European Union. The European Union Member States individually, through their legislation, regulate the conditions for the acquisition, possession, and carrying of weapons, as well as trade in weapons, ammunition, and explosive means and devices. However, there are several key instruments adopted at the level of the European Union that determine minimum common conditions for the acquisition, possession, or carrying of weapons, minimum harmonisation standards, and certain technical aspects of weapons law (Kanduti, 1997). These instruments comprise the following:

- The European Convention on the Control of the Acquisition and Possession of Firearms by Individuals, drafted on 28 June 1978 in Strasbourg (Council of Europe, 1978);
- Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (1991); and
- Council Directive 91/477/EC of 18 June 19, as amended by Directive 2008/51/EC of 21 May 2008, on control of the acquisition and possession of weapons (2008).

CLASSIFICATION OF WEAPONS

The general provisions of the Slovenian Weapons Act (ZOro-1, 2005), more precisely Article 3, determines the classification of weapons into six categories. With reference to the classification of weapons, Strmecki (2006) underlines that the Weapons Act (ZOro-1, 2005) is in line with the relevant European Union regulations, however, in each category the Act provides for additional restrictions and conditions. It must be underlined that the Weapons Act (ZOro-1, 2005) in force envisages various types of weapons documents, such as a permit to acquire weapons, a permit to acquire ammunition, a weapons permit, a permit to possess weapons, a weapons possession document, an authorisation to carry weapons, an authorisation to transport weapons, a permit to collect weapons, and a notification certificate. According to Strmecki (2006), such a list pursues the goal of satisfying, to the greatest extent

possible, various individual interests regarding the possession of weapons, while the rights and obligations deriving from such documents are also precisely determined. Weapons documents that are issued on the basis of treaties must also be mentioned, especially the European Firearms Pass, and documents that allow trade in weapons between European Union Member States.

By Articles 6 and 7 of the Croatian Weapons Act (ZO, 2007), the Croatian legislature determined the classification of weapons into four categories. Pursuant to the second paragraph of Article 3 of the Weapons Act (ZO, 2007), weapons also include the essential components thereof, such as barrels with chambers, barrel cartridges, breeches, holsters, and, for revolvers, cylinders. The Act envisages the various types of weapons documents that can be issued to entitled persons, namely: a permit to acquire weapons, a European Firearms Pass, a permit to possess weapons, a permit to possess and carry weapons, a licence to collect antique weapons, a licence to possess weapons, a licence to directly handle firearms, and other weapons documents issued on the basis of treaties.

In Italy, the classification of weapons is determined by Law No. 110/1975 (Legge 18 aprile 1975, n. 110, 1975), pursuant to which weapons are divided into three categories, i.e. military weapons, weapons with military characteristics, and regular firearms. With reference to such, Mori (2012) underlines that such classification of weapons is in fact unique, i.e. it is not applied in any other European country. He adds that such classification of weapons could entail an illegitimate obstacle to the free movement of goods within the European Union. Various types of weapons documents are regulated under Italian law, such as the authorisation to acquire a firearm and ammunition, a weapons permit for short firearms for protection purposes, a permit to carry a cane with a concealed blade or dagger, a license for hunting weapons, a licence for clay pigeon shooting, a license to carry sports weapons, a permit to carry weapons, i.e. “a green card”, a permit to collect regular firearms, and a permit to collect antique, artistic, or rare weapons of historical importance.

COMPETENT AUTHORITIES THAT DECIDE IN PROCEDURES RELATED TO THE EXERCISE OF RIGHTS AND COMPLIANCE WITH OBLIGATIONS WITH REGARD TO WEAPONS

In Slovenia, the administrative bodies deciding in the first instance in the field regulated by the Weapons Act (ZOro-1, 2005) shall be the administrative unit with territorial jurisdiction. The precise legislative diction of Article 8a (Competence) states that weapons documents and administrative procedure decisions related to the exercise of the rights and to compliance with the obligations in accordance with the mentioned Act shall be issued by the administrative unit in the territory of the person's permanent residence or registered office. The same provision also determines that authorisations to trade in, import or export weapons and authorisations for the transit of weapons from and to third countries and authorisations for the transfer of weapons between the European Union Member States for the purpose of trading in weapons and shooting range activities shall be issued at the first instance by the ministry responsible for the interior.

Pursuant to Article 9 of the Croatian Weapons Act (ZO, 2007), an application for the issuance of a permit to acquire weapons shall be submitted on the prescribed form to the police administration or the police station of the Ministry of the Interior in the territory of the applicant's residence or registered office. The Ministry of the Interior conducts administrative procedures concerning weapons within its Weapons Department, which is

organised within the Unit for Administrative Affairs, which in turn is an organizational unit within the Division for Administrative Matters, Aliens, and Citizenship, which is organised within the Sector for Administrative and Inspection Affairs.

Article 1 of the Italian Consolidated Law on Public Security (TULPS, 1931) determines that public security bodies exercise their competence in the territory of provinces (Italian: *province*) and municipalities (Italian: *comuni*). A prefect (Italian: *prefetto*) and a questor (Italian: *questore*) are responsible for the implementation of public security tasks in the territory of provinces. In the territory of municipalities, however, public security tasks are entrusted to public security commissariats (Italian: *Commissariati di Pubblica Sicurezza*), and if there are no such commissariats, to the mayor (Italian: *Sindaco*).

CONDITIONS FOR ISSUING OR ACQUIRING A WEAPONS DOCUMENT

Age Requirement. In Slovenia and Italy, the prescribed minimum age requirement for acquiring a weapons document is 18 years. In Croatia, the age requirement is higher than the usual 18 years, i.e. it is 21 years, while the fourth paragraph of Article 10 of the Weapons Act (ZO, 2007) determines an exception to this rule, namely that a permit to acquire weapons may be issued to the personnel of the Ministry of the Interior, the Ministry of Defence, the Croatian Army, and correctional facilities. An exception also applies to security guards who, on the basis of the law, carry out security activities in conducting such activities, and to the members of sport shooting societies who actively participate in target shooting competitions, and, regarding hunting weapons, to the members of hunting associations who have passed a hunting examination.

Public Order Concerns and Other Safety Concerns. In all the discussed systems, public order and safety concerns are determined by means of exhaustively listed criminal offences,⁴ where a conviction by a final judgment for such an offence entails a direct public order prohibition. In Croatian law, a conviction for a criminal offence or pending proceedings for certain minor offences are also determined (e.g. a minor offence indicating that weapons might be misused, especially minor offences concerning domestic violence); one of the conditions that is also determined is that an individual may not have been imposed a security measure as a result of domestic violence (ZO, 2007). In Italian law, there is a provision according to which the relevant safety prohibition is also triggered by a conviction by a final judgement for the criminal offence of desertion during war also if an individual was later granted amnesty (TULPS, 1931).

Trustworthiness. Trustworthiness as a condition for issuing a weapons document is determined in the Slovenian Weapons Act (ZOro-1, 2005) in Article 16. Trustworthiness

⁴ Slovenia: a public order prohibition exists when an individual is convicted by a final judgment for committing a premeditated criminal offence with elements of violence that is prosecuted *ex officio*, or an individual is sentenced by a final decision for a minor offence with elements of violence against law and order (ZOro-1, 2005). Croatia: the general conditions are the following: that the individual was not convicted by a final judgement for committing a criminal offence against the Republic of Croatia, a criminal offence against values protected by international law, a criminal offence against life and person, a criminal offence against the general safety of people and property, a criminal offence against human rights and freedoms, against the inviolability of sexual integrity, against family, marriage, and youth, against the administration of justice, against public order, against public duty, against the armed forces of the Republic of Croatia, a criminal offence entailing the torture and killing of animals, and that criminal proceedings for any of the above-listed offences are not pending against the individual (ZO, 2007). Italy: an individual may not have been convicted by a final judgement and imposed a non-suspended sentence for a criminal offence with elements of violence or the criminal offence of theft, robbery, coercion, kidnapping of a person with the intention of committing a robbery or coercion, or for a criminal offence with elements of violence against an official or resisting an official, or for a criminal offence against the state or public order (TULPS, 1931).

entails that individuals shall be deemed to be trustworthy if, on the basis of the established facts, it can be concluded that they will not misuse the weapon or that they will not use or store the weapon carelessly, unprofessionally, or negligently, or enable persons to possess the weapon who are not permitted to possess it. Individuals shall under no circumstances be deemed trustworthy if they are convicted by a final judgement for a criminal offence committed with intent rendering them unfit to be entrusted with the possession or handling of a weapon, or if they may be expected to misuse a weapon; if their contractual capacity has been revoked; if they are dependent on alcohol or drugs; or if the circumstances in which they live suggest that they are unfit to possess a weapon.

Juras and Jakšić (2013) state that the Croatian Weapons Act (ZO, 2007) determines circumstances (e.g. alcohol or drug dependency, a dysfunctional family situation, aggressive behaviour) that may entail serious obstacles to the issuance of a permit to acquire weapons to an individual. In an individual case in practice, the competent body may assess whether such circumstances as well as other unacceptable behaviour indicate the possibility that the individual could misuse a weapon. In order to prove the existence of such circumstances, the competent body may use and obtain any type of evidence that is appropriate for establishing the state of the facts – such evidence in particular includes documents, e.g. records of breath tests, decisions of the social services, judicial decisions, medical certificates, decisions of disciplinary commissions, the hearing of witnesses and expert witnesses, or the results of carrying out an examination. It must be underlined that behaviour indicating the possible misuse of a weapon does not necessarily entail elements of a criminal offence or a minor offence; however, such may be incompatible with the possession of a weapon.

The fragmented Italian regulation determines that the issuance of a weapons document may be denied also with regard to an individual for whom, on the basis of the established facts, the competent body cannot exclude that he or she will not misuse the weapon (TULPS, 1931). An applicant must prove that he or she does not suffer from a mental illness and that he or she is not alcohol or drug dependent – such must follow from a medical certificate.

Medical Examination. In all three regulations discussed herein, one of the requirements to be fulfilled by individuals in order to be issued a weapons document is that the individual has passed a medical examination or submitted a health certificate as part of the procedure. In Slovenia, a medical examination includes the identification of the individual on the basis of personal identification, a general, family, social, work, personal, and special medical history, an examination of medical records, and a clinical examination of all organs and organ systems with a special emphasis on a focused examination of the individual's psychological condition, the state of his or her central and peripheral nervous systems, and sense organs (the Weapons Act (ZOro-1, 2005); the Rules concerning medical examinations establishing the health requirements of an individual carrying or possessing firearms (Pravilnik o zdravniških pregledih posameznikov za ugotavljanje zdravstvene zmožnosti za posest ali nošenje orožja, 2001).

In Croatia, in addition to a medical examination (the components of the examination does not significantly differ from the examination in Slovenia), prior to the examination the individual must obtain the opinion of a selected personal physician, which may not be more than 30 days old as of its date of submission. It is particularly important to note a provision that is not contained in the Slovenian regulation, namely that the competent authority informs the individual's personal physician of the fact that his or her patient has been issued a weapons document. The Weapons Act (ZO, 2007) furthermore imposes on the selected personal physician and any other physician who learns of a change in the

individual's health or course of treatment that could affect the individual's capabilities – as regards being healthy enough to possess or carry weapons – to immediately notify the component authority thereof on the prescribed form. The competent authority may require an owner of weapons to undergo an extraordinary medical examination in cases in which there is serious doubt as to whether the owner of weapons is still capable as regards being healthy enough to possess or carry weapons (ZO, 2007).

The Italian legislation prescribes various forms of medical certificates regarding the reason or objective due to which an individual requests the issuance of a weapons document. It must be clear from the medical certificate that the individual does not suffer from mental illnesses and is not alcohol or drug dependant.

Weapons Handling Test. The Slovenian Weapons Act (ZOro-1, 2005) determines that the certificate attesting to successful completion of a weapons handling test shall serve as evidence of one's specialised knowledge of handling weapons. Individuals shall be deemed to have passed the weapons handling test if they have passed it in accordance with the regulations governing the carrying of weapons in state authorities, or if they are members of a hunting association or have passed the hunting exam or are security guards who have passed the weapons handling test in accordance with the regulations governing private security and the compulsory organisation of private security services.

The Croatian regulation in this specific area does not significantly differ from the Slovenian regulation, while the Italian weapons legislation does not contain the condition that an individual who files an application for the issuance of a permit to acquire weapons must also obtain a certificate attesting to successful completion of a weapons handling test. Although there is no explicit legislative basis for such, Mori (2012) underlines that it is an established practice that questures (Italian: *Questura*) require that individuals who file an application for the issuance of a permit to acquire weapons produce a certificate attesting to successful completion of a weapons handling test. Certain questures, however, do not require such certificate from individuals who file an application for the issuance of a permit to acquire weapons if they refrain from possessing or acquiring ammunition for the acquired weapons.

Other. In the Slovenian and Italian legislation there is a provision according to which individuals, regardless of whether they meet all other conditions, shall not be issued a weapons document if they have asserted the right to conscientious objection to military service. In the Italian legislation there is an additional obligation, namely that an individual must inform all adult members of his or her household, even if they are not family members, of the acquisition of a weapons document. The Italian Law No. 575/1965 (Legge 31 maggio 1965, n. 575, 1965) determines that individuals suspected of belonging to the mafia may not be issued a weapons document; if such has already been issued, it must be revoked.

JUSTIFIED REASONS FOR ISSUING A WEAPONS DOCUMENT

Pursuant to the Slovenian and Croatian legislation, an individual who has obtained a permit to acquire weapons must declare the acquired weapons, register such, and file an application for the issuance of a weapons document with the administrative unit that has territorial jurisdiction. The Slovenian Penal Code (Kazenski zakonik, 2008, Articles 22 and 23) determines that the right to carry weapons does not entail the right to use weapons; such right may exist if a person needs to avert an immediate and unlawful attack on him- or herself or on any other person or to avert danger that he or she did not cause.

The Italian weapons legislation does not require that individuals must obtain a special weapons document in order to legitimately possess weapons. In cases of the mere possession of weapons, the legislation determines the condition that individuals must submit a medical certificate every six years to the competent authority. An individual who does not have a weapons document and wishes to acquire weapons or an additional weapon must, in an application for the issuance of a permit to acquire weapons, state the reasons for the acquisition of weapons and data on the weapons that he or she wishes to acquire. Mori (2012) furthermore states that an individual who already has a weapons document has thereby already proven to the competent authority that he or she is of good mental health and trustworthy and may on the basis of the obtained weapons document acquire the desired weapons and ammunition, however, within the allowed limits as regards quantity.

Weapons for Protection Purposes. The Slovenian Weapons Act (ZOro-1, 2005) requires that individuals applying for the issuance of a weapons document regarding weapons for protection purposes prove that their personal safety is threatened to the extent that they need a weapon for protection in order to ensure their personal safety. The reasons for the limitation of the right to acquire and possess weapons for protection purposes lies in the nature of the weapons and in the fact that in a state governed by the rule of law the state should ensure the safety of the people and take all necessary measures against those who violate such. Justified reasons for the issuance of a weapons document for weapons for protection purposes exist only if they are demonstrated in a specific manner and justify that the applicant's personal safety or the safety of his or her property is threatened and that by acquiring weapons such specific threat would be reduced or abolished. Thus, the acquisition of a permit to acquire weapons for protection purposes is only a possibility granted to individuals if they demonstrate justified reasons for such and not a right.

The Croatian Weapons Act (ZO, 2007) contains a similar provision, namely that individuals must demonstrate a justified reason for the acquisition of weapons for protection purposes, i.e. that their personal safety is threatened or could be threatened to an extent that they need weapons for protection. Also individuals who demonstrate the need to acquire weapons due to the nature of their work or due to the circumstances in which they carry out work, while the activities and measures of institutions that provide safety cannot ensure a sufficient level of safety, constitute a justified reason for acquiring weapons for protection purposes.

Pursuant to the Italian legislation, the competent authority can issue three different types of weapons documents for weapons for protection purposes, namely a weapons permit for short firearms, a permit to carry a cane with a concealed blade or dagger, and a weapons permit for long firearms. Mori (2012) underlines that the law does not require that a weapons permit may be issued only if there is a need for individuals to protect themselves. In practice, however, the diction in the law has been understood in such a manner, and thus a permit is issued if an applicant demonstrates a need for protection.

Weapons for Sports Purposes. Pursuant to the Slovenian and Croatian legislation, individuals who wish to obtain a permit to acquire weapons for sports purposes must submit proof of their membership in a sports shooting organisation or that they actively pursue sports shooting. With reference to such, Article 23 of the Slovenian Weapons Act (ZOro-1, 2005) must be mentioned; it determines that sports weapons shall only be carried and used at shooting ranges, whereas they shall be transported, in accordance with the Act, outside shooting ranges. Similarly, the Croatian Weapons Act (ZO, 2007) provides that sports weapons may not be used outside of civilian shooting ranges or other places designated for shooting.

In Italy, a weapons document that allows sports shooting is commonly called a weapons permit for sports shooting, however, the law does not contain such a term. Within the scope of the broader category of general shooting weapons, the Law No. 85/1986 (Legge 25 marzo 1986, n. 85, 1986) defined in more detail sports weapons, namely sports weapons are long and short firearms that can be used exclusively for sports purposes due to their structural and mechanical characteristics. This definition does not make much sense, as it introduces a completely inappropriate division of weapons into general shooting weapons, hunting weapons, and sports weapons, as if in the case of the latter two categories the weapons are not general shooting weapons (Bellagamba & Vigna, 2008; Mori, 2012). The permit to carry weapons is also one type of weapons permit for sports purposes, which is also known as a “green card” (Italian: *carta verde*). Differently than a permit to carry sports weapons, a “green card” allows an individual to carry weapons only to the shooting range of which he or she is a member. In addition to sports weapons, individuals possessing such a permit may also carry to the shooting range other weapons they possess. This is thus a permit envisaged for recreational shooters.

Weapons for Hunting Purposes. Pursuant to the Slovenian and Croatian legislation, individuals who wish to obtain a permit to acquire weapons for hunting purposes must submit proof that they are entitled to possess a hunting weapon in accordance with the regulations governing hunting. Hunting weapons shall only be carried and used on hunting land or at shooting ranges; the weapons must be transported, in accordance with the Weapons Act (ZOro-1, 2005), outside of hunting land or shooting ranges. Regarding the acquisition of ammunition and the lending and sharing of weapons, the same conditions apply as in the case of weapons for sports purposes. The Slovenian legislation features a particularity regarding weapons for hunting purposes, namely the legislation does not determine a limitation as regards the largest calibre of weapon that is allowed for hunting purposes, as is the case for weapons for protection and sports purposes. The Rules on the type and power of hunting weapons determine the minimum characteristics of the weapons or ammunition with which it is allowed to hunt game and protected wild animal species.

In Italy, hunting is regulated by the Law No. 157/1992 (Legge 11 febbraio 1992, n. 157, 1992), which prescribes in detail the types of weapons and ammunition that may be used for hunting. A weapons permit for hunting purposes is issued in accordance with the provisions of the law regulating public safety. A first weapons permit is issued only after an applicant for a permit has passed a hunting exam. In order for an individual to be allowed to hunt, he or she must also conclude an insurance contract covering liability for damage to third persons caused by the use of the hunting equipment necessary for hunting. An individual must also conclude an insurance contract covering liability for damage in the event of accidents related to hunting.

CONCLUSION

The European concept of weapons treats the possession of weapons as a privilege and not as a right. It is based on the nature of weapons as a dangerous object and the fact that the state, through its institutions, is tasked with ensuring the security of individuals and their property as well as public peace and order. The above-mentioned circumstances are necessary for the existence of a just and democratic society (Repnik, 2012).

In the regulation of civil weapons and in determining the conditions for the acquisition, possession, and carrying thereof, each country takes into account its specific circumstances. Nonetheless, there are growing tendencies in the European Union to unify and harmonise

weapons law in the Member States. What is more, following the terrorist attacks in November 2015 in Paris, in which 130 persons died and approximately 350 were wounded, the European Parliament and the Council of the European Union rushed through an amendment to Directive 91/477/EEC on the control of the acquisition and possession of weapons by introducing a more restrictive European weapons law. The European Parliament and the Council of the European Union adopted Directive 2017/853/EU of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons of 18 June 1991 (2017). The Member States must start to apply the new Directive by 14 September 2018 and transpose it into their national legal orders. The new Directive thoroughly unsettled weapons owners, collectors, sports shooters, and hunters. The main objective of the new Directive is to reduce the misuse of weapons for criminal offences and terrorist actions. Kroppe (2016) argues that the new Directive apparently tries to establish order in the field of legal weapons possession, while it does not touch upon a critical field, i.e. the field of the illegal possession of weapons. The Directive thus directly restricts the wrong population. Štupar (2018) underlines that the Directive suggests solutions according to which automatic firearms converted to semi-automatic firearms, semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms, and deactivated firearms are categorised as prohibited weapons. In addition, the re-classification of weapons from Category B7 (semi-automatic firearms for civilian use which resemble weapons with automatic mechanisms) into category A (prohibited weapons) is determined, which the Slovenian legislature abrogated by the last amendment to the Weapons Act, i.e. in 2009, due to the fact that *resemblance* is an ambiguous term that causes legal uncertainty. In the opinion of the European Commission, the existing categorisation of weapons is not suitable, as allegedly also semi-automatic firearms are extremely dangerous, especially if equipped with a loading device with great capacity. The Directive thus prohibits numerous types of weapons, regardless of the fact that they have been in civilian use for several decades, which in the opinion of the European Commission has suddenly become more dangerous than other uses. The consequence thereof might be that the owners of such weapons, if not determined as an exception, will lose their rights and their weapons. Kroppe (2016) furthermore underlines that the Directive, *inter alia*, determines that the validity of weapons documents is shortened to a period not exceeding five years. The new Directive could furthermore render the collecting of weapons and pursuing sports (competitive) shooting more difficult. If the Directive were implemented as it is now, it is very likely that collectors of weapons would have to forego antique automatic firearms. The Directive determines more strict conditions also as regards the deactivation of firearms in the sense that essential components of firearms will be rendered permanently inoperable and immovable. This would in fact result in the conversion of weapons and consequently in a reduction in the collector's value of weapons. Collectors naturally do not want weapons, i.e. their historical and technical originality, to be destroyed. The provisions of the Directive also interfere with the field of competitive shooting, as semi-automatic firearms are also used in competitive shooting disciplines. The Directive is not intended to impose limitations on sports shooting; however, the critics thereof draw attention to the fact that the diction of the Directive is ambiguous and inconsistent and allows for different interpretations. Rajmond Debevec, winner of three Olympic gold medals in shooting, underlines that there are two shooting categories in the Olympic programme that the new Directive will adversely affect. This concerns the pistol in the women's category and the rapid fire pistol in the men's category. In both Olympic categories small-calibre semi-automatic pistols are used. Such weapons could

also be converted into automatic firearms, but the Directive determines that such weapons are prohibited (Cerar, 2016).

It can be concluded that the concept according to which the possession, carrying, and use of weapons is a (constitutional) right of individuals (such a concept has been adopted, for example, in the United States), and which requires that the state interfere to the least extent possible with individuals' right to acquire weapons, should not be followed. The completely opposite concept regarding weapons should therefore be preserved, namely that individuals' right to weapons be treated as a privilege.

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EFFECTIVENESS OF ASSET RECOVERY IN SLOVENIA – COMPARISON OF POLICE OFFICERS' AND PROSECUTORS' OPINIONS

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ABSTRACT

The aim of the study was to analyse the effectiveness of the Slovene asset recovery system and its functioning in practice. The paper introduces the Slovenian legal framework through the five-stage process of assets recovery: financial investigation, freezing or seizing of assets, confiscation, execution of the confiscation order and disposal of assets. Then it presents the results of the study, in which Slovene police officers and prosecutors provided their opinions on system of asset recovery. In principle, police officers and prosecutors support instrument. At the same time, most of them believe that the Slovene legislation is not systematic and does not provide a solid basis for an effective assets recovery procedure in either criminal or civil law framework. With respect to an adequate organisational structure, both strongly support the creation of two centralised bodies, one for conducting financial investigations and asset freezing or seizure, and another for managing such assets.

Keywords: criminal asset recovery, Slovenia, police, prosecutors

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INTRODUCTION – ASSET RECOVERY AS AN EFFECTIVE METHOD OF CRIME MANAGEMENT

In recent years, Europe took over the idea, which was initially developed in the US, that criminal asset recovery was an effective tool for tackling organised crime. In fact, long prison sentences for individual members of organised crime groups proved ineffective, mainly because they were not directed toward the leaders of criminal enterprises and because they left proceeds of crime intact (Jensson, 2011). The beginnings of the idea that placed greater importance on the recovery of criminal assets go back to the 1980s, when US law enforcement agencies, which were facing Colombian drug barons, found that traditional law enforcement strategies were not successful, primarily because they did not attack the proceeds of illegal trafficking, which generated extremely high profits (Jensson, 2011). Furthermore, organised crime groups used the proceeds of drug trafficking to obtain considerable financial strength and influence, and subsequently started penetrating the licit economy (Vetorri, 2006).

Long prison sentences imposed on individual members of such groups, particularly those, who are in charge of illegal transactions in the field and occupy low-ranking positions in the hierarchical structure, are ineffective, since they are not directed towards the leaders of criminal activities and leave their criminal assets intact. Leaders of organised crime groups tend not to dirty their hands with fieldwork. This is why in the past few decades, experts started to recognise that both conventional law enforcement methods (arresting and criminally prosecuting such perpetrators), as well as the confiscation or freezing of the proceeds of crime are equally important for the successful management of crime. Bullock

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and Lister (2014) describe the rational premises related to asset recovery, which serve as a basis for measures adopted by governments and legislators, as follows:

- this type of action is based on a moral argument claiming that no person can gain or obtain anything through criminal activity. Therefore, the objective of asset recovery is to make reparations for the damage caused owners or society, thus rectifying such injustice;
- asset recovery is also a tool for exercising control over criminal activities. The principal idea is that perpetrators would cease to conduct their criminal activities if criminal assets generated through such activities were to be confiscated or seized;
- finally, asset recovery is also aimed at preventing corruption and the seeping of criminal assets into legitimate economy, thus protecting the financial and economic systems, and guaranteeing the welfare and prosperity of the State.

Research studies analysing the effectiveness of asset recovery in the fight against organised crime are rather scarce, however Buscaglia (2008) used a sample of 107 countries to prove that:

- a 1% improvement in judicial and intelligence system coordination/specialisation will reduce organised crime levels by an average of 2.319%;
- a 1% increase in the number of prevention programmes addressing youth at risk and providing technical assistance to the private sector (e.g. banks) will result in a reduction of organised crime levels equal to 1.793%;
- a 10% increase in the recovery of criminal assets is linked to a 7.99% reduction in organised crime levels; and
- a 10% increase in the frequency of international judicial cooperation is linked to 20.22% decrease in organised crime levels.

Buscaglia (2008), therefore, demonstrated that measures, such as the recovery of illegally acquired assets, have a substantial positive effect on the crime rate in society. Naturally, this approach was also heavily criticised, particularly because some scholars did not believe in the assessment of the incidence of organised crime as a social phenomenon. Moreover, they found it difficult to believe that this type of social behaviour was present to such an extent that would make action in the form of asset confiscation at all necessary (Bullock & Lister, 2014; Naylor, 1999; Nelen, 2004). Jager and Šugman (2013) also stress the importance of preventive measures in reducing crime rates and believe that the State should strive to support various preventive actions, such as education and situational crime prevention, simultaneously with the implementation of the criminal law repression, and conclude that the criminal law repression is neither a miracle cure for addressing accumulated social problems nor a fundamental instrument for regulating the people's behaviour – as such, criminal law can only be the *ultima ratio* of action in society.

The purpose of this paper is to examine the Slovene asset recovery system, including by analysing the attitudes of police officers and prosecutors.

SLOVENIAN LEGAL FRAMEWORK GOVERNING THE RECOVERY OF CRIMINAL ASSETS

Assets recovery procedure consists of the following five stages (Council of the EU, 2012):

- *Financial investigation*, which is an investigative technique that interlinks actors, locations and events through financial facts. This stage is important for determining the full range of assets that are of potentially illegal origin.

- *Freezing or seizing of assets*; when all assets that are suspected to be of illegal origin are identified, they need to be secured. In general, this stage is already based on a court decision regarding provisional measures.
- *Confiscation*, which is carried out on the basis of a court decision (order) and refers to a permanent transfer of ownership rights over the assets from the asset holder to the State.
- *The execution of the confiscation order*; at this stage, assets are effectively passed onto the State.
- *Disposal of assets*; at this stage, the State takes a decision with respect to the use of assets. This stage is closely linked to asset management.

In the subsequent sections, the five-stage procedure described above serves as a basis for examining the legal framework governing the recovery of assets of illicit origin in Slovenia. Nowadays, the field of asset recovery in Slovenia is regulated by the Criminal Code (Kazenski zakonik, 2012), the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) and the Forfeiture of Assets of Illegal Origin Act [FAIOA] (Zakon o odvzemu premoženja nezakonitega izvora, 2011). The legal system in Slovenia thus foresees confiscation both in the criminal and the civil law contexts.

The first stage of the asset recovery procedure, i.e. the *financial investigation*, is defined in FAIOA and not defined in the Criminal Procedure Act (Zakon o kazenskem postopku, 2012). Therefore, for the criminal law procedure general provisions governing investigations may apply to this stage. Article 499 of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) obliges the court and other agencies to gather evidence and inquire into the circumstances relevant for determining the proceeds of crime

Following the investigation stage, the prosecution can propose the *freezing or seizing* of assets to the court, if the law enforcement authorities found that an individual holds the proceeds of crime. More specifically, Article 502 of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) stipulates that the court may, upon the proposal from the State Prosecutor, issue a freezing or seizing order, where there is a risk that the defendant could use such proceeds for further criminal activities or conceal, alienate, destroy or otherwise make use of such proceeds. From a substantive point of view, this provision is simple and logical, particularly when the proceedings foresee an uncomplicated conventional confiscation or the confiscation of the instrumentalities of crime. In such cases, the police can, if they come across certain assets during their investigation, easily identify them as proceeds of crime and even more easily determine that such proceeds are an element of the criminal offence. However, such cases may require an entirely different approach, if the crime was committed by a criminal organisation, where the substantive law foresees a difference between the proceeds of crime and the proceeds of unlawful conduct, where the latter have a much broader meaning. The essential question is whether Article 502 of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) provides a legal basis for the court to secure such unlawfully acquired assets in the broadest sense of the term. The problem actually arises in the very initial stage, i.e. with the financial investigation, because the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) does not provide the possibility to extend such an investigation beyond the investigation of a specific offence and does not allow the investigation into the entire body of assets held by an individual. Therefore, it remains questionable whether such assets can be identified in the scope of criminal investigations in the first place

From a procedural perspective, a freezing or seizing order is issued by the court upon the proposal of the prosecution. The order is then served to all parties participating in the proceedings. This is quite a common procedure, however, the subsequent stages of the Slovene procedure become more complicated in comparison with most other countries. This is partly due to numerous decisions issued by the Constitutional Court, which dealt with the problem of the time limitation applicable to the securing of assets. In fact, the legislation limits the duration of the seizing or freezing order to a maximum of three months in pre-trial proceedings and to six months following the indictment. When this period elapses, the court may, upon receiving a reasoned proposal from the State Prosecutor, extend the measure, however, it must at the same time allow all other parties to voice their opinions. The total duration of the provisional measure, which is adopted after an indictment and applies until the rendering of the final judgment by a court of first instance, may not exceed three years. Three- or six-month intervals, at which the State Prosecutor is obliged to extend the securing of assets, are extremely short and, at the same time, require a considerable commitment of both the prosecutor and the court (court hearings, the justification of the proposal for an extension, etc.).

The inadequacy of provisions governing the freezing and seizing of assets in criminal proceedings seems to be compensated by civil proceedings, particularly by Articles 20 to 24 of the Forfeiture of Assets of Illegal Origin Act (FAIOA) (*Zakon o odvzemu premoženja nezakonitega izvora*, 2011). In civil proceedings, a seizing or freezing order can be issued if there is a reasonable suspicion that a crime included on the list of criminal offences was committed, if there is a disparity between the suspect's income and the value of assets, which they have at their disposal, and, finally, if there is a risk that the owner will hide or destroy such assets. These conditions allow State Prosecutors to apply a much simpler rule with respect to the burden of proof, since they are not obliged to prove that there is a certain degree of suspicion that such assets were acquired through a criminal offence. In civil proceedings, the court does not deal with the legality of the acquisition of assets, but only assesses the proportionality of gained wealth on the basis of data submitted to it. The freezing and seizing order cannot be appealed; however, it must be reasoned. Furthermore, there are no additional court hearings, nor is the judge obliged to inform the parties about the case file, unlike in criminal proceedings. In civil proceedings, the duration of the order is limited to one month following the completion of the financial investigation, if the prosecution does not file an action. If, on the other hand, an action is filed, the State Prosecutor may apply for an extension of the validity of the order. However, the provisions governing the maximum duration of such an extension are not clear.

From a historical point of view, the rule underpinning the conventional confiscation in the criminal law context, i.e. the principle that no one can gain from crime, has been present in the Slovene system from its very inception. The provision governing conventional confiscation is enshrined in Article 74 of the Criminal Code (*Kazenski zakonik*, 2012). The difference between the conventional confiscation and the recovery of illicit assets lies in the fact that the latter is much broader, as it also covers any benefits obtained through other types of unlawful conduct, which do not necessarily derive from a criminal offence (Gorkič, 2011). The Slovene theory and jurisprudence do not define the confiscation of the proceeds of crime as a criminal sanction, even though it affects the assets of the convicted person or any other person, whom the confiscation order is addressed to (Plešec, 2014). The fact that a benefit was obtained from a criminal offence is merely a circumstance or a

precondition for imposing such a measure. Similarly, the Constitutional Court distinguishes between the stage leading to the conviction and the stage of the confiscation of the proceeds of crime.

In the Slovene legal system, the instrument of extended confiscation, which applies if an offence was committed by a criminal organisation, was introduced by an amendment to the Criminal Code (Kazenski zakonik, 2012) in 2012. Article 77a of the Criminal Code (Kazenski zakonik, 2012) provides that the fact that a criminal organisation has such assets at its disposal is sufficient. This provision stipulates that an offender, who commits a crime within a criminal organisation, is also subject to the confiscation of all assets resulting from the criminal activity committed by such an organisation. This means that the provision of paragraph 1 of Article 77a of the Criminal Code (Kazenski zakonik, 2012) distinguishes between the pecuniary benefit or the proceeds of crime (a narrower term) and illicit assets acquired through criminal activity within a criminal organisation (broader term). However, the Criminal Code (Kazenski zakonik, 2012) does not define the difference between illicit assets and proceeds, except when it comes to the assets at the disposal of the criminal organisation. Proceeds derived from a criminal offence, which the individual members of the criminal organisation were convicted of, are governed by provisions defining conventional confiscation in Article 74 of the Criminal Code (Kazenski zakonik, 2012). However, paragraph 2 of Article 77a of the Criminal Code (Kazenski zakonik, 2012) also provides for the confiscation of assets acquired through criminal activity. Therefore, one could conclude that the Criminal Code (Kazenski zakonik, 2012) is rather inconsistent when applying the concepts of illicit assets and proceeds.

After issuing the final confiscation order, a new stage of the procedure, i.e. the *execution of the order*, begins. This stage is extremely important, since proceeds of crime and illicit assets can only become property of the State, if this stage is completed successfully. With respect to the execution of the order in civil proceedings, Jenull (2014) notes that the provisions of the Forfeiture of Assets of Illegal Origin Act (Zakon o odvzemu premoženja nezakonitega izvora, 2011) related to this particular stage are confusing and contradictory. Jenull (2014) points out that the fact that the Act refers to tax enforcement but fails to distinguish between the enforcement of movable and immovable property, is problematic. Namely, the FAIOA (Zakon o odvzemu premoženja nezakonitega izvora, 2011) is completely unclear on the question whether the Financial Administration can carry out the enforcement on immovable property. This dilemma is particularly problematic because the FAIOA governs the *in rem* confiscation, which is aimed at confiscating specific assets. In fact, the FAIOA defines assets as property and rights, which may be subject to enforcement, particularly immovable property, movable property and all other assets having a monetary value, as well as assets deriving directly or indirectly from such assets (Article 4(1) of the FAIOA). This definition leads to the conclusion that assets, which would be subject to enforcement under the FAIOA (Zakon o odvzemu premoženja nezakonitega izvora, 2011), would mostly include assets that cannot be subject to monetary enforcement.

The management stage provides flexible legal solutions for the disposal of secured and confiscated assets. However, it is very questionable whether and how this system works in practice. The most pertinent problem, among others, is surely the issue of determining the value of seized assets. The fact remains that, particularly in cases of value confiscation, the determination of the value of such assets represents certain problems (Selinšek, 2007).

The Slovene system also gives rise to certain issues regarding the organisational aspects of the asset recovery regime. In pre-trial proceedings, the organisational structure for conducting

investigations is extremely heterogeneous and complex (Dežman & Erbežnik, 2003). At this stage, the Slovene law intertwines the competences of the police and prosecutors, without providing the necessary clarity as to which of the two holds the primary responsibility for conducting investigations in pre-trial proceedings (Vrtačnik & Hostnik, 2015).

The law provides for an opportunity to set up specialised investigative teams under Article 160a of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012). These teams are directed by a public prosecutor and combine various bodies and institutions with the aim of providing a multidisciplinary approach to the investigation of criminal offences. The biggest problem faced by the specialised teams stems from the fact that they do not have a permanent structure. According to the legislation, teams consist of members of all competent national authorities and institutions, the powers and tasks of which are connected to the investigation of the offence. However, this does not necessarily mean that the members possess the required experience in financial investigations. Furthermore, team membership merely represents extra work that team members are required to carry out in addition to their regular tasks, which means they cannot be fully dedicated only to the financial investigation concerned. A financial investigation team can also be established in civil proceedings on the basis of Article 14 of the FAIOA (Zakon o odvzemu premoženja nezakonitega izvora, 2011). However, at this stage of the financial investigation within civil proceedings, the organisational structure is much clearer. In this case, the police do not have their competences and are entirely dependent on guidelines and directions issued by the prosecution. Nevertheless, the problem related to the duration of the operation of such financial investigation teams remains, since it is limited to the financial investigation stage and cannot be extended to the final execution or the repayment to the State budget.

At the stage of *securing assets*, Article 506 of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012) confers the powers of managing such assets to a court, which must act with due diligence and take very quick action in such cases. In practice, the fact that the courts are required to determine when the storage of assets is associated with excessive costs proved extremely problematic. Judges often do not have the necessary knowledge and are unable to estimate the value of certain types of property or decide on the storage options and associated costs. According to Article 501 of the Criminal Procedure Act (Zakon o kazenskem postopku, 2012), the court can use its discretion in fixing the amount of proceeds if an accurate determination would cause disproportionate difficulties or if the proceedings would thereby be unduly protracted. Although the court must provide a reasoned decision and substantiate it with facts, this legal solution is inappropriate, since it is impossible for a judge to possess such extensive knowledge and skills, particularly when dealing with a complex case, such as managing a larger company, dealing with exotic animals and similar.

With respect to *asset management*, the FAIOA (Zakon o odvzemu premoženja nezakonitega izvora, 2011) authorises different institutions and refers to different legislative acts. It is obvious that by using such general blanket references to other provisions, the legislator wanted to avoid various issues (Jenull, 2014), particularly the establishment of new institutions, which might have been extremely unpopular at the time of the deepest economic crisis in 2010. In general, the fact that the management of assets is entrusted to two different regimes, one in the scope of criminal proceedings, where the management is assigned to the court, and the other in civil proceedings, where the management is left to different institutions depending on the type of assets, does not make any sense. Therefore, an appropriate institutional structure ought to be established to ensure the efficiency of such procedures.

DESCRIPTION OF THE METHOD, QUESTIONNAIRE AND SAMPLE

DESCRIPTION OF THE QUESTIONNAIRE

The authors have developed a survey questionnaire, which included 22 closed-ended questions and one open-ended question (referring to the work experience of prosecutors and police officers). The closed-ended questions offered 5 potential responses on a scale from 1 to 5, where 1 meant that the respondent did not agree with the statement and 5 corresponded to a strong agreement with the statement. Respondents' cooperation was voluntary, while the confidentiality of data was also guaranteed.

The questionnaire was divided into two parts. The first part consisted of a set of statements aimed at checking the satisfaction of the Slovene police officers and prosecutors with the current organisational structures (e.g. joint financial investigation teams, the organisation of the management of frozen and confiscated assets), as well as establishing their positions on the multidisciplinary and centralised Asset Recovery Office (ARO). This part of the questionnaire comprised four claims. The second part consisted of two statements related to the legislative and implementing aspects, which were used to measure respondents' (dis)satisfaction with the current legal framework and its implementation.

Some demographic data were also collected from respondents. Police officers provided data regarding their gender, age, the length of service in the police, the level within the organisation (police directorate or the General Police Directorate) and the type of work (managerial or operational) they performed. Prosecutors were asked to provide data about their gender, the highest level of professional qualification, the type of work (managerial or operational) they performed and the level at which they worked within the prosecution structure (local, district, higher or supreme prosecutors).

DATA COLLECTION AND THE PRESENTATION OF THE SAMPLE

The questionnaire was distributed to the prosecutors on the margins of the 21st Prosecutors' Training Days that were held on 24 and 25 November 2014. This event is organised every year by the General Prosecutor's Office in cooperation with the Judicial Training Centre and is attended by all prosecutors (from all levels of service) in Slovenia. Asset recovery and the confiscation of the proceeds of crime were the central topics of this particular training seminar. Therefore, one could easily claim that prosecutors attending the seminar were the ones who were most involved in such procedures. The questionnaire was distributed to all prosecutors attending the event (174), while 44 prosecutors decided to participate in the survey. Out of 44 participating prosecutors, there were 6 local, 18 district, 5 higher and 5 supreme prosecutors, while 10 prosecutors did not answer this question. With respect to the type of work they were conducting, 35 prosecutors said they performed operational tasks and 9 were working at the managerial level. 42 prosecutors held a university degree and 2 completed either specialisation, master's degree or PhD. The questionnaire was filled in by 17 female and 27 male prosecutors (61.4%), who have been holding their prosecutorial position from 1 up to 35 years or for an average of 11 years.

Police officers were presented with the questionnaire in March 2015. The employees of the National Bureau of Investigation were selected for the survey, since the Bureau is specialised for the detection and investigation of serious crime, particularly financial and economic crime, corruption and, to a certain extent, organised crime, which represent the main criminal offences where the instrument of asset recovery is most commonly used.

The questionnaire was distributed by e-mail to all employees of the Bureau. Respondents' educational structure was as follows: 7 respondents completed a high level of professional education, 25 held a university degree, 9 completed either specialisation, master's degree or a PhD, while 3 preferred not to answer this question. The length of service in their current position ranged from 1 to 15 years, which makes up an average of a little less than 5 years. There were 30 male (68.2%) and 11 female respondents, while 3 respondents refused to answer this question. A large majority of respondents (88.6%) were employed at the National Bureau of Investigation, 2 were employed at the Police Directorate, while 3 did not want to indicate their organisational unit. The average age of responding police officers was 35.8 (with a standard deviation of 11.04). As mentioned above, state prosecutors were not asked to provide this piece of information.

The two samples are quite similar. There are certain deviations in the educational structure, where the number of individuals holding postgraduate qualifications is slightly higher among the police; at the same time, more police officers are also holding qualifications lower than a university degree. On average, the sample of prosecutors consists of individuals with a longer length of service (experience) at the workplace (11 years in comparison with the police officers' average of 5 years). Nevertheless, the two samples are balanced in terms of respondents' gender.

Regardless of the fact that the number of respondents is relatively low (compared to the total number of police officers and state prosecutors in Slovenia), the sample included particularly those prosecutors and police officers who were most familiar with asset recovery procedure, since they were actively involved in it. Police officers working in the framework of the National Bureau of Investigation are tackling economic and organised crime, which generates more criminal proceeds, daily. Furthermore, prosecutors, who actively participated in the training seminar dedicated specifically to asset recovery and the confiscation of the proceeds of crime, were there to exchange their experience in this field. Therefore, the authors believe that the sample reflects the entire population of practitioners working in the Slovene Police and the State Prosecutor's Office, who are dealing with the operational aspects and issues related to asset recovery.

PRESENTATION AND INTERPRETATION OF RESEARCH RESULTS

The following sections present the results of the analysis of collected data according to individual sets of statements.

ATTITUDE TOWARDS GENERAL AND THEORETICAL PREMISES

This set of statements was used to establish what police officers and prosecutors thought about the effectiveness of asset recovery as a tool to fight organised crime and (in a separate statement) as a tool to combat other types of serious crime (e.g. economic crime). This part of the questionnaire was composed of five substantive statements. The analysis of the internal consistency of the questionnaire (Cronbach's alpha), which was applied to these statements, revealed a figure of 0.65 (see table below), which is why a statement that stood out in this set ("In my opinion, raising prisons sentences and increasing prosecution rates contribute to an increase in the rate of organised crime and corruption in Slovenia.") was excluded from further analysis. After doing so, the value used to test the questionnaires' internal consistency (Cronbach's alpha) rose to 0.76. The remaining four statements were

then analysed with a factor analysis, which showed that all statements were clustering around a specific factor (KMO = 0.660), which is why a combined variable,⁴ i.e. the “Assessment of effectiveness”, was calculated to the purpose of further analysis.

Descriptive statistics related to statements included in the analysis, as well as to the combined variable, are presented below (Table 1).

Table 1: *Assessment of asset recovery effectiveness*

Cronbach's alpha: 0.65	Mean	S.D.
I am convinced that the recovery of property of illicit origin represents an efficient tool for fighting organised crime in Slovenia.	3.66	1.25
I am convinced that the recovery of property of illicit origin represents an efficient tool for fighting other types of serious crime (e.g. economic crime) in Slovenia.	3.56	1.31
In my opinion, focusing on the recovery of property of illicit origin and preventive measures contributes to a decrease in the rate of organised crime and corruption in Slovenia.	3.53	1.09
I believe there is a strong political will in Slovenia to create an efficient system for recovering unlawfully acquired assets.	1.87	.90
Assessment of effectiveness	3.16	.88

A comparison between mean values was conducted by applying the t-test to verify whether there was a difference between police officers' and prosecutors' opinions in the first set of statements. The table below presents the results of the mean values calculated for individual statements, which are divided according to the two groups of respondents (Table 2).

Table 2: *Descriptive statistics related to the assessment of asset recovery effectiveness according to the type of respondent*

STATEMENT	Police		State Prosecutor's Office	
	Mean	S.D.	Mean	S.D.
I am convinced that the recovery of property of illicit origin represents an efficient tool for fighting organised crime in Slovenia.	3.70	1.32	3.61	1.18
I am convinced that the recovery of property of illicit origin represents an efficient tool for fighting other types of serious crime (e.g. economic crime) in Slovenia.	3.61	1.35	3.50	1.28
In my opinion, raising prisons sentences and increasing prosecution rates contribute to an increase in the rate of organised crime and corruption in Slovenia.	1.91	1.05	1.79	.98
In my opinion, focusing on the recovery of property of illicit origin and preventive measures contributes to a decrease in the rate of organised crime and corruption in Slovenia.	3.57	1.12	3.50	1.07
I believe there is a strong political will in Slovenia to create an efficient system for recovering unlawfully acquired assets.	1.82	.81	1.95	.99

The above results show that police officers are united in their opinion regarding the effectiveness of asset recovery in the fight against organised crime, while a slightly less uniform opinion, particularly among prosecutors, was expressed with respect to the effectiveness of this instrument for combatting other types of serious crime, particularly economic crime.

⁴ The combined variable, i.e. the “Assessment of effectiveness”, was calculated by adding up the values of all four variables and dividing it by four.

Prosecutors and police officers also hold a rather uniform opinion regarding the fact that increasing the rate of repressive measures leads to a drop in crime; however, they agree that preventive measures and asset recovery represent an effective tool. Both groups of respondents also express the same level of doubt as to the existence of a sincere political will to create an efficient system for recovering unlawfully acquired assets. The authors were also interested in determining whether there were any statistically significant differences between the two groups of respondents. Therefore, the above statements were used to conduct a comparison of the mean values by applying the t-test. The analysis revealed that no statement gave rise to a statistically significant difference between police officers and prosecutors. In fact, the opinions of both groups with respect to this set of statements were very similar. Apart from the aforementioned analyses, the authors also verified whether respondents' gender had any impact on the assessment of asset recovery effectiveness. A t-test was carried out by using the combined variable, however, no statistically significant differences were observed ($t = 0.30$; $p = 0.75$). There are no statistically significant differences between male and female respondents, while the mean value in both groups amounts to slightly above 3 ($M = 3.17$; $F = 3.11$).

ATTITUDE TOWARDS ORGANISATIONAL STRUCTURES PARTICIPATING IN THE ASSET RECOVERY PROCEDURE

The next set of statements was used to determine whether respondents assessed the organisational structure responsible for conducting financial investigations as effective. An analysis of the internal consistency of this set of statements was conducted first. This step revealed that a statement, i.e. "I believe that Slovenia needs a specialised (centralised) body that would have the competences necessary for managing the secured and recovered assets", ought to be eliminated in order to achieve a satisfactory level of the questionnaires' internal consistency. This is why this statement was analysed separately. After its elimination, the calculated consistency (Cronbach's alpha) for the remaining five statements reached a satisfactory level of 0.50. These statements were then subjected to a factor analysis, which produced two factors (Table 3).

Table 3: *Related factor matrix of the attitude towards the organisation and functioning of the asset recovery system*

Cronbach's alpha: 0.50; Kaiser-Meyer-Olkin coefficient of sampling adequacy: 0.587; Total percentage of explained variation: 62.10%

Factor 1: "Importance of financial investigations"		% of explained variation: 36.16%	
	Mean/S.D.	Weighing factor	
In my opinion, a joint financial investigation team represents an efficient organisational structure for conducting financial investigations.	3.65/1.07	.813	
In my opinion, the common multidisciplinary body (composed of police officers, prosecutors and other officials) is (would be) the most effective organisational structure for conducting financial investigations and asset recovery procedures.	3.72/1.12	.815	
Factor 2: "Investigators' competence"		% of explained variation: 25.64%	
	Weighing factor	Mean/ S.D.	
Personnel conducting financial investigations, as well as prosecutors and judges have sufficient knowledge and opportunities for further education and training in the field of procedures aimed at recovering the property of illicit origin.	.840	2.77/0.93	
Authorities conducting procedures for recovering the property of illicit origin have a sufficient number of qualified personnel at their disposal.	.788	2.59/0.96	
In my opinion, the management of recovered assets in Slovenia is well organised.	.665	1.98/0.89	

Note. Method of rotation: Oblimin with Kaiser normalisation.

As demonstrated in the above table, respondents tend to agree more with the statements clustering around the first factor, which was denominated as the "Importance of financial investigations". Respondents believe that joint financial investigation teams represent an efficient approach to conducting financial investigations. They also agree that it would be useful to have a common multidisciplinary body in charge of conducting such investigations. Statements revolving around the second factor, i.e. "Investigators' competence", generated a lower degree of agreement. Respondents evaluated both the knowledge and qualifications possessed by practitioners conducting financial investigations, as well as the adequate number of such practitioners with a below-average score. The organisation of the management of recovered assets received the lowest score, since the mean value was below 2; at the same time, this is the only statement receiving such a low score in this part of the questionnaire.

Statements included in this part of the questionnaire were further analysed to determine whether they produced any statistically significant differences between police officers and prosecutors. The results of this analysis are presented below (Table 4).

Table 4: *Descriptive statistics related to statements describing the attitude towards the organisation and functioning of the asset recovery system*

	Type of respondent	Mean	S.D.	Standard error of the mean
In my opinion, a joint financial investigation team represents an efficient organisational structure for conducting financial investigations.	Police	3.23	1.12	.17
	State Prosecutor's Office	4.07	.85	.13
In my opinion, the common multidisciplinary body (composed of police officers, prosecutors and other officials) is (would be) the most effective organisational structure for conducting financial investigations and asset recovery procedures.	Police	3.54	1.07	.16
	State Prosecutor's Office	3.91	1.16	.17
Personnel conducting financial investigations, as well as prosecutors and judges have sufficient knowledge and opportunities for further education and training in the field of procedures aimed at recovering the property of illicit origin.	Police	2.79	.95	.14
	State Prosecutor's Office	2.75	.92	.14
Authorities conducting procedures for recovering the property of illicit origin have a sufficient number of qualified personnel at their disposal.	Police	2.66	.99	.15
	State Prosecutor's Office	2.52	.95	.14
In my opinion, the management of recovered assets in Slovenia is well organised.	Police	2.02	.85	.13
	State Prosecutor's Office	1.95	.94	.14
I believe that Slovenia needs a specialised (centralised) body that would have the competences necessary for managing the secured and recovered assets.	Police	3.93	1.11	.17
	State Prosecutor's Office	3.98	1.15	.17

A comparison between the mean values of the above statements was conducted by applying the t-test method in order to establish whether there were any statistically significant differences between the two groups of respondents. The analysis showed that statistically significant differences were only observed in relation to a single statement, i.e. "In my opinion, a joint financial investigation team represents an efficient organisational structure for conducting financial investigations.", where the agreement expressed by prosecutors was statistically significantly higher when compared to police officers ($t = 3.97$, $p = .000$). Other statements did not reveal any statistically significant differences between the two groups.

ASSESSMENT OF THE ADEQUACY OF LEGAL PROVISIONS GOVERNING ASSET RECOVERY

The last set of statements referred to the existing legislation, its implementation and the respondents' attitude towards solutions not foreseen in the Slovene law. This part of the questionnaire consisted of eight statements and produced a much higher degree of internal consistency than other parts, since the value of Cronbach's alpha amounted to 0.80. Therefore, all statements were analysed and included in the factor analysis, which generated two factors. Results are presented in Table 5.

Table 5: *Rotated factor matrix of the assessment of the adequacy of legal provisions governing asset recovery*

Cronbach's alpha: 0.80; Kaiser-Meyer-Olkin coefficient of sampling adequacy: 0.779; Total percentage of explained variation: 64.06%

Factor 1: "Evaluation of legislation"		% of explained variation: 48.89%	
		Weighing factor	Mean/S.D.
In my opinion, the provisions of the Forfeiture of Assets of Illegal Origin Act (FAIOA) are systematic and sufficiently clear to enable an efficient implementation of the procedure all the way to the final confiscation.	.846		2.57/0.97
I believe to have efficient access to all data and records I require for successfully conducting the procedure in the scope of financial investigations carried out on the basis of the Forfeiture of Assets of Illegal Origin Act (FAIOA).	.830		2.88/1.15
I believe to have efficient access to all data and records I require for successfully conducting the procedure in the scope of financial investigations carried out in the framework of criminal proceedings.	.806		2.79/1.19
I believe the Slovene criminal law governing the recovery of assets to be systematic and clear, thus providing a solid basis for an efficient implementation of the procedure all the way to the final confiscation.	.789		2.53/1.01
In my opinion, the Slovene system provides a clear strategic distinction between the possibility to recover assets in the framework of criminal proceedings and the possibility of recovering assets in civil proceedings.	.773		2.89/1.09
In my opinion, the management of the authority I represent has clearly set its priorities for the investigation of criminal offences and that the detection of the proceeds of crime or the property of illicit origin is one of such priorities.	.717		3.77/1.03
Factor 2: "Recovery according to the CC"		% of explained variation: 15.17%	
		Mean/S.D.	Weighing factor
In my opinion, it would be useful if the principle of the reversed burden of proof could also be applied to the recovery of assets in the framework of criminal proceedings.	3.93/1.37		.851
I believe that we should first strive to recover the proceeds of crime in the framework of criminal proceedings and, if this proves unsuccessful, then proceed on the basis of the Forfeiture of Assets of Illegal Origin Act (FAIOA).	3.22/1.47		.629

The examination of results shows that respondents agreed with statements placed under the second factor, i.e. that asset recovery should first be attempted in the framework of criminal proceedings and only later on the basis to the FAIOA (Zakon o odvzemu premoženja nezakonitega izvora, 2011). Interestingly, respondents were in favour of the idea to have the possibility of applying the principle of the reversed burden of proof in criminal proceedings, which is not in line with the current legal provisions; however, it indicates a certain feeling of helplessness faced by investigators and prosecutors when tackling more serious types of crime. It is always extremely difficult to prove such criminal offences, which is why such responses are not surprising.

Statistically significant differences between police officers and prosecutors were also examined with respect to this set of statements. The table below presents the results of the mean values for individual statements according to the two groups of respondents (Table 6).

Table 6: Mean values for the third set of statements for police officers and prosecutors

	Type of respondent	Mean	S.D.	Standard error of the mean
In my opinion, the management of the authority I represent has clearly set its priorities for the investigation of criminal offences and that the detection of the proceeds of crime or the property of illicit origin is one of such priorities.	Police	3.61	1.10	.17
	State Prosecutor's Office	3.93	.95	.14
In my opinion, the Slovene system provides a clear strategic distinction between the possibility to recover assets in the framework of criminal proceedings and the possibility of recovering assets in civil proceedings.	Police	2.70	1.02	.15
	State Prosecutor's Office	3.09	1.14	.17
I believe that we should first strive to recover the proceeds of crime in the framework of criminal proceedings and, if this proves unsuccessful, then proceed on the basis of the Forfeiture of Assets of Illegal Origin Act (FAIOA).	Police	2.93	1.42	.21
	State Prosecutor's Office	3.52	1.49	.22
I believe the Slovene criminal law governing the recovery of assets to be systematic and clear, thus providing a solid basis for an efficient implementation of the procedure all the way to the final confiscation.	Police	2.34	1.03	.15
	State Prosecutor's Office	2.73	.97	.15
In my opinion, the provisions of the Forfeiture of Assets of Illegal Origin Act (FAIOA) are systematic and sufficiently clear to enable an efficient implementation of the procedure all the way to the final confiscation.	Police	2.40	.99	.15
	State Prosecutor's Office	2.73	.90	.13
I believe to have efficient access to all data and records I require for successfully conducting the procedure in the scope of financial investigations carried out in the framework of criminal proceedings.	Police	2.82	1.22	.18
	State Prosecutor's Office	2.77	1.18	.18
I believe to have efficient access to all data and records I require for successfully conducting the procedure in the scope of financial investigations carried out on the basis of the Forfeiture of Assets of Illegal Origin Act (FAIOA).	Police	2.73	1.19	.18
	State Prosecutor's Office	3.04	1.12	.17
In my opinion, it would be useful if the principle of the reversed burden of proof could also be applied to the recovery of assets in the framework of criminal proceedings.	Police	4.00	1.31	.20
	State Prosecutor's Office	3.87	1.45	.22

When attempting to perform an analysis to ascertain whether there were statistically significant differences between the two groups of respondents, the authors found that such an analysis cannot be performed by applying the t-test. In fact, there were no statistically significant differences between police officers and prosecutors, since both groups expressed a uniform opinion regarding the legal framework governing asset recovery in Slovenia.

Finally, a correlation analysis (by using Pearson's correlation coefficient – "*r*") was conducted on combined variables (obtained through the factor analysis) and demographic variables (respondents' age, education, total years of service and the length of service at the current position). Results are presented in Table 7. The authors found that the "Assessment of effectiveness" factor, which was used to describe respondents' opinion regarding the fact that the asset recovery instrument represented an efficient tool for preventing crime, is positively and statistically significantly correlated with all other factors (with the exception of the "Recovery according to the CC"). Respondents, who expressed a stronger agreement with the statement claiming that asset recovery was an efficient tool for preventing crime, also expressed a higher degree of support for statements stressing the importance of common

financial investigations and the role of a common body; they also attributed a higher score to the competence of investigators (both police officers and state prosecutors).

Results show that older respondents evaluated the legislation governing asset recovery better than younger respondents. Consequently, the statistically significant and positive correlation with the “Evaluation of legislation” factor was also observed with respect to the years of service, albeit not with respect to the length of service at the current position. Therefore, one could conclude that younger respondents are more critical towards the existing legislation than older respondents. At the same time, respondents holding a higher level of qualification are more in favour of a system, in which asset recovery would first be carried out on the basis of criminal law, and only subsequently according to civil law provisions. This group of respondents was also more in favour of introducing the principle of the reversed burden of proof for the asset recovery procedures into criminal law. More qualified respondents also attributed higher scores to the existing asset recovery legislation (Table 7).

Table 7: *Analysis of correlation between individual factors and demographic variables*

Factors		1	2	3	4	5	Age	Education	Years of service
1. Assessment of effectiveness	r	1	.285**	.211*	.390**	.001	.080	-.071	.198
	p		.007	.048	.000	.995	.606	.511	.197
	n		88	88	88	88	44	88	44
2. Importance of financial investigations	r		1	.085	.286**	.193	.055	.052	.153
	p			.430	.007	.071	.723	.630	.323
	n			88	88	88	44	88	44
3. Investigators' competence	r			1	.477**	-.128	.123	.061	.171
	p				.000	.235	.428	.570	.266
	n				88	88	44	88	44
4. Evaluation of legislation	r				1	.241*	.524**	.251*	.351*
	p					.024	.000	.018	.019
	n					88	44	88	44
5. Recovery according to the CC	r					1	.607**	.300**	.415**
	p						.000	.004	.005
	n						44	88	44

Note. ** $p < 0.01$; * $p < 0.05$.

DISCUSSION

The results of the survey presented above clearly show that police officers and prosecutors support the asset recovery system, at least in principle, and believe that this is an efficient tool for fighting organised crime and, to a slightly lesser extent, for tackling other types of serious crime. In general, police officers and prosecutors support a higher level of repression (increasing prison sentences and prosecution rates), however, they also believe that preventive measures and measures aimed at recovering the proceeds of crime represent an important tool. Their opinion regarding the fact that more repression in society contributes to a reduced crime rate could also result from a general line of thought according to which an increased repression leads to higher crime detection rates, thus raising the overall crime

rate. Police officers and prosecutors also believe that there is no political will to create an effective asset recovery system among Slovene politicians.

With respect to the adequacy of the organisational structure for asset recovery in Slovenia, police officers and prosecutors expressed relatively converging opinions. Both groups of respondents strongly support the establishment of two centralised bodies, one for conducting financial investigations and the asset recovery procedure, and the other for managing the secured and recovered assets. Differences between the two groups of respondents were only observed with respect to the effectiveness of operations in the framework of joint financial investigation teams. Police officers expressed a higher degree of doubt as to their effectiveness than prosecutors, who are, at least in principle, satisfied with their operation. The reason for the diverging opinions could be found in the fact that police officers believe that such teams are poorly managed. Moreover, they are established on an *ad hoc* basis and the work performed by the members of such teams is inadequately supervised.

The two groups of respondents also expressed uniform opinions with respect to the adequacy of the legislation. Some insecurities were observed with respect to the statement referring to the delimitation between criminal law and civil law asset recovery procedures, since the majority of respondents were rather undecided. This was attributed to the poorer familiarity with the issue, since the statement only required a positive or negative answer (yes/no). Nevertheless, the vast majority of respondents believe that the Slovene legislation was not sufficiently systematic and did not provide a solid basis for conducting the asset recovery procedure successfully either in the framework of criminal or civil proceedings. Police officers and prosecutors also strongly support the introduction of the reversed burden of proof in criminal proceedings for determining the origin of assets held by an individual involved in such proceedings.

Furthermore, the research results and the analysis of the literature enable the authors to conclude that the effectiveness of the system for confiscating proceeds and recovering illicit assets can only be ensured by a systematically devised legislative framework. In Slovenia, this would mean that it would first be necessary to define the concept of financial investigation in criminal proceedings, since this is the starting point for the entire asset recovery procedure. However, this issue is also related to financial investigations in civil proceedings, since the procedure is triggered on the basis of a suspicion that some assets were acquired by committing an offence. It is therefore not appropriate for the financial investigation to be carried out under the provisions of civil law. The authors believe that the legislator ought to give a clear message already at this stage of the procedure by indicating that the primary attempt to confiscate proceeds and illicit assets should be conducted through criminal proceedings and, only if this proves impossible or unsuccessful, law enforcement agencies could rely on the civil forfeiture proceedings. Therefore, the financial investigation must become an essential part of all police criminal investigations into offences that could generate any proceeds. However, at the same time, law enforcement authorities must obtain a clear mandate allowing them, under certain conditions, to investigate the entire body of assets held by a suspect, and not only specific proceeds of crime. Such a mandate would also enable the financial investigation to become useful for the purpose of extended confiscation in criminal proceedings and civil forfeiture. At this stage, it would also be necessary to define the responsibilities of the leading actors in the investigation very clearly. The authors believe that prosecutors must have the role of the leading actor, since they can propose the seizing or freezing of assets immediately after the conclusion of a financial investigation. Prosecutors should also be given the mandate to secure assets in urgent and exceptional circumstances

with the subsequent confirmation of the court. At the same time, procedural provisions for securing assets in criminal proceedings need to be simplified in the same way as in civil proceedings under the FAIOA (*Zakon o odvzemu premoženja nezakonitega izvora*, 2011). From the institutional point of view, it would make sense to set up a multidisciplinary body (ARO), which would enable investigators to have easy access to the data, both at home and abroad. Furthermore, the ARO could act as a think-tank and make sure, by providing appropriate training, that financial investigations become part of all police investigations.

On a more positive side, the Slovene legal order provides its competent authorities several avenues for recovering proceeds and unlawfully acquired assets. The Slovene law foresees the conventional confiscation of proceeds, the *in personam* confiscation in criminal proceedings (Article 498a of Criminal Procedure Act (*Zakon o kazenskem postopku*, 2012)), the extended confiscation in criminal proceedings (Article 77a of the Criminal Code) (*Kazenski zakonik*, 2012) and the civil forfeiture on the basis of the FAIOA (*Zakon o odvzemu premoženja nezakonitega izvora*, 2011). The problem arises due to the dispersion of substantive provisions of both substantive and procedural law. A further problem stems from the fact that some provisions are formulated in such a way they are impossible to implement in practice. In particular, Article 77a of the Criminal Procedure Act (*Zakon o kazenskem postopku*, 2012) *de facto* does not bring any changes from the conventional confiscation, since the assets of a criminal organisation, which has no legal personality, are impossible to confiscate, as demonstrated above. Furthermore, contrary to some other legal systems, the Slovene legislation does not define the concept of a criminal activity that could represent the basis for applying extended confiscation. Therefore, it would be necessary to introduce the extended confiscation with the reversed burden of proof into the Criminal Procedure Act (*Zakon o kazenskem postopku*, 2012) and tie it to any criminal activity, which would be best defined as the commission of certain elements of a criminal offence in a given period.

The enforcement stage should be regulated in a completely different way, both in criminal as well as in civil proceedings. This primarily refers to the issue of organisation; at the moment, and particularly after the adoption of the FAIOA (*Zakon o odvzemu premoženja nezakonitega izvora*, 2011), it is not clear which institution is responsible for the enforcement of confiscation orders. Moreover, it is necessary to establish a clear record as to the number of confiscation orders that have been effectively enforced and the exact amount that was repaid to the State budget. Such a record would show the cost-effectiveness of the asset recovery system in Slovenia and reveal if appropriate criteria and methods for the evaluation of assets were set in place. The evaluation of assets is a particularly problematic aspect of the Slovene system, since it is, as a rule, carried out by judges, who in many cases do not possess adequate knowledge and skills. The creation of a centralised body for the management of assets (AMO) would thus be a very good solution: such a body would be in charge of assets from their evaluation, freezing and seizing to their final disposal.

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POLICE DEPRIVATION OF LIBERTY IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA AND THE RIGHT TO LIBERTY AND SECURITY OF A PERSON

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ABSTRACT

The reformed criminal procedural legislation of the RS successfully follows the modern trends in the criminal procedural doctrine, especially in the area of application of the measures of deprivation of liberty by the police and the limitation of the right to liberty and security of a person. The new legal solutions in the RS (CPC/2011) are different both in their conceptual definition, and by the entity that decides on the implementation of the measures, which make the issue in question even more current, so the authors accordingly paid special attention to the following issues: firstly, the police deprivation of liberty as an international standard in the reformed criminal procedure legislation of the RS; Secondly, court as a subject of decision on the legality of police deprivation of liberty in the RS; Thirdly, empirical research into the implementation measures of police arrest in the RS and suggestions of *de lege ferenda*.

Keywords: right to liberty and security of person, police arrests, court, Serbia

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INTRODUCTION

The complexity of the processes of reforming the criminal procedural legislation of the Republic of Serbia is manifested both through the monitoring of contemporary trends in the doctrine of criminal procedure legislation (Bejatović, 2012; Jovanović & Petrović, 2012; Vazić, 2012), and through modification of the normative framework, starting with the adoption of the Criminal Procedure Code of the Republic of Serbia in 2001, as well as numerous changes and amendments to the above Code, in order for the process of the ten-year reform to be ended by adopting the Criminal Procedure Code in 2011, which, with the critical tone of argument and with the profound theoretical explanations (Bejatović, 2014a; Djurdjić, 2015) and expert interpretation (Bejatović, 2014b; Skulić, 2014a) has contributed to the implementation efficiency of the process (Bejatović, 2010), and thus the implementation of international standard (Bejatović, 2015) in the European framework (Djurdjić, 2010). Namely, the international standard of the right to liberty and security of a person, in addition to the aspect of universality, also implies the absence of arbitrariness and illegality, which are difficult to imagine in a modern, democratic society, where the rule of law exists. However, the presupposed right to liberty and security of person is not only a reflection of a contemporary society, but looking from the aspect of historical genesis, the first proclamations of fundamental rights, had brought a right to liberty and security of person, which is indicative of its importance and necessity of predicting an adequate legislative framework that will ensure its full implementation.

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Numerous modifications to the legislative text of Serbia according to the modern trends have been inevitably accompanied by a modification of the police activities in the pre-trial procedure (Ilić, 2013), the relationship with the public prosecutor (Cvorović, 2015) as well as the measures of the deprivation of liberty, which are for the first time in the criminal procedure legislation of the Republic of Serbia explicitly listed and the distinctive preference depending on the subject that applies them. Also, in comparative criminal procedure legislation, the relationship between the police and the prosecutor in the previous procedure, in which the measures of police deprivation of liberty are applied, is considered to be extremely important and the police are conducting the entire investigation in most cases, including the measures of deprivation of liberty. Depending on the type of investigation, this can be done on their own initiative, as is in the US, where the police investigation exists (Abadinsky, 1998; Gillieron, 2013) or in England or where the prosecution is being investigated by a prosecutor such as the case in Germany (Eisenberg, 2002 Roxin, 2002), and in the case of criminal offenses for which imprisonment up to three years is possible, where in most cases the conduct of the entire investigation is entrusted to the police.

Hierarchical primacy does not allow us to analyze the above rights starting with the Criminal Procedure Code (2011), which elaborates the right to liberty and security of person and without encroaching upon the substance of law, especially from the aspect of deprivation and restriction of liberty by the police, but we will consider the Constitution of the Republic of Serbia (2006) to be the primary and general framework. Namely, the Constitution (Simović, Avramović, & Zekavica, 2013) proclaims the right to liberty and security of person in the way that everyone has the right to liberty and security. Also, other countries provide for constitutional proclamations of the right to liberty and security of the person as well (Gless, 2013; Gillman, 1993; Lioyd, 2005). The deprivation of liberty is allowed only on the ground and in the procedure stipulated by the law. These guidelines of the lawful deprivation of liberty are included in international documents, including the European Convention (Amatrudo & William, 2015; Roberts & Hunter, 2012 Schabas, 2015; Wolfrum & Deutsch, 2007) as one of the most important for us, which foresees the lawful deprivation of liberty only in legally appropriate procedure and with the fulfillment of a restrictive set of conditions.

In addition to the general provisions for the legal restriction of personal liberty in the form of deprivation of liberty, the Constitution (Batavejčić, 2011: 27) provides that a person who is deprived of liberty by a public authority immediately, in a language he understands, be informed of the reasons for his arrest as well as the charges that he had been charged with and about their rights and he has the right to promptly inform about their deprivation of liberty the person of their choice, as well as the right to initiate habeas corpus proceedings (Cvorović, 2016).

The aforementioned proclamations were related to the deprivation of liberty by a court decision. However, the Constitution (Kolaković-Bojović, 2018: 281-282) also contains additional rights in the event of the deprivation of liberty without a court decision, which is even more important from the aspect of issues in question and the police actions in accordance with the national law and international standards. Namely, the person deprived of liberty without a court decision shall be notified immediately that he has the right to remain silent and not to be interviewed without the presence of defense counsel of his choice or a counsel who will provide free legal assistance if he cannot pay for it. Also, the person deprived of liberty without a court must without delay, and no later than in 48 hours, be handed over to the competent court or otherwise be released (Article 29 of the

Constitution (2006)). The detailed elaboration of the constitutional provisions are regulated by the Criminal Procedure Code, in which has brought novelties in the criminal procedural legislation of Serbia, especially in measures of deprivation and restriction of liberty by the police (Ilić, 2010). Specifically, the Criminal Procedure Code finally conceptually determines i.e. lists all the dimensions of the apprehension of the suspect or the accused, which has not been the case, it also provides the distinction between the police arrest and other forms of the deprivation of liberty. The casuistic approach when it comes to the provisions relating to the meaning of certain terms (Djurdjić, 2014; Skulić, 2014b), although marked as adversarial when it comes to the measures of the deprivation of liberty is necessary, from the aspect of police apprehension, given that before the adoption of the new Criminal Procedure Code (2011), all measures were signified as a deprivation of liberty, presupposing them to include the measures of the police activities, whereby the distinction was not made. The reformed measures have foreseen that the deprivation of liberty occupies the following: arrest, detention, prohibition of leaving the apartment, detention and stay in an institution which, in accordance with this Code, was included in detention (Article 2, paragraph 1, item 23 of the CPC). Also, the measures of deprivation of liberty are conceptually determined in comparative criminal procedure legislation as well, and in accordance with that, The German Code of Criminal Procedure (2014) provides for the following measures: temporary deprivation of liberty, detention and retention (Kühne, 2010; Roxin & Schünemann, 2012), while in America the conceptual determination of freedom, in other words, the deprivation of liberty under the 4th amendment of the US Constitution, does not include just the deprivation of liberty (McDonald, Rossman, & Cramer, 1982), that is, arrest, as proclaimed by the explicit of the criminal procedural legislation of the RS, but arrest is only one form of seizure.

When it comes to police treatment, measures of arrest and police detention are important. The measures of arrest and detention are applied to the suspect. As pointed out, the CPC (2011) presupposes police arrest which was finally distinctively defined in relation to the other measures of the deprivation of liberty, which was met with critical attitude of a certain part of the professional public due to a foreign element. However, we consider such a legal solution to be legitimate, since it clearly indicates the entity that deprives of liberty, which is the police as well as the situation to which it relates, while the element of internationality of the arrest could be positively characterized as following modern trends and consistency at an international level, that convergence is not only the elements of criminal procedure system, but also contributes to the concepts of efficiency, but also understanding and precision of the legal text, which is extremely important in achieving the rule of law, and to adjust the behaviour of citizens with the law and the protection of their rights from infringement. Accordingly, the term arrest, in CPC of the Republic of Serbia is completely adapted to the international standard of the right to liberty and security of person, so with the aim of globalist tendencies, as evidenced by the new CPC of the Republic of Serbia, which takes a number of elements of the US criminal procedural legislation (Bacigal, 2009; Carmen, 2010; Scheb & Scheb, 2011) we have accepted police arrest as an adequate legal solution (Cvorović, 2016).

The introduction of elements of the Anglo-Saxon legal system into the criminal procedural legislation of the Republic of Serbia is a consequence of the necessity of reforming the criminal procedure of the Republic of Serbia in accordance with the process of accession of the Republic of Serbia to the European Union. Having received the Screening Report for the negotiation chapter 23, as the final step of screening concerning the judiciary and basic

rights, Serbia started amending the criminal procedural legislation with the aim of improving the efficiency of the procedure, especially in the part related to the delivery of submissions, recording of trials and procedural discipline, bearing in mind the EU standards, the practice of the ECtHR and the Constitutional Court. The Republic of Serbia received the Report regarding screening, in other words, the review of the compliance of the legislation of the Republic of Serbia with the *acquis* and EU standards, on July 28, 2014. It highlights the areas that must be prioritized in the reform process, especially in the judiciary segment (Kolaković-Bojović, 2016: 233), that is, the amendment of the Constitution of the Republic of Serbia and in respect of procedural guarantees, including the rights of persons deprived of their liberty. In response to the recommendations from the Report and the screening, the Republic of Serbia drafted and adopted the Action Plan for Chapter 23, which was adopted on April 27, 2016, and which foresees concrete activities to be implemented.

Changing the process law, including the CPC, is foreseen in the National Justice Reform Strategy for the period 2013-2018 (hereinafter: the NJRS) adopted by the Republic of Serbia on 1 July 2013, while the Action Plan for the implementation of the NJRS was adopted on 31 August 2013. The NJRS has outlined five basic reform principles to promote independence, improve efficiency and change, and improve procedural laws. The recommendations from the Screening Report pointed out the necessity of improving the efficiency of the criminal procedure, as well as the regular reporting by the Commission for the implementation of the NJRS on the results of the implementation of the amended law by the commission for monitoring the implementation of the CPC, where the difficulties arose with the introduction of the prosecution investigation, but also there is the significant growth in percentage of procedures completed by the application of the principle of opportunity and the plea bargain. Also, in the area of procedural guarantees, it was pointed out that the Law on Free Legal Aid was necessary, the draft law has already been done, which will provide greater guarantees for exercising the rights of the lawyers of the suspects or accused persons, which is especially significant for persons deprived of their liberty, according to which the measure of police arrest was applied, which is in line with EU standards. Also, amendments to the CPC with the aim of securing interim legal assistance granted without undue delay after detention and before any police examination, as well as the creation of a “letter of rights” provided to the arrested or suspect by the police or the prosecution.

The Criminal Procedure Code RS (2011) provides that police may arrest a person if there is a reason for custody, but they are obliged to hand over the person in question without delay to the competent public prosecutor (Article 291 of the CPC). The legislator, in accordance with previously stated, requires the fulfilment of the following conditions, in order for the arrest to be lawful by the police: the existence of reasonable suspicion that a person has committed a criminal offense which is prosecuted *ex officio* if some of the reasons for detention and if found on the scene of the crime (Article 292 of the CPC). Specifically, reasonable doubt is set as a material condition which is a collection of facts which directly indicates that an individual offender (Article 2, paragraph 1, item 18. of the CPC), wherein we may notice that the higher degree of suspicion is required for the police arrest than to initiate criminal proceedings (reasonable doubt), but as an argument that can be pointed out to support this fact we may state the importance of the right to liberty and security of person in a democratic society and the realization of the principle of the rule of law. Besides the material, there is also a formal condition, which is the existence of some of the reasons for the custody, and they are:

- for the person in question to be hiding or his identity cannot be established or as a defendant obviously avoids appearing at the main trial or if there are other circumstances indicating a danger of escape;
- there are circumstances that may indicate that he will destroy, modify or forge evidence or traces of the criminal act, or if the special circumstances indicate that he will interfere with the process by influencing the witnesses, accessories or concealment;
- special circumstances indicate that in the short period of time he will repeat the criminal offense or complete the attempted crime or commit a criminal act which threatens;
- if for the criminal offense he is charged with the proposed punishment of imprisonment is of more than ten years, or imprisonment of over five years for the offense with elements of violence or the verdict of the first instance court sentenced to five years' imprisonment, a method of execution or effects of the crime weight have led to concerns of the general public which may jeopardize smooth and fair conduct of procedure (Article 211 of the CPC).

The Federal Republic of Germany has an interesting legal solution (Beulke, 2008; Satzger, 2004), which, in addition to detention as a measure of deprivation of liberty which is proclaimed by the CPC, whose determination is in the sole jurisdiction of the court (paragraph 114 of the CPC), provides for the detention which remains at the disposal of the police by the Law on the Tasks of the Bavarian Police, with subsequent court decisions on the permissibility or extension of deprivation of liberty. In accordance with paragraph 17 of the Law on the Tasks of the Bavarian Police, the police may detain a person in the following cases: firstly, if it is necessary for the protection of the body and life, especially in the case of persons who obviously are not in the capacity to freely decide or are in another helpless state; secondly, if it is necessary to prevent the immediate imminent execution or completion of a commenced criminal offense or an offense of relevance to public order and peace; thirdly-if it is necessary to implement a measure of prohibition of residence in a particular place in the sense of paragraph 16 of CPC. In America (Barkow, 2006; Breitel, 1960), the arrest is just one of the forms of deprivation of liberty that falls under the protection of the IV Amendment, in which there are other types of interference in human freedom that do not constitute arrest but fall under the protection of the said amendment. These are: stopping and searching, border searches; roadblocks represent captures and fall under the fourth amendment, but the constitutional requirements for these types of police actions differ from arrests as milder forms of decline. So, we can say that the term deprivation of liberty is wider than the term of arrest, which implies that any arrest is a deprivation of liberty, but not every deprivation of liberty is an arrest.

Namely, the arrest is defined as taking a person into custody against his or her will for the purpose of prosecution or interrogation (Dunaway v. New York, 1979). Also, in America, the lawfulness of arrest is determined primarily by federal constitutional standards, and in particular by material condition, established suspicion and state laws. The significance of legal arrest entails the lawfulness of the evidence, and the accent of the knowledge of the law on the arrest of the police (miranda rules) is extremely important, because if the arrest is lawful then the search of the suspect and the areas under his or her control are also legal. On the contrary, if the arrest is illegal, then the search of the suspect and the areas under his or her control are also illegal, and the evidence obtained in such a way is unlawful.

The conditions provided by the police deprivation of liberty in the Republic of Serbia are in compliance with the European standards of limitations of the freedom and safety of person (Art. 5 of the EC), as noted earlier, in the previous discussions.

COURT AS AN ENTITY DECIDING ON THE LEGALITY OF THE DEPRIVATION OF LIBERTY BY THE POLICE IN THE REPUBLIC OF SERBIA

In addition to the above international standards that exist in the process of the deprivation of liberty by the police, the very important segment of the deprivation of liberty is habeas corpus act⁴ (Friedman, 1988; Hugles, 1990) which guarantees to every person deprived of liberty to initiate proceedings before the Court to urgently decide on the legality of the arrest. Otherwise, the Habeas corpus act, through the basic principles that it envisages, became part of the modern legal system, including the RS that were implemented in CPC from 2011, but the right to personal liberty and principles from habeas corpus act were foreseen by the adoption of the first Serbian Code of Criminal Procedure from 1865.

Accordingly, the person arrested by the police has the right to request that the lawfulness of his deprivation of liberty be decided by the court. This right stems from the provisions of the law that a person arrested without a court decision or a person arrested on the basis of a court that is not heard, must, without delay and at the latest within 48 hours⁵, were handed over to the competent judge for preliminary proceedings or if it does not happen, were set free (Article 69, paragraph 2 of the CPC, 2011). The judge for preliminary proceedings if in the instant case regarding the legality of the arrest by the police, will decide whether there was a reasonable suspicion that a criminal offense subject to public prosecution on the basis of reports of the arrest and the implementation of which should contain a description of the work, the facts and circumstances giving rise to reasonable suspicion, and those facts and circumstances indicating the existence of some of the reasons for detention, which is a necessary formal requirement for the police arrest and based on that, decide that the person is released or to determine custody (Bejatović, 2014c). Seen in this context, it should be noted that in this case a higher degree of suspicion is required than the one the law provides when it comes to instituting criminal proceedings or grounds for suspicion.

Habeas corpus proceedings initiated by the person deprived of liberty, predicts the court to be the subject on its legality, which derives from the front set out the constitutional⁶ and legal explicit, which is compliant with international standards (Article 5, paragraph 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). Namely, the Commission envisages that any person who is arrested has the right to take proceedings by which the Court to examine the legality of his deprivation and order release if the deprivation of liberty is not lawful.

- 4 This document provides for a series of guarantees for the protection of personal liberty in the Anglo-Saxon legal system, England being considered as its representative, while in modern trends this place still belongs to America. The Habeas Corpus Act set up the foundations of the procedural aspect of protecting the said right (which still has procedural character in England, while in the United States it has constitutional character), which still represents the basic principles of criminal procedure, which, with the adoption of the new Criminal Procedure Code RS (2011) further updates the opportune legal system and normatively predicts its elements (adversarial main hearing, party presentation of evidence, formal truth, etc.). The basic principles prescribed by the Habeas Corpus Act, which are also the part of the modern legal system, are the principle of *ne bis in idem*, the institute of obsolescence, and as a key segment of the protection of personal liberty, there is the necessity of existing and communicating the basis of deprivation of liberty to the arrested.
- 5 Compliance with constitutional guarantees which provide that a person deprived of liberty without a court must without delay, and no later than 48 hours, be handed over to the competent court otherwise be released (Constitution of the Republic of Serbia, 2006).
- 6 Anyone who is arrested has the right to appeal to a court, which is obliged to urgently review the lawfulness of his deprivation of liberty and order release if the deprivation of liberty was unlawful (Constitution of the Republic of Serbia, 2006).

The court as an entity deciding on the legality of the deprivation of liberty is undisputed, however, the question is whether in this case, the public prosecutor could be regarded as the first operator in control of the legality of his deprivation of liberty by the police, given the reformed provisions of the CPC advocating the implementation of the arrested person to the public prosecutor. Namely, the verification of the legality of the deprivation of liberty must be carried out by the court or other authority that is able to carry out the minimum procedural guarantees and which has the power to face released (Jaksić, 2006). If we consider these facts, in the case of the provisions of the CPC, which provide that the public prosecutor immediately after the hearing should decide whether to release the arrested person or to suggest detention to the judge for preliminary proceedings (Article 293, paragraph 4 of the CPC, 2011), we can conclude that the public prosecutor may be considered as the entity deciding on the legality of the arrest in case of police arrest. Namely, there are three facts that speak in favour of that conclusion, and these are: handing over of the arrested to the public prosecutor, as the provisions of the former CPC (2001 provided investigating judge; the decision of the public prosecutor about the release of the arrested; the public prosecutor as a subject of the implementation of procedural guarantees (Cvorović, 2016). Bearing in mind the new concept of public prosecution investigation and the importance of the public prosecutor in achieving the ideals of fairness, we consider making a legitimate legal basis of the public prosecutor about the fate of the arrested persons with the following aspects public prosecutors procedures: legality, professionalism and efficiency.

EMPIRICAL RESEARCH INTO THE IMPLEMENTATION MEASURES OF POLICE ARREST IN THE REPUBLIC OF SERBIA AND SUGGESTIONS OF DE LEGE FERENDA

Police is an active subject of practical implementation of the measures of police arrests. The police arrest rate was analysed at the level of police departments overall, as well as at police headquarters in Belgrade and regional police departments (Kragujevac, Novi Sad, Niš and other) in the segment deviations in the reference values, for the year 2013 when the measure of police arrest started with application according to the new CPC (2011) and for the year 2017.

The basic characteristics of the analysis in the police departments of the police administration in Belgrade for the year 2013 are (Table 1, 2):

- when it comes to police departments in total, the most pronounced quantum value was observed in the offense of unauthorized production and trafficking of narcotic drugs - 101. Then, there are the following criminal offenses: aggravated theft - 73; domestic violence - 47; unauthorized possession of narcotic drugs; theft - 38; murder - 15; serious bodily injury – 16; and
- police Administration in Belgrade, with a tendency of similar quantum discrepancies when it comes to the type of offenses for which it applied the most, manifested the following values: aggravated theft - 34; illicit production and trafficking of narcotic drugs - 31; banditry - 19; theft – 17.

Table 1: The number of person who were imposed measure – Police arrest for criminal offences recorded in 2013

The number of offenders with measure		Articles of the criminal offences of the criminal code of the Republic of Serbia																																
		113	114	121	122	123	132	135	138	178	182	185	185A	194	203	204	205	206	208	208A	210	212	213	214	221	223	225	230	231	234	234A	246		
Police Departments, total	2013	15	4	16	3	4	6	1	11	6	1	1	1	47	38	73	4	42	6	8		2	6	10	1	1	1	1	14	17	1	101		
BEOGRAD	2013	3	1		2			1	2	1			1	9	17	34	2	19	4				3	2								31		
KRAGUJEVAC	2013			1										3		4																7		
JAGODINA	2013	1							1	1				1						8												3		
NIŠ	2013	2				6							3	1	1		2	2				2		6					3	1	4			
PIROT	2013								1																		1					3		
PROKUPLJE	2013	1											1	1	6		5							1								1		
LESKOVAC	2013	1		4				1		1	1		10	6	5		1						1	1						1	4			
VRANJE	2013	1			1								3				2													10	6			
ZAJEČAR	2013			3										3																	1	4		
BOR	2013			2										1																		1		
SMEDEREVO	2013	2						3									2	2														6		
POŽAREVAC	2013												1																					
VALJEVO	2013			3									1																	14	2	1		
ŠABAC	2013	1	2											2	2		1						2									2		
KRALJEVO	2013	1	1			4			1	2			5	5	7		2								1							10		
KRUŠEVAC	2013	2													1																			
ČAČAK	2013														2																	2		
NOVI PAZAR	2013							1	1				4	1	3		2																	
UŽICE	2013												1	1			3																3	
PRUJEPOLJE	2013													1																			2	
NOVI SAD	2013								1					1	2		2																1	
SOMBOR	2013												3																				3	
SUBOTICA	2013			3																														
ZRENIJANIN	2013												3		2																			
KIKINDA	2013							1																									1	
PANČEVO	2013														1																			
SREMSKA MITROVICA	2013																	1															5	
SUK	2013																																	1

Source: Sector for analytics, telecommunications and information technology, 2014

Table 2: *The number of persons who were imposed measure - Police arrest for criminal offences recorded in 2013*

The number of offenders with measure		Articles of the criminal offences of the criminal code of the Republic of Serbia																						
		246A	269	275	278	289	296	297	317	322	323	332	333	334	344	344A	348	350	355	359	364	367	368	388
Police Departments, total	2013	46	1	1	3	1	1	6	1	4	9	1	2	1	10	4	22	7	8	5	2	7	7	2
BEOGRAD	2013	9							1		1			2		10		1			3		1	
KRAGUJEVAC	2013	1	1											1	1					1				
JAGODINA	2013																							
NIŠ	2013	1									2	1			4	4	1	2		1	1	2		
PIROT	2013	2			1			1									1							
PROKUPLJE	2013			1				1		1						2								
LESKOVAC	2013	1			1					2	1					1				2				
VRANJE	2013	12												1	2		1							
ZAJEČAR	2013																							
BOR	2013																							
SMEDEREVO	2013	7												1										
POŽAREVAC	2013							1												1				
VALJEVO	2013	5			1												1							
ŠABAC	2013							1	1			1					1							
KRALJEVO	2013	7									1					1	1				1			
KRUŠEVAC	2013																							
ČAČAK	2013									1														
NOVI PAZAR	2013													1										
UŽICE	2013																							
PRIJEPOLJE	2013	1									1							1						
NOVI SAD	2013																							
SOMBOR	2013																	1					1	
SUBOTICA	2013																							
ZRENJANIN	2013							1			2													
KIKINDA	2013																							
PANČEVO	2013				1											1					2	7		
SREMSKA MITROVICA	2013							1								2	2	7						
SUK	2013																							

Source: Sector for analytics, telecommunications and information technology, 2014

Table 3: *Total number of arrested persons on the territory of the Republic of Serbia in 2017*

Police Departments, total	Police arrest
SRBIJA	2582
BEOGRAD	824
KRAGUJEVAC	122
JAGODINA	22
NIŠ	70
PIROT	90
PROKUPLJE	48
LESKOVAC	57
VRANJE	64
ZAJEČAR	25
BOR	53
SMEDEREVO	66
POŽAREVAC	5
VALJEVO	113
ŠABAC	113
KRALJEVO	73
KRUŠEVAC	21
ČAČAK	42
NOVI PAZAR	98
UŽICE	32
PRIJEPOLJE	57
NOVI SAD	19
SOMBOR	71
SUBOTICA	10
ZRENJANIN	161
KIKINDA	88
PANČEVO	45
SREMSKA MITROVICA	183
AP KIM	
SBPOK	14
SUK	

Source: Sector for analytics, telecommunications and information technology, 2018

Due to the above (Table 3), the police is the key subject of the preliminary investigation and the realization of efficiency as an international standard, and the use of measures of deprivation of liberty or a police arrest contributes significantly to the increase in efficiency and not just more of the pre-trial and criminal procedure. Accordingly, critical review and deepened theories require new normative solutions regarding the implementation of measures of deprivation of liberty and implementation of the international standards. The critical review at the legal solutions in the Republic of Serbia brings the following conclusions and proposals *de lege ferenda*:

- it is extremely important to note, with regard to its conceptual definition, that the effectiveness of police action, and therefore the application of measures of deprivation and restrictions of freedom of parties to the proceedings in any case should not be to the detriment of international treaties and national legislation guaranteed rights and freedoms;
- the control of the legality of police conduct in implementing the measures of deprivation and restriction of freedom has been secured by, among other things, the control mechanisms of its work. For these reasons, it is of particular importance to establish an effective system of both external and internal controls, which include the successful implementation of the various means of control, such as hierarchical control, disciplinary responsibility, controls of the various supervisory bodies, which is not yet satisfactory, especially from the aspect of its practical functioning. However, we have to praise the fact that the work on the adoption of the new Code of Police was given special attention to create more effective normative framework, especially in the promotion of human rights and the creation of adequate mechanisms of internal and external control of the police;
- the police, in the realization of its activity, also takes the measures of procedural constraints, in other words, measures of deprivation of liberty (police arrest), and in their implementation strictly to be observed in statutory requirements of application of such general principles of police action in such situations. The positive legislation of Serbia, in this regard, is at the level of solutions that have generally become the standard, and as such, present in most of the laws of the modern democratic state;
- when it comes to the implementation of measures of police arrest, the decision of the Criminal Procedure Code by which a person who is deprived of liberty by the police may be even after eight hours' taken to the public prosecutor in charge (Article 291, paragraph 3 of the CPC, 2011) is inadequate. This happens primarily because of the fact that the notion of unavoidable impediment is so broad and so vague that a lot of things may be considered, and it thus offers the possibility of misuse of such an exception. For these reasons, it seems to be far more appropriate solution to leave a slightly longer period within which the police is obliged to hand over the person deprived of liberty to the public prosecutor (e.g. a maximum of ten hours) or to be more precise in determining the reasons of possible deviations from the deadline of eight hours as a rule (e.g. only due to the need of urgent medical assistance of person deprived of liberty). With this type of regulation of this issue, it is possible to avoid any misuse which is, admittedly, possible; and
- in accordance with the above mentioned, the CPC from 2011 in has brought considerable novelties in terms of the procedural position of the subjects in the pre-trial and investigative procedure. These are, generally speaking, praiseworthy. Specific analysis of not a few of the parts of these phases in the process, and not only to them,

show that they are not at the desired level. They are not in the function of the normative base for the desired level of efficiency of processing entities in the fight against crime in general. Therefore, it is justified by the majority opinion of professional Serbian public that the CPC from 2011 may not be the end of our reform of the Criminal procedural law (Bejatović, 2014a). On the contrary, it is necessary to continue work on reforms and scale differently quite a number of today's solutions that are not in the function of the proclaimed objective of the reform (creating a normative basis for a more efficient procedure, but not at the expense of international treaties and national legislation guaranteed freedoms and rights of subjects of criminal procedure). Accordingly, and in view of the arguments, work on the forthcoming reforms must include the segment of measure of deprivation of liberty by the police, including police arrest.

The conducted research on the topic of police arrest confirmed the initial hypothesis that it is one of the most important and most current issues in the field of criminal law (theory and practice) in general. Furthermore, all hypotheses of the baseline of the research have been confirmed. It has been fully proven that the expansion of human rights has led to the adoption of a large number of relevant international documents, which regulate the field of basic human rights and freedoms and their existence in the national legislation of the Republic of Serbia.

It has been clearly proven that the correlation between the police and human rights is extremely important, especially from the point of view of deprivation of liberty, where the police are the key entity in the application of measures that deprives a person of liberty. Namely, we can notice that when it comes to statistical indicators of the use of police arrest measures, they are constantly increasing and considered to be extremely important measures for the realization of the preventive aspect of criminal policy, especially when it comes to criminal offenses of unauthorized production and trafficking of narcotic drugs, aggravated theft and domestic violence.

On the basis of the conducted research, the use of all necessary methods resulted in a large number of conclusions and suggestions of *de lege ferenda* related to police arrest. The conclusions should contribute to even more adequate normative regulation of the police as an active subject of deciding on deprivation of liberty and restrictions on the freedom and rights of citizens, respectively, more adequate use of such a standardized position of the police in the practical realization of its powers of this character.

CONCLUSION

The international standard of the right to liberty and security of person is of universal character and has several key characteristics, such as: the prohibition of arbitrary deprivation of liberty; constitutional legal character of the standard because of its significance; strict adherence to the legally prescribed conditions for taking measures of police arrest; time determination in undertaking, reduced to the terms - without delay, as soon as it comes to police arrest, while the trial of the habeas corpus act in the court and the duty to review the decision of deprivation of liberty at certain time intervals and to decide on prolonging or abolishing the measure of deprivation of liberty. The authors highlighted the police as a significant subject not only in the pre-investigative process, but also in the field of combating crime in general, which is more effective by standardizing several forms of deprivation of liberty by the police, including police arrest. Viewed from the perspective of positive legislation of the Republic of Serbia, it can be concluded that the national

framework of police powers which limits movement in a certain area is to a great extent in line with the anticipated international standards of deprivation of liberty, which, through legal explicit of temporal determination, the goals for which they are being undertaken and the professionalism of the police, reflect a representative image of the conducting of the police in the taking measures of police arrest, which is extremely important both at the international level and in regard to the lawful, effective and professional conducting of police at the national level.

The paper outlines the standards of police arrest, which are the guarantees of a person deprived of liberty, as well as the legality of police treatment during deprivation of liberty. As such, they represent minimum guarantees at the European level. Through the analysis of their implementation in the positive legislation of Serbia, the authors pointed out a high degree of implementation and consequently consistency in Europe regarding the right to liberty and security of the person. The authors find that the above-mentioned facts point out a positive outcome of the reform of the criminal procedural legislation of the RS with regard to the measure of police arrest, but also the necessity of further reform in the direction of strengthening the procedural guarantees of persons deprived of liberty in accordance with EU standards and the practice of the ECHR.

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JURIDICAL STANDARDS FOR CLINICAL FORENSIC EXAMINATIONS OF VICTIMS OF VIOLENCE IN EUROPE: JUSTEU!

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ABSTRACT⁵

Victims' rights differ in the member states of the European Union. The Directive (EU) 2012/29 implements a minimum standard on the rights, support and protection of victims of crime. An important part of this victim support should be the access to clinical forensic examinations. These examinations are especially relevant for documentation and preservation of evidence in cases of rape or sexual assault. Under the Justice program JUST/2015/SPOB/AG/VICT (Action grants to support national or transnational projects to enhance the rights of victims of crime/victims of violence) the Ludwig Boltzmann Institute for Clinical Forensic Imaging (LBI CFI) leads the project "JUSTeU!", which pursues minimum standards for clinical forensic examinations in Europe and the foundation of a permanent CFN Europe (Clinical Forensic Network for Europe). The discussion regarding the establishment of such standards on the European level is not only important concerning victims' rights, but also concerning the legal certainty in criminal proceedings.

Keywords: JUSTeU!, clinical forensic examination, victims' rights, Directive (EU) 2012/29, CFN Europe

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INTRODUCTION

In the European Union (EU) approximately 15% of Europeans, which is roughly equivalent to 75 million people, fall victim to crime every year. The EU strives to ensure that victims receive adequate support and protection, regardless of where in the EU the crime has been committed (European Commission, 2018a).

In case criminal and/or civil law proceedings are instigated against the alleged perpetrator, the injuries sustained in the course of a crime and herewith the body of a victim becomes an evidence object of great relevance, in particular with regard to the conviction and sentencing of the perpetrator. Detecting traces of any kind of violence is conducted by forensic physicians during a clinical forensic examination, which encompasses the seurance and storage of trace evidence and detailed documentation of injuries. This shall ensure on the one hand that law enforcement authorities can use these findings as evidence and on the other hand that judges are able to assess the case more easily. Hence, a clinical forensic examination serves legal certainty and moreover, the protection of victims of survived

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violence by strengthening their legal status (Kerbacher, Pfeifer, Leski, & Riener-Hofer, 2018). But the access to such clinical forensic examinations is far from being implemented in all member states of the EU. In Graz (Austria), clinical forensic examinations are available since 2008 through a Clinical-Forensic Outpatient Center (Medical University of Graz, 2018), which was founded by the Ludwig Boltzmann Institute for Clinical Forensic Imaging (LBI CFI) in cooperation with the Medical University Graz (Krebs, Riener-Hofer, Scheurer, Schick, & Yen, 2011). The LBI CFI is an interdisciplinary research institute focusing on the development of basic parameters for the clinical-forensic use of imaging techniques. One of the main aspects of the juridical research at the LBI CFI is to analyse the legal parameters regarding clinical forensic examinations.

EXCURSUS: CLINICAL FORENSIC EXAMINATIONS

In a questionnaire-based survey, Kainz, Scheurer, Schick and Riener-Hofer (2013) found out that representatives of the Austrian judiciary still mainly associate forensic medicine with the coroner's inquest and the autopsy, in other words with medicine on the deceased. This correlates with the wording of Article 125 and Article 128 of the Austrian Code of Criminal Procedure. Especially in connection with cases of physical and/or sexualized violence, the law enforcement authorities are conscious of the need for clinical forensic examinations. Clinical forensic medicine is a part of forensic medicine dealing with the examination of victims of crime (Madea, Wiegand, & Mußhoff, 2015). The validity of findings within a clinical forensic examination depends mainly on two factors: the examination needs to be carried out within a certain time frame and conducted professionally. Concerning the time frame should be mentioned that in case sexual abuse or rape is suspected, the examination should be conducted within seventy-two hours after the incident. The reason for this is that the chance to successfully secure traces of body fluids declines rapidly with time (Krebs et al., 2011). Also diagnostic findings as erythemas, petechial haemorrhages as well as superficial scars can vanish in a relatively short time. The primary objectives of a clinical forensic examination are to identify all kinds of lesions on the entire body, to detect injuries in the genital area and to take biological trace material (blood, saliva, sperm and hair) as evidence for forensic purposes. The inspection of the entire body is essential, because injuries may be on areas not primarily visible as for example on neck, head or inner side of the lips. The forensic findings should further be documented in detail in a report and with photos using a forensic scale (as shown in Figure 1) to depict the size of the injuries (Kernbach-Wighton et al., 2015). In a nutshell, the conclusion is that evidence needs to be gathered quickly and injuries need to be documented properly, otherwise evidence may be irretrievably lost (Federal Ministry of Health and Women's Affairs, 2016).

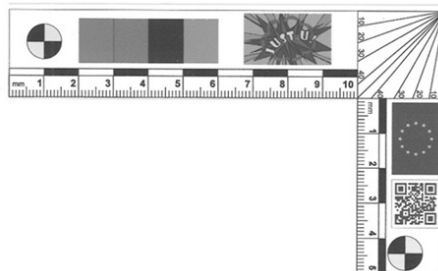


Figure 1: Forensic scale created for the project JUSTeU!

Source: Ludwig Boltzmann Institute for Clinical Forensic Imaging, 2016

JURIDICAL PARAMETERS

In 2016, the last three member states of the EU, Bulgaria, the Czech Republic and Latvia, have signed the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (European Union Agency for Fundamental Rights, 2017). Since the convention was first opened for signature in 2011 in Istanbul, it is referred to as the “Istanbul Convention”. The Istanbul Convention is the most comprehensive international treaty combating violence against women and domestic violence. In June 2017 the EU signed the convention and thereby took the first step towards the accession of the convention. Therefore, the EU was able to nominate a candidate for the election of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO, 2017). The latter is an independent human rights body established by the Council of Europe and responsible for monitoring the implementation of the Istanbul Convention by the parties (Council of Europe, 2017a). The first parties evaluated by GREVIO were Austria, as the first European country, and Monaco, in accordance with the provisional timetable for the first evaluation procedure 2016 to 2020 (Council of Europe, 2018). So far (by April 2018), GREVIO published reports on Austria (Council of Europe, 2017b) and Monaco in September 2017 (Council of Europe, 2017c) as well as on Albania (Council of Europe, 2017d) and Denmark in November 2017 (Council of Europe, 2017e).

Under the heading “*Support for victims of sexual violence*” Article 25 of the Istanbul Convention foresees that the parties “*take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims*” (Council of Europe, 2011). Thereby, the Istanbul Convention points out the relevance of clinical forensic examination for victims of violence. Also the Austrian state report to GREVIO mentions in context with forensic examinations that “[p]rompt documentation and careful gathering of evidence are key to ensuring that the preserved evidence will be admissible in court.” Further, the state report lists the currently existing Austrian examination options in Graz, Innsbruck, Salzburg and Vienna (Federal Ministry of Health and Women’s Affairs, 2016). GREVIO (2017) determined in its Baseline Evaluation Report on Austria in paragraph 100 “*a stark contrast in the number, scale and regional spread of services between domestic violence victim services and services for victims of other forms of violence*”. Meanwhile, violence protection centres for domestic violence are available in all nine provinces, specialised counselling service for victims of sexual violence and rape is only provided in five provinces (GREVIO, 2017). Already the Austrian NGO-Shadow Report, which was issued in September 2016 to GREVIO, criticised this fact (Association of Austrian Autonomous Women’s Shelters & Domestic Abuse Intervention Centre Vienna, 2016). Therefore, GREVIO urges the Austrian authorities to “*ensure generally that the specialist support services meet the demands of victims, irrespective of the form of violence they experienced or the particular realities and compounding difficulties they face*”. Further, the report addresses Austria to secure financial resources for the implementation of these support services (GREVIO, 2017). Subsequently to GREVIO’s Baseline Evaluation Report, the Federal Ministry of Health and Women’s Affairs (2017) issued Comments on GREVIO’s report stating in proposal 27a that Austria recognizes the need for comprehensive and adequate support services for victims and will pursue to continue its efforts despite of financial limitations and limited human resources. Also the expansion of specific counselling services for victims of sexual violence is proposed (proposal 27b). At current state, the government is working on recommendations how victim support can be improved best (ORF, 2018). Therefore, a task force for violent and sex crimes is ought to be set up, which will include experts representing both practice and science (Federal Ministry of the Interior, 2018).

Besides the Council of Europe, which dedicated an international treaty - the Istanbul Convention - to the prevention of violence against women, also the EU addressed the issue of victims' rights. The centrepiece of these efforts regarding victim protection and support is the *Directive (EU) 2012/29 of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*, so-called victims' rights directive. In addition, the EU has put in place the following legislation: *Directive (EC) 2004/80* concerning the compensation to crime victims enables individuals to apply for state compensation, if they have become a victim anywhere in the EU. *Directive (EU) 2011/99* on the European protection order establishes a mechanism to request a European Protection Order, if a protection order in criminal matters has been issued in one European member state. *Regulation (EU) 2013/606* on mutual recognition of protection measures in civil matters constitutes a mechanism for direct recognition of protection orders issued between countries of the EU (European Commission, 2018a).

Taking into consideration that victims' rights differ in the individual member states of the EU, the victims' rights directive wants to achieve significant changes in relation to the treatment of victims of crime. They and their families should receive a non-discriminatory access to the rights laid down in the directive. The key victims' rights are: right to information, right to support, right to participate in criminal proceedings, right to protection and to individual assessment, rights of victims' family members, right to understand and be understood. Further, all rights are granted to EU-citizens (Article 20 TFEU), who fall victim to crime in Europe, regardless of their nationality, which is also specified in recital 10 of the victims' rights directive (European Commission, 2017). The aim of Directive (EU) 2012/29 is "to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings" through the "establishment of minimum standards" as stated in recital 2 and 4. Recital 10 lays down that victims should be protected, inter alia, from secondary and repeat victimisation and "be provided with sufficient access to justice". Especially women and children are in need of special support and protection, because they face a high risk of secondary and repeat victimisation, mentioned in recital 17. Laid down in Article 8 is the right to access to victim support services, Article 9 further specifies the minimums for victim support services. As one of these specialist support services member states of the EU should offer, recital 38 makes reference to "referral to medical and forensic examination for evidence in cases of rape or sexual assault". Irrespective of whether or not, the victim chooses to make a complaint with regard to a criminal offence to the police, the access to these support services should be provided as laid down in recital 40 and Article 8 (5) of the Directive (EU) 2012/29 (European Parliament & Council of the European Union, 2012). In that context, the European Commission notes that underreporting of crime is a major problem within the EU, reported cases to the police are only "the tip of the iceberg". For this reason, any victim should be able to seek assistance and support, regardless of whether he/she makes a complaint to the police (European Commission, 2015). Moreover, Article 20 lit d of the directive requests that "medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings". According to Article 27 and 28, the member states had to implement Directive (EU) 2012/29 - in other words: adopt new legislation transposing the directive into national law - by November 16, 2015 and had to provide data and statistics to the European Commission indicating how victims have accessed the rights of the Directive by November 16, 2017. Furthermore, by the same date, the European Commission should have submitted a report to the European Parliament and to the Council of the EU evaluating, if the member states have taken the necessary measures

to implement the rights of the directive pursuant to Article 29 (European Parliament & Council of the European Union, 2012).

The draft report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality (2018) on the implementation of Directive (EU) 2012/29 establishing minimum standards on the rights, support and protection of victims of crime points out that as of September 2017 only twenty-three European member states had officially transposed the directive. Moreover, it states in connection with the implementation of the directive that some European countries only partially complied with the prescribed requirements of the directive. Therefore, the European Commission initiated in total sixteen infringement procedures against member states. According to the database of the European Commission, the infringement cases concern Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia and Slovenia (European Commission, 2018b). The draft report further urges the European Commission to attend its reporting obligation as determined by Article 29 of Directive (EU) 2012/29. The Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality emphasizes that one of the primary objectives of the directive is "*to improve the position of victims of crime across the EU and to place the victim at the centre of the criminal justice system*". Nevertheless, victims' support services are not consistently available throughout the European countries (Committee on Civil Liberties, Justice and Home Affairs & Committee on Women's Rights and Gender Equality, 2018).

A low-threshold access - no formal complaint with regard to a criminal offence is a prerequisite - to clinical forensic examinations would in our view be able to comply with all legal requirements prescribed by the "Istanbul Convention" and the Directive (EU) 2012/29. As already mentioned, the availability of forensic examinations is different from country to country and is in some countries not ensured at all. Therefore, the LBI CFI devoted the project JUSTeU! to strengthen the legal positions of victims of physical and/or sexualized violence through the dissemination of low-threshold clinical forensic examination offers.

JURIDICAL STANDARDS FOR CLINICAL FORENSIC EXAMINATIONS OF VICTIMS OF VIOLENCE IN EUROPE

Under the "Joint Justice & Daphne call - Actions grants to support national or transnational projects to enhance the rights of victims of crime/victims of violence- JUST/2015/SPOB/AG/VICT" the LBI CFI proposed the project JUSTeU!, which stands for **juridical standards** for clinical forensic examinations of victims of violence in Europe, to the European Commission. The project was granted and is co-funded by the Justice Programme of the European Union. In February 2017, the biennial JUSTeU! project started - ending with January 2019. The LBI CFI - Mag. Dr. Reingard Riener-Hofer and her team (Mag. Dr. Sylvia Wolf, Mag. Dr. Hanna Sprenger, DI Johannes Höller, Mag. Sophie Kerbacher and Mag. Michael Pfeifer, BA BA MA) - has the project lead. The international project consortium consists of medical and juridical institutes. Two projects partners are from Germany: the Institute of Forensic and Traffic Medicine at the University Hospital Heidelberg (Prof. Dr. Kathrin Yen and Dr. Astrid Krauskopf) and the Institute for Forensic Medicine at the Hannover Medical School (Prof. Dr. Michael Klintschar). One project partner is the Department of Medical and Surgical Specialties, Radiological Sciences, and Public Health at the Università degli Studi di Brescia (Assoc. Prof. Dr. Andrea Verzeletti) in Italy. Two further project partners are from the Czech Republic: the Department of Forensic Medicine at the

Faculty of Medicine in Hradec Králové of Charles University (Assoc. Prof. Dr. Petr Hejna) and the Faculty of Law at Palacký University Olomouc (Dr. Michal Malacka, Ph.D.).

The JUSTeU! project pursues to emphasize the implementation of Directive (EU) 2012/29 and to achieve a better support for victims of survived violence through the availability of clinical forensic examinations (Kerbacher et al., 2018). The project is structured in three major topics.

DISSEMINATION AND AWARENESS-RAISING ACTIVITIES

The first major topic is *Dissemination and Awareness-raising Activities* and aims to achieve a more proficient care for victims of crime. For the purpose to raising knowledge on the relevance of forensic examination offers in the public, several project activities are included in the project. The first public event, where also all project partners participated, was the JUSTeU! Kick-Off Meeting in March 2017 in Graz. Around 90 persons including representatives from victim support, forensic medicine, justice, police, hospitals and the general public attended the kick-off meeting. To emphasize the relevance of an access to clinical forensic examinations in the public, three lectures were given by experts from victim support, forensic medicine and the judiciary and the contents of the JusteU! project were introduced. Beyond that, each project partner country hosted a national symposium in 2018 to raise awareness for the importance of clinical forensic examinations in the public. In Germany, the Institute of Forensic and Traffic Medicine at the University Hospital Heidelberg and the Institute for Forensic Medicine at the Hannover Medical School held a joint national symposium on the 5th of March. In Austria the symposium took place on the 8th of March 2018 under the patronage of the Austrian Federal Ministry of the Interior in Vienna. On the 12th of April, the national symposium in the Czech Republic was held in České Budějovice. The Italian national symposium was set for the 3rd of May in Brescia. To draw attention to the project, stickers (as shown in Figure 2), flyers and forensic scales (as shown in Figure 1) were created as advertising material and distributed at all national symposia. Moreover, the LBI CFI presented the project at international medical conferences and at national social networks. Further, the LBI CFI created the public access project website, accessible via <https://www.justeu.org/>, which is continuously updated and offers detailed information about the project, corresponding publications and upcoming public events.

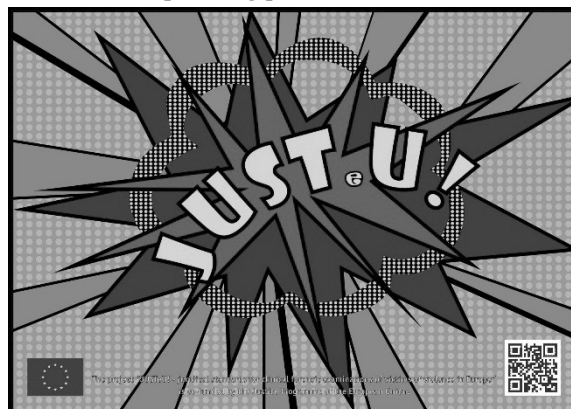


Figure 2: JUSTeU! sticker
Source: JUSTeU!, 2018

EVALUATION OF THE LEGAL REGULATIONS FOR DOCTORS RELATING TO VICTIMS OF PHYSICAL VIOLENCE AND POSSIBLE EXPANSION OF NATIONAL CLINICAL FORENSIC SERVICE OFFERS

The second major topic and main part of the JUSTeU! protect is the *Evaluation of the legal regulations for doctors relating to victims of physical violence and possible expansion of national clinical forensic service offers*. One of the project goals of JUSTeU! is the analysis of the legal parameters for such examinations in the EU. Besides, the already mentioned international treaty - the Istanbul Convention - and the outlined European legislation - particularly Directive (EU) 2012/29 - also the legal regulations on a national level need to be observed (for example, any type of legal obligations medical practitioners face when they are concerned with a victim of crime). Therefore, the juridical expert Dr. Michal Malacka, Ph.D. from the Faculty of Law at Palacký University Olomouc draws up a legal opinion on the European and national regulations concerning doctors during clinical forensic examinations. The legal opinion is based on the replies to the questionnaire *QLaw* - questionnaire concerning the legal framework for doctors when dealing with a case of physical violence -, which was developed in the project and sent to all project partners as well as about 180 relevant stakeholders as Ministries of Justice and Health, medical associations, members of the European Council of Legal Medicine and experts in law and forensic medicine. Concurrently, the same persons received the second in the project developed questionnaire *QCFN* - questionnaire concerning national victim supporting low-threshold clinical forensic examination offers. Both questionnaires were distributed via email as word documents with input fields and could be completed electronically. The replies to *QCFN* serve as valuable information source to gain an overview on the existing clinical forensic services in European countries. Moreover, through this questionnaire information about the general attitude towards the foundation of a future Clinical Forensic Network Europe, in short *CFN Europe*, was collected. Despite the constant striving to distribute the questionnaires European-wide, the responses to the surveys were scarce. Overall, through the completed *QLaws*, data from ten European countries (Austria, Croatia, the Czech Republic, Germany, Italy, Luxembourg, Poland, Slovakia, Slovenia and Sweden) was gathered. The quality of the answers lacked of comprehensive legal knowledge by the responders. Therefore, it took great efforts to compile comparative results, which could be used for the legal opinion. Through the responses to *QCFN*, information from thirteen European countries (Austria, Croatia, the Czech Republic, Germany, Greece, Ireland, Italy, Luxembourg, Poland, Portugal, Romania, Slovakia and Slovenia) could be obtained.

JUSTEU! WORKSHOP

The third major topic is the *JUSTeU! Workshop including the definition of a European-wide minimum standard for victim supporting clinical forensic examinations, and the launch of a permanent European Clinical Forensic Network (CFN Europe)*. CFN Europe should serve as an expert pool for clinical forensic medicine throughout the EU to exchange experiences and build capacities, also after the end of the project. The main project activity within this project phase is the two-day workshop on the 11th and 12th of June 2018 in Graz in Austria. At the workshop all project partners and further experts in clinical forensic medicine are participating - thereby, eleven European countries are represented: Austria, Croatia, the Czech Republic, Germany, Ireland, Italy, Luxembourg, Portugal, Romania, Slovakia and Slovenia. The legal opinion

(based on the evaluation of the responses towards QLaw), experience reports focusing on clinical forensic medicine in practice as well as the overview on clinical forensic services in Europe (based on the analyses of the responses towards QCFN) are presented by the project partners at the JUSTeU! Workshop. Further, two of the primary objectives of the workshop are the formulation of a European minimum standard for clinical forensic examinations and the foundation of CFN Europe. Moreover, statutes for CFN Europe are developed at the workshop together with all participants. The European network shall enhance the development of comprehensive clinical forensic services in the EU.

CONCLUSION

Providing access to forensic examinations for the support of victims of crime is prescribed by the Istanbul Convention as well as the victims' rights directive. Further, the Baseline Evaluation Report on Austria by GREVIO states that Austrian authorities should secure the availability of sufficient victim support services, especially also for victims of sexual violence. All these requirements are taken into consideration within the JUSTeU! project of the LBI CFI.

The JUSTeU! project strives to improve the knowledge on and to raise awareness about the importance of clinical forensic examinations for victims of physical and/or sexualized violence in the public and for professional groups, who deal with victims of crime. Given the fact that most acts of violence are not reported to the police, a low-threshold access to clinical forensic examinations, independent of making a formal complaint with regard to a criminal offence to the police, is a desirable solution. Thereby, also the risk of secondary and repeat victimisation can be reduced. After a properly conducted clinical forensic examination in a timely manner, victims have a detailed medical report - including photo documentation and possibly secured trace evidence material - on the findings at their disposal, which may be used as evidence in criminal court proceedings. This further enables the victim to avoid follow-up examinations at a later time.

Within JUSTeU! a data collection concerning the legal framework - on a national and European level - for medical practitioners when dealing with a victim of physical and/or sexualized violence is compiled, which serves as a valuable starting point to discuss further steps for implementing forensic examination offers in the European countries. Via the foundation of a permanent CFN Europe, which is designated to pursue these efforts even after the end of the project, the long-term impact of JUSTeU! should be guaranteed. Besides that, a minimum standard for clinical forensic examinations will be developed in the project. Conclusively, European countries should be conveyed, that the availability of low-threshold and free of charge forensic examinations to victims not only supports and benefits victims but also assists the state itself to increase legal certainty in this field.

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QUALITY OF PROVISIONS OF THE RUSSIAN CRIMINAL CODE ON THE LIABILITY FOR SEXUAL ASSAULT

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ABSTRACT³

Crimes against the sexual integrity and sexual freedom are regarded as some of the most dangerous violations of an individual well-being. It has been proven that coexistence of Articles 131 (criminal liability for sexual intercourse) and 132 (criminal liability for various sexual acts) of the Russian Criminal code leads to a number of issues, as it is basically impossible to impose Article 131 alone in the case of rape. Subdivision of sexual violence into two elements, one of which only includes the intercourse, and the other all the rest, leads to violation of the concept of justice. Based on the thorough study of the articles that refer to the sexual integrity and sexual freedom, and their implications in practice, a proposition of a single Article providing criminal liability for any acts of sexual violence was formed.

Keywords: Criminal code, sexual assault, rape, violence, Russia

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INTRODUCTION

Violence in a broader sense means the application of physical or any other unlawful force to a person (Ozhegov Dictionary, 2018). The scope of the problem is hard to determine due to various factors, including the cultural context, legal provisions, victims' unwillingness to report the offense etc. For example, World Health Organisation [WHO] (2017) estimates that 1 in 3 of women worldwide experienced some form of violence (it is estimated that approximately 35% of women worldwide experienced either physical and/or sexual violence), while the data for men is not available. In most of the countries, the field of (sexual) violence is addressed in the Criminal Codes.

The Criminal Code of the Russian Federation (hereinafter Russian Criminal Code) (orig. Ugolovnyj kodeks Rossijskoj Federacii) (1996) considers crimes against the sexual integrity and sexual freedom as one of the most dangerous forms of violation of an individual well-being. The danger of these acts lies primarily in the irreversible damage inflicted to the victim, which results in deep mental, psychological and physical trauma, and affects victim's social status. Statistical data of the Ministry of Internal Affairs of the Russian Federation shows that the number of sexual crimes in Russia is decreasing in the recent years (e.g. number of registered cases of rape decreased from 5398 in 2009 to 3538 in 2017) (Ministerstvo Vnutrennikh Del, 2018). Bimbinov (2015) argues that these forms of crimes are mostly connected to the perpetrator's masculine behaviour, fear of the opposite gender, perception of women as an object of threat and other psychopathological manifestations, and in result unaffected by social and economic changes.

In this paper, we address the problem of imposing the Article 131 of the Russian Criminal Code that refers to criminal liability for sexual intercourse (without the consent

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and violent in nature). Based on the analyses of legal and legislative sources and legal comparative studies we argue that the Article 131 is impossible to impose alone in the cases of rape. Moreover, the division of sexual violence in the Russian Criminal Code on those forms that include intercourse and other forms of sexual violence, leads to a violation of the concept of justice. In the first part of the paper, various definitions of violence and sexual violence are highlighted, and the development of the Russian Criminal Code is presented. In the second part, sexual violence in the context of the Russian Criminal Code is discussed. In conclusion, possible solutions for the current legal situation in the field of sexual violence in the Russian Federation are exposed.

DEFINITION OF VIOLENCE

Violence can be defined as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community (Mercy, Krug, Dahlberg, & Zwi, 2003). Filipič (2015) argued that violence refers to the violation of rules of safe and quality coexistence of people, violation of human rights and personal boundaries, and/or the abuse of power at the expense of another. Violence takes many forms (e.g. ideological, cultural, ecological, psychological, physical, sexual, economic etc.) but its definition depends on the social and cultural contexts (Meško, 1998; Mugnaioni Lešnik, Koren, Logaj, & Brejc, 2009). Physical and sexual violence present the predominant forms, which are frequently accompanied by psychological violence. While physical violence refers to violation of an individual's physical integrity against his will, psychological violence includes threats of physical violence and/or damaging information, which could substantially harm the victim's rights or interests (Ivanova, 2002). For the purposes of this paper, we will focus on sexual violence, which is presented in more detail below.

SEXUAL VIOLENCE

The broad definition identifies sexual violence as a sexual act committed against someone without that person's freely given consent (Basile, Smith, Breiding, Black, & Mahendra, 2014). Moreover, sexual violence can be defined as any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts of traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It can include: (a) completed or attempted forced penetration of a victim, (b) completed or attempted alcohol/drug-facilitated penetration of a victim, (c) completed or attempted forced acts in which a victim is made to penetrate a perpetrator or someone else, (d) non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or misuse of authority to consent or acquiesce, (e) unwanted sexual contact, and (f) non-contact unwanted sexual experiences (Centers for Disease Control and Prevention, 2017; Jewkes, Sen, & Garcia-Moreno, 2002; Kury, Pagon, & Lobnikar, 2003; World Health Organization [WHO], 1996). Legal definitions of sexual violence rarely reflect all the elements of broader definitions. In the following section, the development of the Russian Criminal Code is presented.

THE DEVELOPMENT OF THE RUSSIAN CRIMINAL CODE

The Russian Criminal Code currently in place was enacted on May 24, 1996, becoming effective from January 1, 1997, following a long and arduous legislative process full of political, economic and social controversy that arose during the first years after the fall of

the Union of Soviet Socialist Republics (USSR). Virtually immediate transition to the market economy led to an enormous increase in white-collar crime. According to the VII Congress of Peoples' Deputies of the Russian Soviet Federative Socialist Republic (RSFSR), what emerged in Russia was basically a criminal market model. This along with ideological and social turbulence called for a new criminal law to be enacted.

On October 19, 1992, the draft of the new Criminal Code, worked on by 35 courts of Russian constituent entities, 7 academic institutions of the Ministry of Interior, 5 state universities, 7 research institutes, discussed on three panel conferences and reviewed by the Harvard Law School, USA was introduced by the President of Russia to the Supreme Soviet. The President commented on the new law being highly relevant, and further amendment of the then-current Criminal Code of Russian SFSR of 1960 enacted under completely different political, economic and social conditions no longer possible. It was further noted that the draft had already positively affected the administration of law enforcement (Kuznetsova, 1995).

However, the draft never made it to the Supreme Soviet as it was repelled by the Committee on legislation and judicial and legal reform. Korenevsky (1993) saw the reason for such action in the conflict of interest of the Committee members. In the period 1993-1994 further drafts of the Criminal Code were written. While the Special Part of these drafts was generally similar to the 1992 version, the General Part contained a number of significant differences, such as criminal liability of legal entities, subdivision of criminal laws, introduction of the new purpose of punishment etc. (Kuznetsova & Tyazhkova, 2002).

Two drafts of the Criminal Code were introduced to the State Duma in October 1994: the President's (based on the 1992 draft) and the deputies' (based on the alternative drafts). On May 24, 1996, a finalized version of the Criminal Code was enacted by the State Duma, approved by the Federation Council on June 5, 1996, and signed by the President of Russia on June 13, 1996 (Kuznetsova & Tyazhkova, 2002). This new Russian Criminal Code contains a separate Chapter 18 "Crimes against sexual inviolability and sexual freedom of the person" providing liability for sexual assault (Ugolovnyj kodeks Rossijskoj Federacii, 1996). Since its enactment, these provisions saw over seven amendments. Changes introduced into provisions regarding liability for sexual violence were mostly related to more severe punishment and introduction of new aggravations.

SEXUAL VIOLENCE IN THE CONTEXT OF THE RUSSIAN CRIMINAL CODE

A national legal act that regulates sexual violence in the Russian Federation is Criminal Code. Description of sexual offenses, their basic statutory element, and sentences are provided in Chapter 18: *Crimes against the sexual inviolability and sexual freedom of the person*, which consist of five articles (Ugolovnyj kodeks Rossijskoj Federacii, 1996):

- *Rape* (Article 131) – a sexual intercourse with the use of violence or of a threat thereof, with respect to the victim or to other persons or with the use of a helpless state of the victim;
- *Violent actions of sexual character* (Article 132) – pederasty, lesbianism or other actions of sexual character with the use of violence or with a threat thereof with respect to a male (female) victim or to other persons or with the use of the helpless state of the victim;
- *Compulsion to perform sexual actions* (Article 133) – compulsion of a person to enter into illicit relations, pederasty, lesbianism, or the commission of other sexual actions by

means of blackmail, threat of destruction, damage, or taking of property, or with the use of material or any other dependence of the victim;

- *Sexual intercourse and other actions of sexual character with a person who has not reached the age of sixteen years* (Article 134) – sexual intercourse committed by a person who has reached the age of eighteen years of age with a person who has not reached the age of sixteen and sexual maturity.
- *Depraved actions* (Article 135) – the commission of lecherous actions (exhibitionism, demonstration of pornographic materials and sexual touches – petting) without using violence by a person who has reached eighteen years of age with a person who has not reached sixteen years of age and sexual maturity.

In the following section, the problems with current provisions of the Russian Criminal code that focus on sexual violence are presented.

THE PROBLEMS WITH PROVISIONS OF THE RUSSIAN CRIMINAL CODE REGARDING SEXUAL VIOLENCE

Deriving from the legal provisions of Articles 131 and 132, we argue that sexual activities performed in cases of rape and violent actions of sexual character include not only sexual violence but also the threat of violence and/or abuse of the helpless state of the victim. The only difference between rape (Article 131) and violent actions of sexual character (Article 132) can be seen in the form of sexual activity. Prior the enactment of the Russian Criminal Code (1996), no statutory criminal liability for acts of sexual violence other than sexual intercourse existed. The court had to determine the nature of such acts (e.g. anal or oral sexual contact) (Verhovnyj Sud RSFSR, 1990, 1991). Dyachenko (1993) noted that such acts accord in almost 20% of the cases.

After the enactment of the current Criminal Code in 1996, the problem of liability of the offender committing rape (Article 131) and other violent actions of sexual nature (Article 132) was apparently resolved. However, the analysis of all objective and subjective elements of sexual crimes raises several questions. Firstly, the current legal provisions of Articles 131 and 132 do not refer to criminal liability for sexual intercourse with the use of violence performed by a female perpetrator on a male victim.⁴ Systemic analysis of Chapter 18 of the Russian Criminal Code leads to the conclusion that sexual intercourse and other sexual acts do not overlap, i.e. the former is not part of the latter. As previously noted, other violent actions of sexual character include any form of sexual contact between the perpetrator and the victim, with exception of sexual intercourse, pederasty, and lesbianism. Forceful initiation by a female perpetrator of a penile-vaginal contact with a male victim presents a form of sexual intercourse, which is not considered a crime under the current version of the criminal law (Ugolovnyj kodeks Rossijskoj Federacii, 1996).

Secondly, the coexistence of Article 131 providing liability for sexual intercourse and Article 132 providing liability for other sexual acts (including petting, masturbation and other forms of oral and manual stimulation) should basically make it impossible to impose Article 131 of the Russian Criminal Code alone in case of rape. Due to human physiology, a sexual contact (consensual or otherwise) inevitably leads a person to perform sexual activities other than the intercourse itself to induce or sustain arousal or reach sexual satisfaction (Levin &

4 The repealed ruling of the Plenum of the Supreme Court of the Russian Federation (orig. Verhovnyj Sud Rossijskoj Federacii) from 2004 “On legal precedents in cases provided for by Articles 131 and 132 of the Criminal Code of Russia” contained clarification that such acts are included in other sexual acts.

van Berlo, 2004).⁵ Theoretically, it is possible that perpetrator penetrates the victim's vagina under threats of violence without touching her in any other sexual way. In most cases of rape, the court either pays little attention to other kinds of sexual acts or consider them part of the sexual intercourse.⁶ This approach does not fully reflect the law. Forced sexual intercourse is clearly defined in the Article 131 of the Russian Criminal Code. Other criminal forms of sexual contact are subject to Article 132 of the Russian Criminal Code. In such cases, according to the Article 17 of the Russian Criminal Code, cumulative sentencing is required (Ugolovnyj kodeks Rossijskoj Federacii, 1996).

Thirdly, the current subdivision of crimes of sexual violence into two elements, where one only includes sexual intercourse, and the other all remaining forms of sexual violence, leads to violation of the concept of justice. According to the decision of the Supreme Court of the Russian Federation, where several instances of rape or sexual violence took place within a short period in respect of the same victim and the circumstances suggest these acts were committed by the perpetrator under the same intent, they should be considered as one and the same crime, which should be classified in accordance with either the Article 131 or Article 132 of the Russian Criminal Code. However, if the perpetrator committed both rape and violent actions of sexual character in any order in respect of the same victim, the crimes shall be classified cumulatively according to the Articles 131 and 132 of the Russian Criminal Code, regardless of whether there was a time gap between the rape and violent actions of sexual character (Verhovnyj Sud Rossijskoj Federacii, 2015). In practice, this means that a person who committed a forced sexual intercourse and some other act of sexual violence (e.g. oral sex) against the same victim within a short period shall be subject to cumulative sentencing,⁷ while another person who committed several acts of sexual violence equal in terms of public danger, except sexual intercourse (e.g. anal and oral sex) shall only be liable according to the Article 132.⁸

DISCUSSION AND CONCLUSION

Described problems with legal provisions of Articles 131 and 132 of the Russian Criminal Codes, which refer to sexual violence, demonstrate the need for their correction. Subdivision of rape and other violent actions of sexual character into two different groups of crime is unreasonable, as it introduces gender discrimination into criminal law and artificially limits the range of possible subjects and criminalizing forms of sexual activity rather than violence

5 In 2010, Nikulinsky district court of Moscow found the defendant guilty of crimes according to the Part 1 of the Article 132 and Part 1 of the Article 131 of the Russian Criminal Code. It was established that the defendant undressed himself and the victim in a secluded area, then violently forced the victim to masturbate his penis against her will. Then, in order to fulfill his sexual needs, the defendant, fully realizing the actual character and public danger of his actions and using the fact that the victim's will had been suppressed by the previous acts of sexual violence, engaged in a natural sexual intercourse with her against her will (Nikulinskij rajonnyj sud, 2010).

6 The municipal court of Taganrog (Rostov Oblast) found the defendant guilty of the crime according to the Part 1 of the Article 132 of the Russian Criminal Code. It was established that the defendant, with the intent of raping, with the use of violence in order to fulfill his sexual needs, started caressing the victim, holding her down to the bed with his arms, pulled up her nightgown and penetrated her vagina (Taganrogskij Municipal'nyj Sud, 2011).

7 In 2011, Levoberezhny district court of Voronezh found the defendant guilty according to the Paragraph b of Part 2 of the Article 131 of the Russian Criminal Code for threatening the victim with a knife in order to force her to take his penis in her mouth, after which he undressed her and penetrated her vagina against her will (Levoberezhnyj rajonnyj sud, 2011).

8 In 2011, Promyslenny district court of Samara found the defendant guilty according to the Part 2 of Article 132 of the Russian Criminal Code for using violence and threat of death to force the victim to take his penis into her mouth and make in and out movements, after which he turned the victim around and penetrated her anus (Promyslennyj rajonnyj sud, 2011).

as criminal means. In order to remedy that, rape and other violent actions of sexual character need to be merged into a single crime (Isaev, 2007). Maslak (2013) and Smirnov (2015) believe that rape and other violent actions of sexual character should be merged into a single crime under the name *Acts of sexual violence*, providing liability for rape, pederasty, lesbianism or other sexual acts performed with the use of violence or under threats of applying violence to the victim or other people or with the use of a helpless state of the victim.

Implementation of such measures would most definitely affect both the criminal law and, more importantly, the law enforcement activity in a positive way. It does not, however, account for the need of differentiation of criminal liability for sexual acts of different levels of public danger. The proposed provision would provide the same punishment for sexual intercourse, pederasty, lesbianism and other sexual acts. However, these forms of sexual contact performed using violence may lead to different consequences for the victim, both physical and psychological. According to forensic experts, the consequences of rape and violent pederasty are far more severe than those of violent lesbianism (Deryagin, 2006; Shaldyaeva, 2010; Dmitrieva & Smirnova, 2011). This conclusion is obviously based on the fact that the former two forms of sexual violence involve penetration. This is why it should be more reasonable to differentiate the severity of sexual crimes based on the fact of penetration rather than gender or area of contact. Bezverkhov (2014) propose that a specific list of concepts should be developed in order to describe elements of crimes against sexual integrity and sexual freedom in a legal setting. It should be highly generalized, combining clear and precise instructions with flexible and adaptable wording, concise terminology and full coverage of the subject of protection by the legal provisions with regard to the relative instability of sexual patterns of society and corresponding criminal tendencies.

It would be reasonable not to include provisions for acts of sexual violence in the Article 132 of the Russian Criminal Code as most authors suggest (Criminal law encyclopedia, 2011; Smirnov, 2015), but in the Article 131 without changing its name. Removing the article on rape could lead to the most unpredictable interpretations while including any and all violent actions of sexual character under the concept of rape would not lead to any significant changes in the public conscience.

Currently, the Articles 131 and 132 of the Russian Criminal Code contain the same classification characteristics, some of which require correction. As an example, Paragraph a of Part 2 of both Articles in question, sets the same minimum and maximum sentence for acts of sexual violence by a group of persons, by a group of persons in collusion, and by an organized group. These forms of complicity need to be differentiated not only because of the different levels of public danger, but also with regard to the fact that such crimes are part of criminal activities of highly organized (sometimes international) groups such as those dealing in human trafficking and organization of prostitution (Nurmukhametova, 2012; Tyuryukanova, 2006).

Paragraph b of Part 2 of Articles 131 and 132 of the Russian Criminal Code provides increased liability for acts of sexual violence committed under the threat of murder or serious injury. This implies that under Part 1 of Articles 131 and 132 of the Russian Criminal Code the threat may only consist of a promise of battery or light to moderate injury, such as biting, breaking a finger or nose fracture. However, actual perpetration of such crimes under this kind of threat is highly unlikely. Nurkaeva (2014) wrote that it is hard to imagine a situation where the perpetrator of rape threatens the victims with only light or moderate injury. Additionally, Part 1 of Article 131 and Article 132 of the Russian Criminal Code provides the list of acts of sexual violence that lead to actual moderate injury as an

aggravation (Verhovnyj Sud Rossijskoj Federacii, 2014). Such consequences are objectively more dangerous than threatening the victim's life. This is why it seems reasonable to remove the aggravation characteristic in question and classify acts of sexual violence under threats of murder and serious injury according to Part 1.

Paragraph a of Part 3 and Paragraph b of Part 4 of the Articles 131 and 132 of the Russian Criminal Code provide lists of aggravation characteristics in connection with the minor age of victims. These are standard aggravations commonly used in direct or indirect crimes against a person. However, in context of Chapter 18 of the Russian Criminal Code, due to the specific nature of the actual subject of crime, the criterion for differentiation should be the "age of consent", which is currently sixteen years, rather than the legal age of majority. Changing the criterion of Paragraph a of Part 3 from minor victims to victims under the age of sixteen years removes the need to differentiate liability for such crimes against victims under the age of fourteen years, which used to be the age of consent. Instead, acts of sexual violence against victims under the age of sixteen years committed by a parent or legal guardian could be classified as an additional aggravation (Kameneva, 2009; Poddubnaya, 2008). This seems to be a reasonable addition since almost every study of the subject led to the conclusion that sexual abuse by the victim's guardian is characterized by high latency, a tendency to repeat and severe consequences for the victim's physical, psychological and mental development. In addition, removal of the minor age from the aggravation clause would make the existing note to the current version of the Article 131 of the Russian Criminal Code obsolete. This widely criticized note not only impedes judicial discretion, but also contradicts fundamental nature of Chapter 18 of the Russian Criminal Code, and violates the principle of legality and the concept of justice (Rueva, 2016).

The aggravation characteristic described in Paragraph b of Part 3 of Articles 131 and 132 of the Russian Criminal Code could be seen as reasonable. However, for the avoidance of doubt regarding the criminal responsibility for infecting the victim with HIV (Smirnov, 2015) the order of alternative consequences listed should be changed. The current wording leaves no room for arguments denying the possibility of application of this aggravation in cases of perpetrator's irresponsibility regarding the infection of the victim with HIV.

Unlike the provisions discussed above, Article 133 of the Russian Criminal Code that deals with sexual coercion has drawn no serious criticism from any authors or law enforcers. Suggestions made for the improvement of the Article are mostly focused on more severe punishment for crimes or clarification of certain elements of crime (Dydo, 2006; Korgutlova, 2009). In practice, problems with the provision in question usually arise in cases of misunderstanding of the elements of crime, such as methods of perpetration.

Regarding the problem of criminal liability for sexual intercourse, where perpetrator is a female it would make sense to apply systematic changes in the Articles 131, 132 and 133, which would consider forceful initiation by a female perpetrator of a penile-vaginal contact with a male victim as a crime. Kameneva (2009) pointed out that criminal liability for sexual intercourse with the use of violence, under threats of violence or with the use of a helpless state of the victim regardless of the subject's gender should be provided in a single point of the criminal law.

Some situations, however, are not subject to legal treatment under the current version of Chapter 18 of the Russian Criminal Code and present a loophole in the legal framework regarding the protection of sexual integrity and sexual freedom. For example, there are currently no provisions in the criminal law for criminal liability for coercion of a person

to engage in sexual acts with another person. Article 132 of the Russian Criminal Code is applied in such cases by analogy, which is prohibited under current legislation (Korobeev, 2014).

The study comprehensively reviews the elements of violent sexual crime, pointing out the primary legal and law enforcement issues and suggesting possible solutions. The findings of this study may be used for the modification of Russian criminal legislation as well as further studies.

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KEY ASPECTS OF THE EFFICIENCY OF THE SLOVENIAN JUDICIARY - PAST VS FUTURE

*Mojca Rep*¹

ABSTRACT

Public trust in the judiciary depends on the ability or inability of all three branches of power to do everything necessary to ensure the judiciary's higher quality. The latter is also provided by statutory acts. In the judicial year 2018, the improvement of the judiciary's quality is one of the priorities. The international community admits that Slovenia has made significant progress in recent years, as the court backlogs and the time taken to resolve most of the cases have been reduced. However, the judiciary still strives to achieve greater transparency and efficiency as well as improve the quality of courts with adoption of additional (also) legal changes. The purpose of all efforts is to shorten the path to "understandable" justice which undoubtedly has a positive impact on public trust in the judiciary.

Keywords: trust in the judiciary, legislation, judicial statistics, judiciary

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INTRODUCTION

According to the Constitution of the Republic of Slovenia (Ustava Republike Slovenije [URS], 1991) judiciary represents an independent branch of power entrusted with an impartial and independent trial without undue delay in order to strengthen the rule of law and the protection of rights and freedoms, respecting the generally applicable principles of international law, international treaties and compliance with other legislation of the Republic of Slovenia. Consequently, the Slovenian judiciary must accept independence and impartiality, responsibility, integrity, fairness, trial in an optimum and predictable time and provision of quality services to its clients as fundamental values of its work. Indeed, all parties in court proceedings must be provided a fair, equally accessible, predictable, timely, cost-effective and quality court procedure. At the same time, it is very important for judiciary the kind of relationship it has with lay and professional public as well as its relationship with other two branches of power. While respecting the aforementioned independence and impartiality and based on assumption that court activities are organized in a way that relieves the judge of non-judicial work as much as possible, judiciary encourages individuals to participate, supports a sense of common affiliation, respect and public confidence and promotes peaceful dispute resolution. These are also the basic premises of the Slovenian judiciary. The judiciary re-defines its priorities annually to confirm the awareness of its responsibilities and, as an independent branch of power, directs all its efforts to ensure the quality of its work. In the Opening of the judicial year 2018 (Vrhovno sodišče Republike Slovenije, 2018a), the judiciary confirmed the following guidelines in order to ensure its successful and efficient performance in each individual case:

- each case will be dealt with individual treatment as soon as possible, which must be proportionate to the meaning and complexity of the case;
- each work is carried out at the lowest possible level of competence;
- the decisions taken should reflect procedural fairness; and
- the judges (will) monitor as well as manage court proceedings.

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According to the Europe 2020 strategy (European Commission, 2010) as well as the Justice 2020 strategy (Ministrstvo za pravosodje in javno upravo, 2012), the judiciary is committed to respecting the expected time to resolve cases and to decide on how many judges are needed. This is primarily in the domain of judiciary itself, but based on the assumption that the other two branches of power also ensure the fulfilment of certain conditions (Vrhovno sodišče Republike Slovenije, 2018b).

SLOVENIAN JUDICIAL SYSTEM

The judicial function, in addition to the executive and legislative, is one of the three functions of the authorities responsible for the Rule of Law in the State. The basic tasks of the judicial system is deciding on the rights and duties of citizens in concrete cases and deciding in allegations against them. The Slovenian Constitution requires that all courts are impartial, independent and constituted by law. Judges must decide independently and are bound only by the Constitution (URS, 1991) and the law. The judicial system in Slovenia consists of two types of courts: general and specialized. Among the general courts, district courts (44) and regional courts (11) have jurisdiction over the first instance, and the jurisdiction between them is divided according to the content of each dispute. In the second instance, 4 higher courts decide, and the Supreme court is the highest court in the country. Specialized courts only operate in their narrower SCOPE. The four courts of first instance decide in labor and social disputes, and the task of the appeal body is carried out by the Labor and Social Court in Ljubljana. The Administrative court represents another form of specialized court, whose task is judicial review of the part of the state administration. Although the Constitutional Court is connected with a regular judiciary system, it is not part of it. The main tasks of the Constitutional Court are the protection of human rights and the protection of constitutionality and the legitimacy of regulations (Sodstvo Republike Slovenije, 2018).

THE SUCCESS OF SLOVENIAN COURTS BY 2018

In November 2013, a report on business performance of judiciary was first published on the website of the Slovenian judiciary, and since that year data have been collected in the Supreme Court's database. The aim of measuring court performance is to assess the overall effectiveness of a court and its individual programs, rather than to assess the performance of individual judges. The assessment of court business performance is the basis for organizational changes and a means of continuous improvement of court's performance and court programs (Vrhovno sodišče Republike Slovenije, 2018b). Therefore, it is mainly the data on the number of court cases, duration of procedures, age structure of resolved and unresolved cases, the numbers of judges and court staff and their workload that is published. This way the public is provided an insight into the average, actual, and anticipated times of resolving cases for each court and for all legal areas which increases the transparency of court work and at the same time enables making comparisons between the courts (Vrhovno sodišče Republike Slovenije, 2018b). Sufficient staff as well as relevant legislation is necessary for quality work of the courts. Further, quality work depends on the judiciary's competences to use legislation in practice. This and the duration of legal procedures are the most commonly assessed categories when it comes to public confidence in judiciary. For the purposes of this article, the following indicators will be presented:

- changes in the number of cases between 2007 and 2017;

- the duration of procedures or the average resolution time between 2013 and 2017 (due to the data structure in the court statistics document, the data between 2007 and 2012 could not be included);
- the number of court staff between 2007 and 2017;
- changes in sectorial legislation in the years 2014 - 2018 and their purpose; and
- the level of trust in the judiciary between 2010 and 2017.

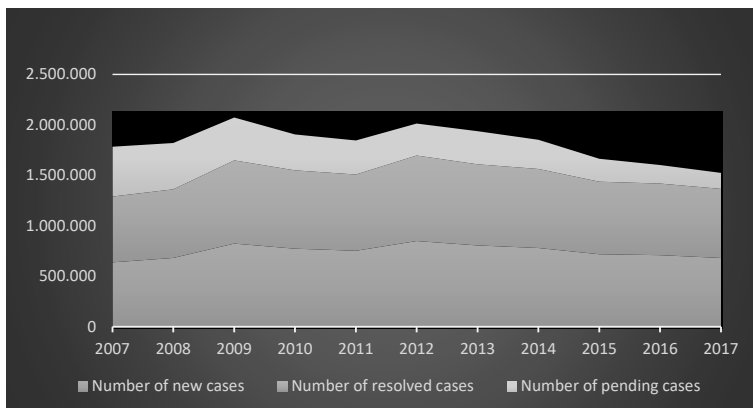
THE NUMBER OF COURT CASES FROM 2007 TO 2017

The first presented indicator is the number of all court cases between 2007 and 2017 followed by other two indicators, i.e. the number of resolved and unresolved cases in the same time period.

Table 1: *Figures of all new cases, resolved and unresolved cases between 2007 and 2017*

Year	Number of new cases	Number of resolved cases	Number of pending cases
2007	637.964	653.618	491.757
2008	681.069	681.069	459.256
2009	824.562	824.562	425.636
2010	774.684	774.684	356.952
2011	753.951	753.951	338.462
2012	848.968	848.968	316.572
2013	804.972	804.921	327.748
2014	781.404	781.404	290.939
2015	718.561	718.561	226.981
2016	709.743	709.743	183.880
2017	682.797	682.784	159.756

Source: Ministrstvo za pravosodje, 2008-2018



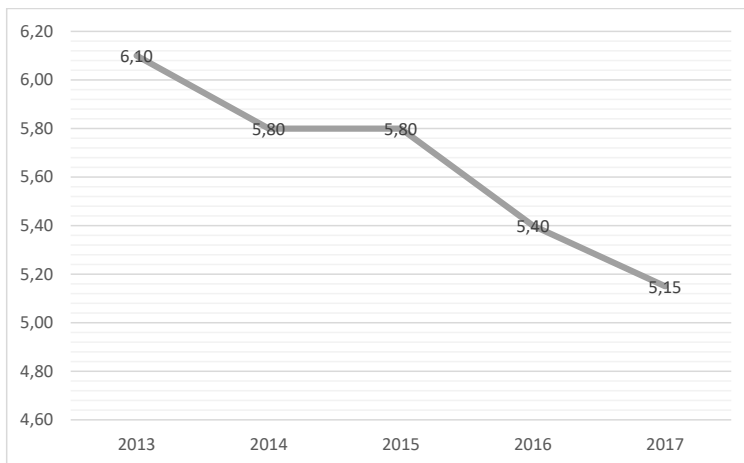
Graph 1: *Figures of all new cases, resolved and unresolved cases in the period 2007-2017*

Source: Ministrstvo za pravosodje, 2008-2018

As is seen from Table 1 and Graph 1 the number of all resolved cases has been constantly decreasing since 2012, while there has also been a constant decrease in the number of unresolved cases in the last decade. According to these figures, it can be claimed that the judiciary is in control of new cases. However, it is more than obvious that the number of the latter has been rising by 2009, and decreased by 2012, when the number of cases was the highest. Since 2012, it has constantly been decreasing. Court backlogs are no longer a systemic problem, while a smaller number of unresolved cases require a more detailed treatment and supervision of the court presidents (Vrhovno sodišče Republike Slovenije, 2018a).

DURATION OF COURT PROCEEDINGS OR THE AVERAGE RESOLUTION TIME BETWEEN 2013 AND 2017

An important indicator regarding the efficiency of judiciary is also duration of proceedings. Due to the structure of the data in accessible documents concerning judicial statistics, the data relating to the period between 2007 and 2012 could not be included. Graph 2 therefore presents the average time to resolve all cases between 2013 and 2017 for all legal categories.



Graph 2: *Average time to resolve cases in months between 2013 and 2017*

Source: Vrhovno sodišče Republike Slovenije, 2018a

As is seen from Graph 2, the average resolution time of cases in the period between 2013 and 2017 decreased. According to the Supreme Court's assessment one of the reasons for this was greater awareness of courts to increase their efficiency and legal stability which contributed to greater legal predictability and, therefore reduced the number of brought-in cases for speculative purposes. For further clarification, the data on the number of major pending cases is added that has been halved over the past five years, while the number of cases older than 10 years is increasing. At the same time, the number of major pending cases (between 5 and 10 years old) was reduced by a quarter. It is realistic to see average time of case resolution to drop further in the future (Vrhovno sodišče Republike Slovenije, 2018a). The court performance is coming into the mature phase (Vrhovno sodišče Republike Slovenije, 2017) assuming stable business circumstances and no major fluctuation in the resolution

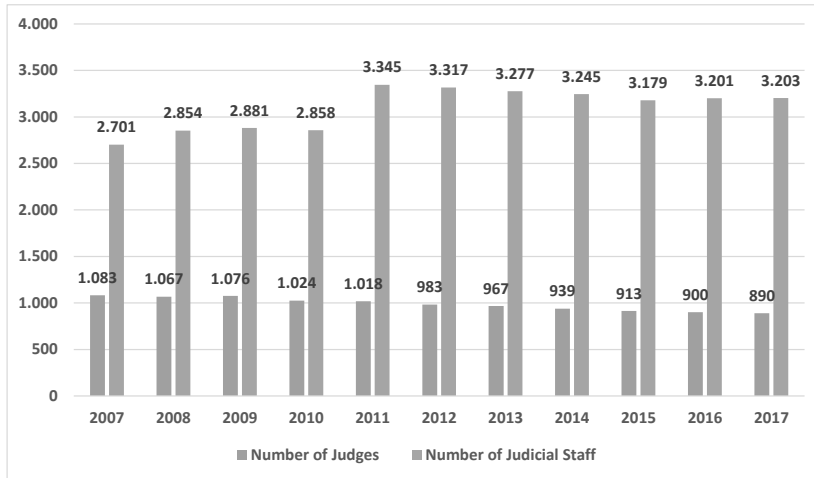
of brought-in cases. The courts monitor the settlement of the oldest cases in the ordinary course of their performance. These cases cannot be influenced by different courts for various reasons (e.g. the absence of clients, procedures before other bodies or other external circumstances that hinder continuation of the proceedings). This can be partly solved by a proper application of sectorial legislation. On the other hand, an excessive reduction in case resolution time can be at the expense of clients (the right to be heard) and the quality of the judiciary's functioning – reasonable and fairly guided procedure and a quality judicial decision (Vrhovno sodišče Republike Slovenije, 2018a) so carefulness is necessary. However, a comparison of the available data between 2003 and 2006, for example, shows that the average time taken to resolve the cases in 2003 was 26.5 months, 23.5 months in 2004, 20.4 months in 2005, and 19,8 months in 2006. This represents progress according to the data in Graph 2. The Court of Justice of the European Union (2017) also agrees that there has been considerable progress in the area of judicial backlogs. These are also the findings of the fundamental document of the European Commission (2018) - Justice Scoreboard for 2017, which shows that the resolution time of court cases has shortened and is in the European average, if not even significantly above the average. As explained above, the data on duration of the proceedings are presented irrespective of the legal field while a more detailed analysis would be desirable and interesting. Given the volume of data, this would require a completely new paper.

At this point it is necessary to mention the expected time of case resolution, i.e. disposition time, an internationally accepted calculation category that estimates the time needed to resolve a case, but only on the basis of data on resolved and unresolved cases in the previous year. However, the expected time of case resolution does not reflect the duration of the actual court proceedings in relation to the method of calculation (Vrhovno sodišče Republike Slovenije, 2018a). This indicator is merely used to follow the objectives set out in the Europe 2020 strategy (European Commission, 2010) and for international comparisons, while other indicators with a higher interpretive power are used (e.g. average (actual) time of case resolution) in the management of courts and are calculated on the basis of the information about duration of individual cases. Each year the Supreme Court determines and regularly monitors the achievement of time standards which are taken into account in the Annual Report on the Efficiency and Success of the Courts for 2015 and 2016 (Vrhovno sodišče Republike Slovenije, 2016, 2017) and are already properly included as one of the criteria in the assessment of Judicial Service for the presidents of courts. For all matters the expected solution time has shortened from 2.3 to 2.1 months. The inclusion of time standards data in the assessment of the work of an individual judge is a particular challenge, which may require a completely new approach in the future (Vrhovno sodišče Republike Slovenije, 2018a).

COURT STAFF

For many years a strategic direction of the Supreme Court has been to gradually reduce the number of judges. This is only possible with the provision of appropriate support from other judicial staff and when in line with the direction that the judge should be relieved of all duties other than the trial. The principle of sound management of court cases, meaning that each case is given individual attention and is further treated in a manner that is proportionate to its meaning and complexity, and the principle of each task being carried out at the lowest level of competence, are already firmly anchored in daily court operation. Therefore, judges should only take decisions in those cases in which judicial evaluation is

required (Vrhovno sodišče Republike Slovenije, 2018a). Graph 3 presents the data between 2007 and 2017 with regard to the number of judges and other court staff. The judges of the courts, the Secretary General of the Supreme Court, directors, assistants, court assistants, registrars, minute takers and other court staff, i.e. judicial officers who do not work on cases (Vrhovno sodišče Republike Slovenije, 2015, 2016, 2017).



Graph 3: *Number of judges and judicial staff 2007 - 2017*

Source: Ministrstvo za pravosodje, 2008-2018

Graph 3 shows that the number of judges has been decreasing since 2007 as well as the number of judicial staff (since 2011). In order to monitor the objectives of the Europa 2020 Strategy (European Commission, 2010), the courts monitor human resources also according to MFERAC information system which also takes into consideration replacement jobs. This means that the data on the number of staff employed for a fixed period due to replacements are duplicated. According to this methodology there were 890 judges and 3,470 employees (court staff) in Slovenian courts on 31st December 2017 which is 9 judges less than at the end of 2016, while the number of court staff members increased only by 17. The ratio between the number of court staff and judges on the selected date in 2017 was 3.9 employees per judge. In order to achieve the objective of the Europe 2020 strategy (European Commission, 2010), which equals 42 judges per 100,000 inhabitants and 4.3 employees of judicial staff per judge. The number of judges per 100,000 population is decreasing from 2012 onwards, when there were 47.8 judges and, at the end of 2017, there were 43.1 per 100,000 habitants. The number of judges should be further reduced by 20 judges by 2020, and judicial staff should be strengthened with between 220 and 230 new employees. (Vrhovno sodišče Republike Slovenije, 2018a). Since 2014, the Supreme Court has pointed out problems related to age structure of the judges. By reducing the number of judges, it is also necessary to change the age structure of judges. Current trends indicate an accelerated reduction of judges aged 35-39 years and those aged 40-44 years. If currently there are 214 judges of these ages, it is expected that there will be less than 160 judges of both age structures in 2020. It is believed that older judges are an integral part of the quality of judiciary, since their many years of experience is the basis for the quality of a trial, and they can transfer knowledge to younger colleagues (Vrhovno sodišče Republike Slovenije,

2015, 2016, 2017). At the same time, it is necessary to ensure enough new young judges to deal with new responsibilities and challenges. It is urgent to take measures of a more systemic nature. For a number of years, the Supreme Court has advocated the introduction of a uniform first-degree judge, an idea that enjoys majority consent in judiciary. Although the Ministry of Justice has taken steps to streamline the network of courts, existing options must be exploited first. The Supreme Court would also like to draw attention to the fact that more and more legislative proposals are in the process of transferring jurisdiction to the courts in Ljubljana, which is not in line with the tendency for a more coherent regional development, nor is optimal from the management point of view since Ljubljana Local and District Courts already have the most workload (Vrhovno sodišče Republike Slovenije, 2018a).

CHANGES IN SECTORIAL LEGISLATION IN THE YEARS 2014 - 2018 AND THEIR PURPOSE

Since 2014 to March 2018 a number of sectorial legal acts were adopted with the aim to accelerate court procedures. The following are some of the most important ones: Court Experts, Certified Appraisers and Court Interpreters Act (Zakon o sodnih izvedencih, sodnih cenilcih in sodnih tolmačih [ZSICT], 2018), which regulates status issues of persons who are expert court assistants and part of the Slovenian judicial system at the systemic level; Cooperation in Criminal Matters with the Member States of the European Union Act (Zakon o spremembah in dopolnitvah Zakona o sodelovanju v kazenskih zadevah z državami članicami Evropske unije [ZSKZDČEU-1B], 2018), which brought the unification of cooperation system between competent authorities of the Member States of the European Union to obtain evidence for the needs of criminal proceedings and misdemeanour proceedings; and Act Amending the Court Register of Legal Entities Act (Zakon o spremembah in dopolnitvah Zakona o sodnem registru [ZSReg-D], 2017), which provides a greater data transparency of companies and other legal entities. Inquiries on companies and branches in other countries can be made free of charge through the register; The Act Amending the Criminal Code -1E (Zakon o spremembah in dopolnitvah Kazenskega zakonika [KZ-1E], 2017), which strengthened the principle of legality in criminal law, in particular with regard to more detailed identification of criminal offenses; State Attorney's Office Act (Zakon o državnem odvetništvu [ZDOdv], 2017) whose purpose is a more effective representation of the state, a greater flexibility in the performance of tasks, better transparency of the business, a more appropriate career employment system for young and successful lawyers and prevention of political employment (Rep, 2017b); The Judicial Council Act (Zakon o sodnem svetu [ZSSve], 2017) is the first systemic regulation intended for the complete regulation of the position of the Judicial Council; Act Amending the Police Tasks And Powers Act -A (Zakon o spremembah in dopolnitvah Zakona o nalogah in pooblastilih policije [ZNPPol-A], 2017), which supplements the provisions of Police Tasks And Powers Act (Zakon o nalogah in pooblastilih policije [ZNPPol], 2013) and thus guaranteeing an even greater legal and personal security for people and their property as well as the security of police officers; Act Amending the Contentious Civil Procedure Act (Zakon o spremembah in dopolnitvah Zakona o pravnem postopku [ZPP-E], 2017) which, in particular, through the introduction of amendments and supplements, accelerated the contentious procedure; Act Amending the Criminal Code (Zakon o spremembah in dopolnitvah Kazenskega zakonika [KZ-1D], 2016) is aimed at strengthening the criminal law framework for the prevention of and combating terrorism in all its forms; The Act

Amending the Judicial Service Act (*Zakon o spremembah in dopolnitvah Zakona o sodniški službi* [ZSS-M], 2015), contains the following amendments: supplementing the record of the effectiveness of the work of judges and the record of the effectiveness of the work of the courts with data on the number of resolved and unresolved cases; strengthening the role of the president of the court; introduction of the institute of “flying cases”, alignment with the proposal of the Act Amending the Judicial Service Act with regard to appointing special judicial positions for inter-district judges (Rep, 2015); Act amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku* [ZKP-M], 2014), which supplemented the arrangements for legal instruction to the suspect and the defendant, and relieved the state prosecutor’s office and the courts by expanding the prospect of a procedure with a penal order.

The mentioned legislation was adopted in order to prosecute offenders more effectively. Further, certain sectorial legislation had to be brought in line with the European legal order. However, one of the main reasons was also to reduce court backlogs and to speed up court proceedings. The latter also applied to criminal proceedings. Unfortunately, the amendments to the proposed Criminal Procedure Act which the Government of the Republic of Slovenia regarded an effective pre-trial and criminal procedure that would give detection, prosecution and trial authorities all the necessary tools for more effective work, was not adopted, in particular due to the foreseen termination of judicial investigation (Rep, 2017a).

PUBLIC TRUST IN JUDICIARY FROM 2010 TO 2017

Between 2013 and 2017, two major studies about confidence in judiciary were carried out in Slovenia. Both studies included individuals’ assessment of given statements with grades on a scale from 1 to 10, with 1 being the lowest and 10 being the highest grade. The study included the following population categories: adult citizens of the Republic of Slovenia, courts users, lawyers, public prosecutors and state attorneys/lawyers, judges and court staff. The 2013 study was carried out by the Centre of Public Opinion Research of the University of Primorska. The research was divided into measuring general public’s opinion and professional public’s opinion. This section presents a part of the research that showed the following results (Rep, 2015): general public’s confidence in judiciary is relatively low by reaching 4.43 confidence rates. The highest score was given to judges’ expertise, with an average score of 6.03. The statements “Judges are fair” and “Judges are understanding” scored a bit worse (5.08 and 5.03). The lowest confidence level was shown when assessing impartiality (4.94) and the importance of judge’s independence (4.62). 5.6% of the surveyed representatives of professional public considered that courts enjoyed reputation among Slovenian public. 75.7% of the respondents believed that the courts did not enjoy public reputation, while almost a fifth took a neutral position.

In 2015, the Supreme Court of the RS ordered a second study by the Faculty of Applied Social Studies in Nova Gorica for the same population categories as in the first study. The results were as follows (*Vrhovno sodišče Republike Slovenije*, 2016): The satisfaction of general public is lower than in 2013, while court users and professional public assessed judges relatively well and better than two years ago. More than 60 % of general public agree that court procedures are fair, and more than 70 % that the attitude of judges is respectful. The lowest score (but still high) by court users was given with regard to the possibility of expressing their opinion during the hearing while both court users and professional public were more satisfied with court personnel. Professional public is the most critical of judges’ accessibility, while the least satisfying group among professional public is lawyers.

General public gave the highest scores to the following three categories: judge's expertise (5.7), understanding attitude towards people (4.9) and independence of judges (4.5). The largest drop in comparison with 2013 is observed in the category "fairness" (fall by 0.6) and "impartiality" (fall by 0.5). Low scores were given by court users who lost their cases: fairness, for example, scored 4.5 while they gave the best grade to the category "judge's expertise" (average rating of 4.6) although a comparison with the year 2013 shows a drastic drop from 5.6 to 4.6. A drop in the average grade is also observed in all other characteristics of judges, with impartiality (from 4.5 to 4.4 and even to 2.8 whereby the lowest grade was given by court users who were not satisfied with the court final decision) and fairness/honesty (drop to 4.5) seeing the biggest grade drops. In 2015 the importance of judge's independence was assessed by general public with an average score of 9.4. For comparison the Politbarometer research, which measures Slovenian public opinion, gave the following results regarding the general trust in the judiciary in the period from 2010 to 2014 (Center za raziskovanje javnega mnenja, 2010, 2011, 2012, 2013, 2014): the average score (1 = not at all trust, 5 = completely trust) was 2.46 at the beginning of 2010, at the end of 2011 2.27, at the end of 2012 2.37, at the end of 2013 2.20, and in June 2014 2.33. But according to the result of the European Social Survey Trust in Justice (Jackson, Pooler, Hohl, Kuha, Bradford, & Hough, 2011) respondents in Denmark, Norway and Finland have the highest levels of trust and those in Bulgaria, the Russian Federation, Portugal and Slovenia report the lowest levels of trust. And the results of the 2018 EU justice scoreboard (European Commission, 2018) shows that the percentage of Slovenian population who trust judiciary is the lowest in the European Union.

The Supreme Court of the Republic of Slovenia is aware of the importance of public confidence in the functioning of the courts; therefore, ensuring the quality of services for clients in court proceedings in addition to independence and impartiality, accountability, integrity, fairness and trial in an optimal and predictable time, is one of the fundamental values of the judiciary. The time has come when it has become indisputable that precise and clear information on court performance should be provided to the courts of justice and other competent institutions and citizens. Public confidence in the judiciary is still (too) low.

CONCLUSION

In this article, some of the key indicators of quality assessment of the Slovenian judiciary have been presented in a limited scope throughout the years. Public have stressed the need for an independent and impartial judiciary. While judges' expertise and their attitude are assessed relatively well, much effort still needs to be made to ensure procedural fairness that will consolidate public trust in an independent and impartial judiciary. It was around the year 2000 when public had the highest level of confidence in judiciary. The majority of the court backlogs occurred in the period mentioned, and most cases fell under statute of limitation, the judicial procedures were the longest, and the functioning of the judicial system was the worst. Since 2013, the Slovenian judiciary significantly continued to reduce the number of unresolved cases and the average time to resolve cases. In 2017, the number of unresolved cases fell to 160,000, and it also reduced the average time needed to resolve cases. The average time of solving all cases was thus reduced from 3.7 to 3.4 months. The number of judges has also decreased to the acceptable number of judges who can still achieve the desired work results, in particular in the light of new competences given to judiciary branch and in view of an increasing complexity of the cases under consideration. Permanent improvement of court work quality is one of judiciary future priorities, where the set objectives will ensure

even higher-quality court decisions with regard to the principle of procedural fairness that will be explained in a language that is also understandable for lay people. It is therefore necessary to relieve judges of non-judicial activities and more intensively involve other judicial staff. It is necessary to prepare an appropriate legal framework for the needs of court operations, especially in the field of criminal and administrative procedures. Criminal proceedings present a particular challenge since they can affect human rights in the most intrusive way. According to the opinion of the current Minister of Justice, it would also be necessary to ensure uniform case-law through a publication of lower court decisions (Makovec, 2017). This would undoubtedly unify the court practice and reduce the number of complaints before higher courts, while enabling the lay public a greater insight into court performance and to predict possible case conclusions in cases of lawsuits. Definitely the latter will have an impact on a higher level of confidence in judiciary. Quality and regular execution of judiciary can only be ensured by a proper involvement and cooperation of all three branches of power with the undisputed aim of ensuring the rule of law.

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THE NEW FACE OF CRIMINAL LAW – TOWARDS A BETTER FUTURE?

Laura Stănilă¹

ABSTRACT

In the current social context defined by antagonist goals, such as the need of security versus the need of protecting human rights, the need of public formal reaction versus the need of ensuring balance in the juridical field, Criminal Law becomes a sort of Excalibur Sword, the magic tool for solving all turbulences that occur in the social life. Nothing could be more wrong than that! In the present article we try to demonstrate the fact of Criminal Law becoming a source of violence itself, starting with the concept of symbolic violence initiated by Pierre Bourdieu (Bourdieu 2001). The increased number of inchoate offences, the tendency to incriminate instead of finding other juridical solutions in order to respond to certain human conducts are only some of the many examples of arguments that prove in our opinion that Criminal Law has changed its face and is reaching for an unknown destination.

Keywords: symbolic violence, over-criminalization, social risk, social peril, culture of social control

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INTRODUCTION

Excalibur, the sword of King Arthur, is a powerful weapon in the hands of a skilled warrior. It is identified with a single hero and should not be allowed to fall into the hands of an enemy owing to its inherent power. In the case of Excalibur, when Arthur is dying of his wounds following his Battle with Mordred, it must be returned to its source, the Lady of the Lake, rather than given to whichever knight - no matter how noble - might succeed Arthur as king (Mark, 2017).

Telling the tale of Excalibur might seem unusual in a scientific study but in so many aspects, Criminal Law as a system might be compared to this ancient almighty weapon. The comparison, as strange as it is, proves to be very incentive.

Criminal law as a system, is indeed a very powerful weapon that can give us – as a society – both power and distress. If thought-out and used properly, it can provide peace and security, it can make individual conducts predictable and it can contribute to social Good. If improperly used, it can provide a lot of suffering for people, no matter guilty or innocent. In fact, the misuse of criminal law might force us to face a new era of legal abuse and countless restrictions. In fact, even it was thought to fight violence in all its manifesting forms, criminal law can become a tool for violence, but not as a physical, but as a symbolic one. It is common sense to ask oneself if using in improper manner the weapon of criminal law could lead to a better future or is it going to throw us in a Dark-Age Era with limited rights and limited actions, while the State seen as an ultimate almighty structure gathers more and more powers.

METHODS

The present study is purely theoretical, and it is not supported by statistical data. The methodology used is mainly based on the comparative method used to perform a

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quantitative and qualitative radiography of criminalization in legislation of several states such as Netherlands, Romania, Malta, Nicaragua, etc. Another logical method served to summarize the opinions of the mentioned authors on the subject investigated, as well as in the presentation of the study conclusions. At the same time, being a trans-disciplinary study (of criminal law, general sociology, sociology of law and sociology of criminal law), we also used the sociological method, criminal law being a social reality, while its criminalizing norms have important consequences in the development and the social and individual conduct of the human being. The scholar investigating this topic can not be isolated in the legal technique shelter but must be placed at the center of social life.

The sociological doctrine, especially the current promoted by Pierre Bourdieu (Bourdieu, 2001), was both a starting point and a foundation of this scientific approach. We first analysed the sociological concept of symbolic violence and then tried to prove that the over-criminalization tendency is nothing more than an excessive manifestation of state power, a form of symbolic violence perpetuating at the shelter of a desideratum of security and protection of citizens.

THE CONCEPT OF SYMBOLIC VIOLENCE

Bourdieu's conception on symbolic violence points out to the subordinating effects on people of hidden structures that reproduce and maintain social domination in covert ways. This involves the numerous mechanisms through which overall social domination is achieved from institutions to ideologies (Colaguori, 2010: 389). It is obvious that the common comprehension representations of violence, although symbolic in their mode of signification, do not correspond to the concept of symbolic violence thought-out by Bourdieu.

Symbolic violence is a common fact nowadays, an "ordinary" expression of power structures, occurring during the "peaceful operation of actions" in the society (Colaguori, 2010: 389). The power structures could act in reasonable manner for achieving a higher good, but it is possible to seek for is not an abnormal expression of power that occurs outside of the otherwise peaceful operation of actions in society. On the other hand, it is possible to pursue the creation of a power environment in which the higher good of society is only a shield for hidden interests the realization of which presupposes the use of power at any price. According to Colaguori (2010: 391-392), symbolic violence is the subdued expression of a power that is normally and regularly operating in a mode of violence. Violence is therefore not only an active mechanism of social life, it establishes the political ontology of social life.

Symbolic violence must be seen – as Bourdieu did - as an unequal relationship, a power imbalance between people, whose effects involve voluntary submission to relations of domination that have legal sanction. It conceals inequity in its basic form because it is grounded on the social contract, but also, on an unequal social hierarchy: ordinary people consent to give to higher-status others certain powers, the first being placed in a position of status subordination. In Bourdieu's (2001) view, cultural codes of conduct imposed to be followed, determine people to behave in the prescribed way, according to role expectations for one's class, gender, race etc. This leads to an entangled relation between social actors involved in power relations. They empower others to do things that will dis-empower them, contributing willingly to their own social subordination. In other words, they consent to be sanctioned if not acting accordingly.

As Bourdieu has stated, “symbolic power cannot be exercised without the contribution of those who undergo it” (Bourdieu, 2001: 40). It is undoubtedly a form of voluntary submission. As a matter of fact, in Foucault’s vision, discipline is the most perfect tool of social control managing to render individuals docile and predictable. In the same time, through discipline, they are being re-educated, become useful for the society and more compliant and manipulable. Discipline is the key for social control (Foucault 1997). In conclusion, symbolic violence is grounded on free will, free consent and voluntary acceptance of rules imposed under sanction.

But the violence resulted in these circumstances is subtle, it cannot be compared to murder or rape, people are thought they have to obey social codes, while the result of such obedience consists in restriction of their own rights and freedoms even when doing so works against their own self-preservative interest. Symbolic violence implies the imposition of such principles of division, and more generally of any symbolic representations (languages, conceptualizations, portrayals), on recipients who have little choice about whether to accept or reject them (Bourdieu, 1987: 812). If we return to the Excalibur metaphor, while the sword is anchored in stone waiting for a king to release its powers, the criminal law is anchored in the society, waiting to release its dark powers if detached from its primordial goal.

Other scholars do not question the violent component of symbolic interactions involving legal rules, on the reason “they cause similar somatic and/or mental injuries to people, as does physical violence” (Chreptyk, 2012: 14). As a matter of fact, criminal law is seen as: (a) a tool/weapon of establishing and upholding (political) power; and (b) a means to control and restrict the use of (political, executive, and judicative) power, in particular the subtle or even blatant abuse of power (Kerner, 2013: 3). It is obvious that in the last 100 years criminal law has changed its face. Even if open minded scholars such Beccaria and Foucault had emphasized the proper developing directions of the criminal law, the reality nowadays is the opposite: there are too many criminal conducts and too little criteria to define them. Having in mind the latin adagium *nullum crimen sine lege, nulla poena sine lege*, one must be very intrigued knowing that, from the first five *mala in se* crimes - intentional homicide (murder and manslaughter); rape; robbery; grievous wounding; breaking and entering a private home with the aim to steal - to countless *mala prohibita* crimes and offences (hundreds of them).

THE CONCEPT OF OVERCRIMINALIZATION

So how many crimes and offences should it be? Which number is the right number for us, as a society? As Smith has pointed out, the term *overcriminalization* implies an excessive number of criminalizing rules. It “posits that there are too many criminal laws on the books today. It is, of course, difficult to make such claims without a normative baseline—an idea of what constitutes the right number of criminal laws—and such a baseline is elusive at best. Still, history and crime rates provide relevant benchmarks, and they suggest that the criminal sanction is being seriously overused, particularly at the federal level, where overcriminalization has resulted in nothing less than the federalization of crime” (Smith, 2013: 538).

In Smith’s (2013) opinion, the problem stands not in the fact that they expose too much conduct to punishment, but rather in the fact that they reach conduct that either does not deserve punishment or that does not deserve the amount of punishment provided for in particular contexts. The issue of overcriminalization can be approached both under quantitative and qualitative terms:

- on one hand overcriminalization is typically framed as an objection to the number of criminal laws on the codes, viewed as excessive, and to the reach of those laws, viewed as too restrictive (Smith, 2013: 540);

- on the other hand, overcriminalization has also a qualitative feature—even more significant in Smith's view, to the integrity and efficacy of the criminal law than its quantitative one. Honestly speaking, overcriminalization decreases the quality of criminal codes and fails to safeguard its modern desideratum - that is to provide just and proportional punishments for criminal conducts. If a criminal code abounds in criminalizing regulations, being modified often in the sense of increasing their number, then such a code would end up weak organized and structured. Its rules “may not be readily accessible or comprehensible to those subject to their commands. Moreover, a sprawling, rapidly growing criminal code is especially likely to contain crimes in which the all - important conduct (*actus reus*) and state of mind (*mens rea*) - elements are incompletely fleshed out. These kinds of drafting and interpretive flaws can give unwarranted and perhaps unintended sweep to criminal laws and threaten disproportionately severe punishment” (Smith, 2013: 541).

Other scholars view overcriminalization as a socio-political phenomenon that might be evaluated in the aggregate for causes, consequences, and correctives (Luna, 2005: 711). Overcriminalization is a form of abuse of the State through its criminal justice system, consisting in the implementation of crimes or imposition of sentences without justification.

The definition of the overcriminalization phenomenon proposed by Luna (2005) consists of a sum of elements: untenable offences; superfluous statutes; doctrines that overextend culpability; crimes without jurisdictional authority; grossly disproportionate punishments; excessive or pre-textual enforcement of petty violations (Luna, 2005: 716).

In 1967, the late prof. Sanford H. Kadish wrote a revolutionary article by which he drew attention of the public to the issue of excessive criminalization and its multiple forms. The misuse of criminal law has tended both to be inefficient and to produce grave handicaps for enforcement of the criminal law against genuinely threatening conduct. Kadish (1968: 17) offers many examples of misuse of criminal law, drawing attention especially to: use of criminal law to enforce morals, to provide social services or to avoid legal restraints on law.

In case of providing so-called moral offences, the main purpose of criminal law was abandoned leaving place for reducing the criminal law's essential claim to legitimacy. In such case criminal law induced offensive and degrading police conduct, particularly against the poor and the subcultural, and generated cynicism and indifference to the criminal law. It has also created a proper environment for organized crime and has produced, possibly more crime than it has suppressed.

It is interesting that regarding the use of criminal law in order to combat immoral conducts the doctrine divided between the supporters' and the fighters' groups. On one hand it is said that society is founded on moral grounds and this is the explanation for the fact that every legal rule has a moral core. On the other hand “unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business” (Great Britain Committee on Homosexual Offences and Prostitution, 1957: 61-62).

There are serious questions about the social utility regarding certain types of sex offences, gambling, use of certain narcotics or even abortion.

In case of sexual intercourse with a juvenile (that implies his/hers consent) with there is a question about how can we know for sure that the age limit stated by the criminalizing rule is the best solution found by the legislator as long as sexual education is starting in a kindergarten? For example, in Netherlands, the sexual education starts at 4 (de Melker,

2015) meaning the question of consented sex with a juvenile aged 11 may be a "natural" experience. In Romania, sexual intercourse, oral or anal sex, as well as any act of vaginal or anal penetration committed with a juvenile aged 13 to 15 shall be punishable by no less than 1 and no more than 5 years of imprisonment, as stated by Article 220 of Romanian Criminal Code (2009).

Bestiality is also under debate as long as some of the perpetrators consider it an act of love. The Criminal Code of Netherlands (1881, 2012) bans under criminal law acts of bestiality in Section 254 - Any person who engages in lewd acts with an animal shall be liable to a term of imprisonment not exceeding one year and six months or a fine of the fourth category; Section 254a - Any person who distributes, offers, publicly displays, produces, imports, conveys in transit, exports, obtains or possesses an image - or a data carrier that contains an image - of a lewd act involving or seemingly involving a human and an animal, shall be liable to a term of imprisonment not exceeding six months or a fine of the third category.

Homosexuality is also banned under criminal sanction in an impressive number of criminal codes. In a total of 74 countries, same-sex sexual contact is a criminal offence (Sioban, 2016).

Another conduct that is criminalized in some countries and legal in others is prostitution. "The offence of prostitution is under debate as long as, although there are social harms beyond private immorality in commercialized sex-spread of venereal disease, exploitation of the young, and the affront of public solicitation, for example-the blunt use of the criminal prohibition has proven ineffective and costly" (Kadish, 1968: 22). Worldwide prostitution is legal in 53 countries, limitedly legal in 12 and illegal in 35 (ProCon.org, 2018).

In case of abortion things are more sensitive, certain religious values being involved. The criminal prohibition of abortions is occasionally defended on the ground that it is necessary to protect the mother against the adverse physical and psychological effects of such operations. There seems little doubt, however, that these laws serve to augment rather than to reduce the danger. The criminal penalty has given rise to a black market of illegal abortionists who stand ready to run the risk of imprisonment in order to earn the high fees produced by the law's discouragement of legitimate physicians (Kadish, 1968: 23). Researchers found out 58 of 196 countries permit abortion on request, for any reason while 137 countries do not permit this exception. Still 6 countries do not permit abortion not even to save women's life, such as Malta, Nicaragua, South Sudan, Chile, El Salvador etc. (Pew Research Center, 2015).

Gambling and use of drugs are two social conducts with criminalization purpose issues since their prohibition couldn't stop them, but only to made them flourish. "The irrepressible demand for gambling and drugs, like the demand for alcohol during Prohibition days, survives the condemnation of the criminal law" (Kadish, 1968: 23-24).

In case of using criminal law as an alternative to social services, it has diverted important law-enforcement resources from protecting the public against serious crime.

"In a number of instances which, taken together, consume a significant portion of law-enforcement resources, the criminal law is used neither to protect against serious misbehaviour through the medium of crime and punishment nor to confirm standards of private morality, but rather to provide social services to needy segments of the community. The drunk, the deserted mother, and the creditor have been the chief beneficiaries. In each instance, the gains have been dubious in view of the toll exacted on effective law enforcement" (Kadish, 1968: 27-28). Criminal law is used to assist a merchant in obtaining

payment or to assist needy families in obtaining support from a deserting spouse. For example Romanian Criminal Code (2009) sanctions under Article 239, paragraph 2 a form of Breach of a fiduciary by defrauding creditors – "a penalty no less than 6 months and no more than 3 years of imprisonment or a fine shall apply to the individual who, knowing that they will not be able to pay, purchases goods or services thus causing damage to the creditor". Also, Article 240 of the same, regulates Simple bankruptcy as the failure to submit or the late submission, by the individual debtor or by the legal representative of the legal entity debtor, of the request for the opening of insolvency proceedings, within a period of time not exceeding by more than six months the period of time provided by the law since the occurrence of the insolvency, punishing it by no less than 3 months and no more than one year of imprisonment or by a fine. Also Article 378 bans under criminal law family abandonment: "The commission by an individual having a legal obligation of support with regard to an individual entitled to receive such support, of one of the following acts: a) abandoning, sending away or leaving helpless, and thus subjecting them to physical or moral suffering; b) failure, in ill-faith, to fulfil their obligation of support provided by the law; failure, in ill-faith, to pay, for two months, the support allowance established by a Court, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine."

Criminal law must not become a tool to supply social services and cannot intervene in the activity field of non-criminal institutions and public servants.

In case of using criminal law to elude restrictions on police conduct, the consequence is the undermining of the very principle of legality.

At a time when the volume of crime is steadily increasing, the burden on law-enforcement agencies is becoming more and more onerous, and massive efforts are being considered to deal more effectively with threats to the public of dangerous and threatening conduct, releasing enforcement resources from the obligation to enforce the vice laws must be taken seriously (Kadish, 1968: 26).

While admitting technical or scientific advances (e.g., computers) can require new criminal legislation to address novel problems, some of us ask ourselves if we really need so many criminal laws and if we really need to add a criminal penalty for the violation of every new commercial or environmental law? Or should we consider a criminal law minimalism as a better solution for the future?

Another author identified four of the hallmarks of overcriminalization (Larkin, 2011: 2):

- the use of strict liability crimes (i.e., offences that dispense with the requirement that a person acts with a guilty mind, however defined) to outlaw conduct, particularly in commercial and regulatory fields;
- the passage of several laws applicable to the same conduct, which enables prosecutors to multiply charges and thereby threaten a person with a severe term of imprisonment if he does not accept a plea bargain;
- the delegation to administrative agencies of the responsibility for filling in the details of a substantive criminal law, which thereby vests in the agency responsible for enforcing the law the power also to define its terms; and
- enforcing through the criminal law conduct that, if it is to be enforced by the government at all, should be enforced through administrative or civil mechanisms.

Maybe the question of overcriminalization in Criminal Law should be addressed from the perspective of its functions. Ashworth identifies three functions of the Criminal Law (Ashworth, 2008: 413):

- the Declaratory Function consisting in the declaration of forms of wrongdoing that are serious enough to justify the public censure inherent in conviction and punishment;
- the Preventive Function: the declaration of forms of conduct or omission that are prohibited on the basis of their propensity to lead to significant risk or danger to an interest protected by the law, and which justify the censure inherent in conviction and punishment; and
- the Regulatory Function: the reinforcement of regulation through the declaration of forms of conduct, often without requiring proof of fault, which amount to non-compliance with a regulatory scheme.

Among the three functions, the preventive one is worth to analyse in order to evaluate the real danger of overcriminalization. To explore this secondary preventive function, it is probably best to take together the first two elements: (a) the declaration of forms of conduct or omission that are (b) prohibited on the basis of their propensity to lead to significant risk or danger to an interest protected by the law. Three forms of criminal liability call for justification in this context—preparatory crimes, offences of possession, and endangerment offences. The essence of a preparatory crime is a criminal attempt, which (broadly speaking) consists of purposely taking a substantial step towards the commission of a substantive offence. A modern approach of this kind would be to emphasize the possibility of achieving prevention through design (of housing, shopping malls, transport systems and other public spaces), through the regulation of activities, through social provision (of housing, leisure facilities), and so forth. Criminal law, as the most intrusive and condemnatory state mechanism, should be regarded as a last resort, or as a “back-stop” for other non-criminal measures of prevention (Ashworth, 2008: 417).

The traditional concept of criminal law reshapes itself transforming in a “preventive tool designed to minimize dangers and risks” (Sieber, 2016: 38). This new preventive function of criminal law is shown in the field of substantive criminal law by protecting overall social interests in advance of criminal activity against individuals and in criminalization of preparatory acts that pose specific risks or are executed with the intent of committing a crime. But we can also find it in the field of criminal procedure by allowing the use of the police and intelligence powers in order to facilitate the investigation of activities in this preparatory phase of the crime.

It is very important to find the balance because there always will be the confrontation between liberty and security, as basic social needs. But, as the risk prevention tends to become a real dogma of the modern society, we must focus on the fact that by accepting this principle of prevention in the criminal law field contributes to a more efficient crime control and improves security. But it would be unfair for the scientific approach to minimize or to reduce to silence some negative aspects of the preventive principle: public order, security and social risks are notions very difficult to define, and by interpretation we can easily push the limits beyond the common sense and civil liberties become secondary interests for the State which will only act focusing on social security and public order (Stănilă, 2017: 357).

In the end what are the consequences of overcriminalization? As with the causes of overcriminalization, the resulting costs may be divided in specific categories (Luna, 2005):

distended penal codes of vast criminal liability have a degenerative effect on an adversarial system in which law enforcers are not impartial bystanders but instead interested parties aggressively seeking arrests and convictions;

- for prosecutors, overcriminalization produces a dangerous disparity of power, with, for instance, extreme sentences via mandatory minimums applied as leverage to squeeze out information or guilty pleas.

- prosecutorial supremacy through overcriminalization is troubling enough when the underlying crime and attached penalties are tenuous to begin with. But it also emasculates the constitutional rights of the accused - the presumption of innocence, the right to trial by jury, the requirement of proof beyond a reasonable doubt, and so on - threatening prolonged sentences for those who demand their day in court. It seems no stretch to argue that defendants are literally punished for exercising their rights.
- the menace of excessive punishment is most alarming, however, when it is used to extract pleas from those with legitimate claims of innocence or excuse.
- at the level of political theory, broad and opaque discretion is difficult to square with notions of democratic legitimacy and produces a sort of secret law on the streets that is unrecorded and inaccessible, cannot be publicly debated by a fully informed citizenry, and thus prevents elected officials from being held accountable for their actions and those of their subordinates.
- overcriminalization also encourages the misallocation or waste of limited resources, especially when the underlying rationale, such as the pursuit of vice crime, is deemed trivial or untenable by most political theories.
- overcriminalization dilutes the moral force of the criminal justice system to the verge of insignificance for some members of society.

CONCLUDING REMARKS

Criminal Law has become undoubtedly a source of violence itself, putting constant pressure on the innocent citizens which confront with a constant increasing number of legal obligations imposed under criminal sanction. Among other tools, criminalization is the easiest way to provide predictable conducts, but in the same time constitutes a knowledge burden for those intended to comply. We began with the concept of symbolic violence initiated by Pierre Bourdieu and reached after the concept of overcriminalization.

In the end, the best way to keep "Excalibur" anchored in the social reality is to appeal to very simple, common-sense solutions, almost conservative: first it is not healthy creating new criminal offences as a method of regulating business activities. Regulation is better handled through fines and market forces, not the heavy stigma of criminal sanctions. Then, it should be recommended to revise laws in order to eliminate criminal penalties that are currently associated with many occupations or to remove ambiguities and consolidate redundant laws to help prevent prosecutorial abuse.

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THE IMPORTANCE OF EVIDENCE COLLECTION IN PROCEDURES FOR CRIMINAL ACTS IN THE FIELD OF ECONOMIC CRIME IN SERBIA

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ABSTRACT

The purpose of the paper is to analyze the importance of regular means of evidence and particular evidence collection operations in criminal procedures conducted for criminal acts in the field of economic crime in Serbia, bearing in mind the fact that the outcome of criminal procedures in cases regarding criminal acts falling within the economic crime area is greatly dependent on the quality of collected evidence. The primary method applied in this work is the method of theoretical content analysis, along with the essential methods of concretization and specialization, as well as the normative and analytic-deductive data analysis methods. After examining the research data and analyzing the relevant attitudes of contemporary legal theory, conclusions have been drawn which point to the practical importance of application of means of evidence in general, and in particular special evidence collection operations in practice, with general recommendations for broader application.

Keywords: economic crime, evidence collection, the Criminal Procedural Code, Serbia

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INTRODUCTION

During the last twenty years Serbia has passed through a very turbulent period in which the war, sanctions and different regimes affected economic, social and cultural development. These radical changes “which are even now taking place in transitional Serbia, also affect people’s everyday lives, altering their expectations, needs and behaviour” (Milivojević, 2011: 187).

This situation is not only characteristic of the area of Serbia, but also of the Western Balkan region in general, and it has become a solid foundation for different activities falling into the sphere of general and economic crime. According to the prevalent attitudes, the Western Balkan region is passing through serious and turbulent phases of stagnation or deterioration in economics, security, democratization and European integrations (Teokarević, 2015), which has a significant, either direct or indirect effect on the phenomenological side of crime in general, and in particular its individual modern manifestations, but also on the intensity of effect of criminal activities, the consequences they produce, the victimological aspect in all its segments, etc. If we look at the situation at the European Union level, Bal-Domanska (2016: 512) points out that “the 2008 economic crisis manifested itself in many spheres and had an impact on the deteriorating socio-economic situation of the EU regions”, which also has significant implications for the continuous growth of economic crime in the European area in general.

Economic crime is a kind of crime which is primarily characterized by a variety of definitions. One of the reasons for the absence of uniformity in scientifically defining the

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economic crime concept is great phenomenological diversity, influenced by the diversity of the culturological, economic and legal aspects in different periods, on the territory of different countries, but continents as well. According to Bobnar (2013: 163), “certainly economic crime and corruption are not only a problem of security and criminal law, but also endanger the essence of the rule of law and transparent market mechanisms of each state”. In direct relation to economic crime, in particular corruption, is distrust by citizens in a state that is characterized by political elites, and those officials who forget who pays them, thanks to whom they are in office, and who owe them loyalty (Matić, 2017).

Economic crime in Serbia is characterized by complex criminal acts, especially in the fields of finance, accounting, banking, foreign trade, as well as in the privatization process.

The attitude towards economic crime in practice is often conditioned by political will or the use of opportunity of criminal prosecution (Keršmanc, 2013). Economic crime “is characterized by a remarkable variability of manifestations, which is quite logical, due to its dependence on the newly established socio-economic and political relations which inevitably create conditions for changes and the emergence of new manifestations” (Cvetković, Mićović, & Tomić, 2016: 198). According to Jager and Šugman Stubbs (2013: 155), “it can be said that economic crime remains / becomes a growing social problem, with consequences that are continuously growing”.

In view of the phenomenological complexity of social, political, and other factors which work in its favour, “combatting economic crime, and its organized forms in particular, includes its assessment and anticipation, as well as taking adequate preventive and repressive measures with the aim of more efficient prevention of economic crime, its detection and collection of evidence” (Bošković, 2009). With regard to that, we must not ignore some very important features of economic crime, such as a continuous and very successful adaptation to the current social conditions, good organization of perpetrators of criminal acts in this area and their connections with the authorities, government or other, as well as a high degree of social risk.

A detailed systematic approach, as well as a good organization of all the competent entities, contemporary normative acts harmonized with the relevant international standards, and well devised and successfully realized operative activity in the evidence collecting domain, are key to successfully combatting modern manifestations of economic crime. This primarily means that “successfully combatting organized economic crime includes its incrimination through criminal law, processing through criminal-procedural law, and treatment by means of criminalist methods and techniques, along with accepting up-to-date international standards and procedures as regards these criminal acts” (Šikman & Vasić, 2011: 16). According to some views, success in managing economic crime requires greater attention to the creation of a comprehensive strategy in this area. In doing so, the area of prevention should play a central role. Successful prevention can only be based on knowledge and experience (Jager & Šugman Stubbs, 2013).

In view of the aforesaid, in particular the importance of a comprehensive legislative treatment, and the resulting practical comprehensive activity of criminal prosecution authorities, the purpose of the paper consists in analyzing the importance of regular means of evidence and special evidence collection operations in criminal procedures for criminal acts of economic crime in Serbia. Namely, the outcome of criminal procedures in cases concerning criminal acts falling under economic crime is significantly dependent on the quality of gathered evidence. Criminal acts in the field of economic crime are most often revealed after a certain period of time from undertaking the criminal acts, and are usually

committed by very influential people, so that they are very often rather difficult to prove. A timely reaction of crime prosecution authorities, and a comprehensive opus of evidence collection operations stipulated by the law and available for application in the evidence collection process, may be, and most often are, key to proving individual criminal acts.

According to the Criminal Procedural Code of the Republic of Serbia (*Zakonik o krivičnom postupku*, 2011), there are two groups of means of evidence available for use in criminal procedure. They are regular means of evidence and special evidence collection operations. By analyzing the content, characteristics and conditions under which the means of evidence of special importance to procedures for criminal acts from the field of economic crime are applied, by using the relevant methodology, primarily the normative, analytic-deductive data analysis method, the method of content theoretical analysis and concretization and specialization, we will be able to draw conclusions on the significance of individual regular means of evidence, as well as special evidence collection operations in the field of combatting economic crime.

In the following part, and before the part dedicated to research, we will point out the relevant attitudes of contemporary legal theory on the concept and basic characteristics of economic crime.

LITERATURE REVIEW

As Bošković (2009: 122) points out, “the content of the economic crime concept cannot be identified by a single definition for all time, given the dynamic nature and adaptability of economic crimes to newly established socio-economic and political relations in which they find conditions for survival and development though new manifestations”. According to this, Ferme (2013) emphasizes that “the manifest forms of economic crime are strongly linked to the individual geographical and social environment”.

In the beginning, economic crime was considered a kind of property criminal act (Barzykina, 2016). However, with the passage of time economic crime gained a special place in the nomenclature of crime forms, and started being studied as a separate, very important kind of crime. Globalization presented great opportunities for committing numerous criminal acts, especially acts in the sphere of economic crime – e.g. the possibility of acting at the international level taking advantage of a lack of legal regulations in some countries’ commercial and financial markets. Certainly, the characteristics of economic crime, such as “complexity, concealment and invisibility” (Kolar & Zdolšek, 2013: 182), are going in favor of the continuous development of this form of crime.

In the previous period, one of the most ubiquitous definitions was the one which included within the economic crime concept all criminal acts committed against social property (Bošković, 2009).

We should mention an important definition of economic crime in a narrow sense from that period which was formulated by Kobe (1975: 600), which states that „an economic criminal act represents behaviour which occurs as a socially dangerous, unlawful attack on social property in the form of damage, destruction, jeopardy, unauthorized appropriation by persons with special characteristics which stand in special relations to assets in social ownership”.

An important characteristic of our current economic system is that economic activity is becoming increasingly market-oriented, which certainly has influence on defining the behaviours to be included under the concept of economic crime.

In theoretically defining the economic crime concept, Bošković and Marković (2015: 207) point out that it is „a specific field of delinquency in economy, business and ruling structures and association for a kind of profession in the competence of which lie discretionary decisions, the authority to control and perform official, business, government and financial duties”. On the other hand, Barzykina (2016: 12) quotes that ”economic crime is defined as a set of criminal acts committed in the field of commercial business activities by persons engaged in those activities, with a view to acquiring certain material gains at the expense of business partners, consumers, competitors, and the state itself”.

On the other hand, according to Kaminski (2013: 121), economic crimes are defined as “prohibited acts which violate or infringe on supraindividual goods in the economic sphere, while economic crime does not only impact on the interests of participants in the economic trade market (entrepreneurs, as well as consumers), but also the interests of public institutions”. In addition, as Ferme (2013: 123) states, “there are significant differences between statistical indicators and the real extent of economic crime. Statistical data are just “the tip of the iceberg,” which hides a significantly different picture of the number of crimes and the amount of pecuniary damage”.

This kind of delinquency is treated as particularly grave, because big tax evasion transactions, direct and indirect forms of corruption, are considerably more damaging than classic forms of crime. In addition, owing to their social influence and position, the perpetrators of these crimes are relatively relieved of responsibility without regard to the law (Bošković & Marković, 2015). On the other hand, as other authors point out, “certain kinds of criminal acts are much more often committed by powerful (and in turn invisible) people, who derive significantly greater financial benefits from their victims” (Willott, Griffin, & Torrance, 2001: 442), compared to the benefits resulting from general crime forms, and according to Kolar and Zdošek (2013: 182), “it seems that economic crime is very detrimental to the wider social community”. In other words, perpetrators of criminal acts in the economic crime area, “recognized” members of society, are rarely prosecuted owing to actual immunity which they enjoy as “respectable business people” (Pavićević & Simeunović-Patić, 2005).

According to the modern definition proposed by Banović (2002: 28), economic crime is defined as the totality of punishable behaviours (acting or failure to act) which result from economic relations and relating to those relations, by both legal entities and natural persons who, as parties in those relations, have certain powers over the property that the relations are based on, which punishable behaviours inflict direct damage on the property, and violate or infringe on business relations.

However, according to Bošković (2009), economic crime includes those forms of criminal behaviour and activities of natural persons with certain positions and powers in economic, or business relations and in the field of conducting official duties (commercial and non-commercial activities), which are directed against the economic system of the country, and the purpose of which is to obtain illegal property gain, or inflict damage on the property they deal with, regardless of the forms of property involved, and which are in turn defined as criminal acts under criminal laws.

The initial definition of economic crime as a type of crime committed by persons of higher social status in performing their professional duties, has nowadays been significantly modified, stating that by using the new information-communication technologies members of the lower strata of society have been given great opportunities to get involved in this kind of crime (Reid, 2000), so that in the modern living and working conditions economic crime

can no longer be defined as a kind of crime restricted to the privileged class of population. In addition, “economic crimes occur in many areas: from production, warehouse-storage operations, internal exchange of goods, foreign trade operations, cash operations to bookkeeping” (Matijević & Marković, 2013: 392). This definition points to the extremely important security implications of contemporary forms of economic crime, bringing into focus the statement that economic crime in its primary sense is no longer the “exclusive right” of a certain group of people, but is gradually becoming a mass phenomenon with expanding global tendencies.

METHODOLOGY AND DATA SOURCES USED

The subject of analysis of this paper is the importance of regular means of evidence and special evidence collection operations in criminal procedures conducted for criminal acts falling under economic crime in Serbia. Namely, the outcome of criminal procedures in cases on criminal acts in the economic crime area is greatly dependent on the quality of collected evidence. According to the Criminal Procedural Code of the Republic of Serbia (CPC) (*Zakonik o krivičnom postupku*, 2011) there are two kinds of means of evidence available for use in criminal procedures. They are regular means of evidence and special evidence collection operations.

In this paper we have primarily applied the method of theoretical content analysis along with the essential methods of concretization and specialization, as well as the normative and analytic-deductive data analysis methods. The relevant source that the data analysis has been based on is the current Criminal Procedural Code, which was adopted in Serbia in 2011, and started being fully applied in 2013. By analyzing the content, characteristics and conditions under which means of evidence of special importance to procedures for criminal acts from the field of economic crime are applied, we will be able to draw conclusions on the significance of individual regular means of evidence, as well as special evidence collection operations in the field of combatting economic crime.

RESEARCH RESULTS AND DISCUSSION

An efficient response to economic crime manifestations, and in particular its modern forms, implies the application of an adequate methodology, close international cooperation, as well as a modern regulatory framework, unified both at the regional and international levels. An adequate methodology in combatting economic crime implies the introduction of both selectively chosen classical methods for the detection and proving of economic criminal acts, and the application of modern, legally stipulated methods and special evidence collection operations.

Means of evidence are stipulated by the Criminal Procedural Code and are classified into two groups. The first group are regular means of evidence, which include: inspection, event reconstruction, interrogating the accused, witness examination, expertise, documents, sampling, the checking of accounts and suspect transactions, the search of apartments and persons, temporary confiscation of objects. The second group are special evidence collection operations, which include the following: secret communication monitoring, secret surveillance and taping, simulated operations, computer data searches, controlled delivery, undercover investigator (*Zakonik o krivičnom postupku*, 2011).

Article 83 of the Criminal Procedural Code lays down the facts which are the subject of evidence, which include: the facts that characterize the criminal act, the facts determining the

application of other provisions of the criminal law, the facts determining the application of provisions of criminal procedure (*Zakonik o krivičnom postupku*, 2011).

As regards the subject of evidence, we must note the following. The subject of evidence actually represents the disputed legally relevant facts which make up the content of the criminal matter. Evidence is a fact which serves to establish the existence or non-existence of the disputed legally relevant facts (in fact to establish the subject of evidence). In other words, the value of evidence, in its entirety, is high, because it helps to determine the legally relevant facts making up the content of the criminal matter, and it is the foundation of all court rulings in criminal procedures. Namely, as Milošević and Stevanović (1997: 207) point out, “almost all court decisions, and judgements in particular, must be based on certain legally relevant facts, the existence or non-existence of which is determined by evidence”.

Regular means of evidence are as a rule applied in criminal procedures. Regular means of evidence which are especially important in collecting evidence for criminal acts in the field of economic crime are expertise, documents and the checking of accounts and suspect transactions.

Expertise is the establishment of facts which are relevant to criminal procedures, and are not legal in nature, as well as the issuing of findings and opinions by a person with the required professional knowledge and skills, in a situation when the court, or the authority conducting the procedure, does not have the required professional knowledge to determine any important fact (Škulić, 2013). Of special importance in the field of economic crime is the expertise of business records.

Namely, there are in practice numerous examples of accounting data manipulation, or false data processing in business records, intended to inaccurately present the balance and source of funds, and in turn the actual business operations of commercial entities. This phenomenon has been termed cosmetic accounting in practice, and it resulted in the emergence of forensic accounting, the primary task of which is to reveal and investigate criminal actions in financial reports of commercial entities. As Ivanović (2015: 89) points out, “graduate economists with certain experience in working on financial operations can be engaged for this kind of expertise”.

According to article 2 paragraph 1 item 26 of the Criminal Procedural Code, documents are defined as any object or computer data which is suitable or intended to serve as proof of a fact being determined in the procedure. Documents are provided *ex officio* or on the proposal of the parties by the authority conducting the procedure, or submitted by the parties, as a rule, in the original (article 139). Proving by means of documents is performed by reading, watching, listening or inspecting the content of the document in another way (article 138). According to Škulić (2013: 278), “the purpose of the document is that its content produces a certain legally relevant effect”, which can be very important in criminal procedure, especially when we are dealing with complex criminal acts, such as acts in the field of economic crime.

If there is reasonable doubt that a person accused of a criminal act for which a prison sentence of four years or more is stipulated possesses accounts or conducts transactions, the authority conducting the procedure can decide on checking their accounts or suspect transactions, provided that the check includes: a) data collection; b) monitoring suspect transactions; c) temporary suspension of suspect transactions (article 143) (*Zakonik o krivičnom postupku*, 2011).

If the required conditions are met, the public prosecutor can order the bank or other financial organization (insurance companies, business companies, funds etc.) to provide

them, in a specified period of time, with the information on the accounts held or controlled by the suspect, and the funds they hold in them, and everything required from the data records (article 144). Besides checking the accounts and suspect transactions, the public prosecutor may require the court to order control of suspect transactions (article 145). Finally, if the legally stipulated conditions are met, and if there is reasonable doubt that the accused is conducting a suspect transaction, on the public prosecutor's justified request in writing, the judge in the previous procedure can order the bank or other financial organization to temporarily suspend the execution of the suspect transaction (article 146) (Zakonik o krivičnom postupku, 2011).

Special evidence collection operations represent particular evidence collection methods which are atypical in nature, and are only applied in relation to certain criminal acts "which are, on the one side, very serious while, on the other, owing to some phenomenological characteristics, and psychological and other qualities of the perpetrators, they are very difficult to detect, clarify and prove by using the usual, regular evidence methods" (Škulić, 2007: 307). As opposed to the regular, special evidence collection operations can only be applied under legally stipulated conditions and with legally stipulated criminal acts.

It is characteristic of special evidence collection operations that if, in undertaking special evidence collection operations, it was acted contrary to provisions of CPC or the order of the procedure authority, the court decision cannot be based on the collected data (article 163) (Zakonik o krivičnom postupku, 2011). The following table shows the most important characteristics of special evidence collection operations, with the aim of gaining insight into the conditions of their application, basic features and importance for criminal procedures.

Table 1: *Special evidence collection operations – conditions of application, characteristics and importance for criminal procedures*

Name of measure	Measure application	Measure imposition	Measure duration	Measure execution
Permanent communication surveillance	Communication by phone or other technical devices or surveillance of the suspect's e-mail address and confiscation of letters and other post	The judge in the previous procedure – order	As a rule 6 months maximum (3 months + 3 months). In case of the public prosecutor's office with special competences, the measure shall last 12 months maximum.	The police, Security-Information Agency or Military Security Agency
Secret following and taping	Discovering the suspect's contacts or communication in public places and places with restricted access, except in the apartment, and establishing identity or locating persons/ objects	The judge in the previous procedure – order	As a rule 6 months maximum (3 months + 3 months). In case of the public prosecutor's office with special competences, the measure shall last 12 months maximum.	Police, Security Information Agency – SIA, or Military Security Agency - MSA
Simulated operations	Simulated purchase, sale or provision of business services; simulated giving or receiving of bribes	The judge in the previous procedure – order	As a rule 6 months maximum (3 months + 3 months). In case of the public prosecutor's office with special competences, the measure shall last 12 months maximum.	Police, SIA, MSA or <i>other authorized person</i>
Computer data searching	The searching for already processed personal and other information and its comparison with the data relating to the suspect and the criminal act	The judge in the previous procedure – order	As a rule 9 months maximum (3 months + 3 months + 3 months).	Police, SIA, MSA, <i>customs, tax or other services, or another state authority</i>
Controlled delivery	With the knowledge and under the surveillance of competent authorities, delivery of illicit or suspicious shipments into Serbia or transit through Serbia.	Republic or public prosecutor with special competence	Not specified by law. The details on the measure start and end dates are provided when the measure is ended in the report to the public prosecutor.	The police and other state authorities determined by the public prosecutor
Undercover investigator	The engagement of an undercover investigator if the use of other special evidence collection operations does not provide evidence for criminal prosecution, or its gathering would be very difficult	The judge in the previous procedure – order	One year as a rule, and 18 months exceptionally (12 months + 6 months).	As a rule, an undercover investigator is an authorized officer of the internal affairs authorities, SIA or MSA.

Source: Zakonik o krivičnom postupku, 2011

As we have pointed out above, contemporary societies are increasingly facing more dangerous and serious forms of crime, executed with the use of the most up-to-date technical innovations, in the solving of which, i.e. criminal prosecution and processing in general, the classic forms of gathering and securing evidence are not sufficient. The conditions for the employment of special evidence collection operations in criminal procedures are a topic

which constantly holds the attention of the scientific and professional public, bearing in mind the essential characteristics of each individual measure identified in the table. An opinion which has come into focus with the passage of time is that the application of special evidence collection operations must not be too broad, infringing upon human rights and liberties, or too narrow, annulling their effect. In effect, economic crime, and in particular its organized forms, is a specific form of professional crime, which differs in many characteristics from traditional forms of criminal organization, as well as from classic forms of crime. One of those specific characteristics is certainly a more difficult process of proving those criminal acts, especially by classic means of evidence. The evidence deficit, which is typical of criminal acts falling under economic and organized crime, is actually the reason for introducing special evidence collection operations and it highlights the great importance that special evidence collection operations have in criminal procedures.

The conditions under which special evidence collection operations can be applied in criminal procedures are strictly defined by the law. Namely, special evidence collection operations can be imposed relating to a person when there is reasonable doubt that they committed a criminal act for which those evidence collection operations can be imposed, and there is no other way to collect evidence for criminal prosecution, or its collection would be very difficult.

As a result, for a particular evidence collection operation to be applied in a criminal procedure, there must first exist a certain degree of doubt (reasonable doubt) that a particular person has committed a criminal act for which these evidence collection operations can be imposed. In addition, the restrictive application of special evidence collection operations becomes particularly prominent relating to the second condition. Namely, those procedures can be imposed only if evidence for criminal prosecution cannot be collected in any other way, or its collection would be too difficult, which is assessed taking into account the circumstances of the particular case.

CONCLUSION

An efficient response to manifestations of economic crime implies the application of an adequate methodology and a contemporary regulatory framework and based on these elements the legally stipulated opus of means of evidence, regulated in such a way as to meet the challenges of the gravest modern (primarily organized) forms of economic crime. Basically, the adequate methodology implies the introduction of selectively chosen classical methods for detecting and proving economic crimes, as well as the application of special evidence collection operations, with a view to keeping abreast of contemporary tendencies in complex and socially dangerous forms of economic crime.

The relevant source for research in this paper, that the data analysis has been based on, is the current Criminal Procedural Code. By analyzing the content, characteristics and conditions under which means of evidence of special importance to economic crimes are applied, the application of the relevant methodology, primarily the normative, analytic-deductive data analysis method, then content theoretical analysis and concretization and specialization, we demonstrated the importance of individual regular means of evidence (expertise, documents and the checking of accounts and suspect transactions), as well as special evidence collection operations in the domain of fighting economic crime (secret surveillance of communications, secret following and taping, simulated operations, computer data searches, controlled delivery, undercover investigator). Despite many conflicting opinions on the expediency and necessity of use of special evidence collection

operations in procedures in the territory of Serbia, the prevailing attitude is that it is essential to legally stipulate and regulate a set of special evidence collection operations the employment of which, in a strictly regulated way, and in a strictly regulated duration under restrictive conditions, will be crucial to evidence collection in procedures conducted for the gravest criminal acts in the field of economic and organized crime, and their combined manifestations, particularly dangerous for the modern social community.

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RELATIONSHIP BETWEEN CONTINUITY OF EVIDENCE AND BEYOND A REASONABLE DOUBT - WITH SPECIAL FOCUS ON THE CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF SERBIA

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ABSTRACT

Authors dealing with the problem of lack of stable material evidence in the practice of criminal procedure in Republic of Serbia. Assumption is that the lack of stable material evidence in the criminal procedural practice in the Republic of Serbia is a result of the lack of standards in job of finding and providing of evidence, with one side, and abolition of the principle of material truth, and the reduction of investigative powers of the court, introduction of an adversarial model of criminal procedure and standard of proving beyond a reasonable doubt, with the other side. Regarding this, the authors consider that applying the principle beyond a reasonable doubt in making of judgement, requires respect for the principle of the continuity of evidence. On the base of this conclusion authors think that there is need for recognition of principle of continuity of evidence in criminal procedural legislation of Republic of Serbia.

Keywords: continuity of evidence, beyond a reasonable doubt, truth, evidence standards, judgement

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INTRODUCTION

The scientific and technological progress of mankind has enabled the development of modern forensic methods that should contribute to improving the efficiency of the work of the criminal justice and police authorities in the field of detecting the perpetrators, collecting relevant material evidence, bringing them to justice, or prosecuting, proving and pronouncing an adequate verdict. Despite the emergence of modern forensic methods and tools, such as optical (technical) recording of facts through photo and video film, invisible ray (UV, IC and X rays), DNA analysis, 3D technology, automatic systems for fingerprint identification and facial recognition, electronic microscope, etc., there has been no significant progress in the work of criminal justice in Republic of Serbia in terms of increasing efficiency in the field of proving the guilt of the perpetrators of the criminal offense on the basis of material evidence. On the contrary, despite the application of state-of-the-art scientific and technological achievements in the process of finding and providing material evidence, it often happens that numerous indictments are dismissed, that is, the proceedings are suspended, and the persons charged for the criminal offense are acquitted because of the lack of solid material evidence they speak in favor of their guilt. Namely, there is a huge number of examples in our judicial practice in the area of criminal law in which there was no initiation of proceedings or in which proceedings were suspended because due to somebody

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perfunctory or inaccuracy in the conduct of investigative (evidence) actions, no adequate material evidence was found, or serious mistakes were made during the manipulating with evidence found, which for the result had the non-existence of valid evidence or the lack of evidence at the main stage of the criminal proceedings. This state of affairs regarding the proving of a criminal offense imposes the need to raise the level of seriousness in the work with evidence in order to ensure efficiency in the field of finding, fixing, or providing evidence and their use in criminal proceedings in Republic of Serbia. This, in our opinion, can only be achieved by a more responsible approach in dealing with evidence in accordance with the principle of continuity of evidence, which excludes any possibility that the evidence will be contaminated, changed or replaced.

This is especially important when it comes to the fact that in the Republic of Serbia is implemented so-called “prosecutorial investigation”, as well as there is possibility for parallel investigation (investigation of accused and defendant attorney), and that there is also an adversarial model of the main trial in which the investigative powers of the court have been reduced, the principle of determining material truth has been abandoned and a model of proving beyond a reasonable doubt is introduced.

In this connection, we proceed from the assumption that, beyond a reasonable doubt, in the criminal proceedings, mainly can be reached only if the principle of the continuity of evidence has been previously observed. Namely, the suspicion of the continuity of the evidence has the effect of casting doubt on the validity of the evidence itself, which means that the court hardly can take into account that in the existence of some legally relevant fact established on the basis of that evidence, it is convinced with the degree of certainty (beyond a reasonable doubts), which is a requirement for the application of the principle *in dubio pro reo*, or doubts in favor of the defendant.

Therefore, disregard of the continuity of evidence is one of the main reasons for doubting the validity of the evidence, or the obstacle to reaching the level beyond a reasonable doubt. Accordingly, in our work we will first expose the current legal regulations regarding the evidence and working with evidence in the criminal procedure of the Republic of Serbia, after which we will point out the basic elements of the principle beyond a reasonable doubt, and then on the basic elements of the principle of continuity of evidence in the criminal procedural legislation of the United States. After that, we will give our view of the principle of the continuity of the evidence that would be applicable in the criminal procedure law of the Republic of Serbia. At the end of the work, by putting into the relation of these two principles, we will try to justify the hypothesis, and on the basis of this, we propose a mandatory recognition of the principle of continuity of evidence as one of the basic principle of the criminal procedural law of the Republic of Serbia.

WORKING WITH EVIDENCE ACCORDING TO THE CURRENT CRIMINAL PROCEDURAL CODE OF THE REPUBLIC OF SERBIA

The new Criminal Procedural Code of the Republic of Serbia from 2013 introduced a number of novelties concerning the criminal procedure. First, the model of the prosecution investigation was introduced, and the function of the investigating judge was abolished. Then, it is prescribed possibility to conduct a parallel investigation by the suspect and his defense counsel. When it comes to the main trial, changes were made, which first of all increased the intensity of the principle of contradiction, and the stage of the evidentiary procedure was conceived as the area of direct confrontation between the charge and the defense in which the court plays the role of a passive and neutral arbitrator (Ivanović, 2014).

In like this conceptualized model of criminal procedure, the parties are to collect and present evidence before the court for their claims, and consequently each of them will request a court decision in their own interest. In order to remain impartial, the court must be passive in terms of finding and performing evidence (Đurđić & Trajković, 2013). When it comes to the position of the court in the evidentiary proceedings, the new Criminal Procedural Code of Republic of Serbia (2011) changes its inquisition roles, which is traditionally characteristic of the European continental legislation, which is reflected in the active participation in the presentation of evidence. Namely, according to the provisions of the new Criminal Procedural Code, the burden of proving the prosecution is on the authorized prosecutor, and the court makes the evidence on the proposal of the parties (Article 15, paragraph 2 and 3 of the CPC). Also, it is stipulated that the court may order a party to propose additional evidence, or, exceptionally, order such evidence to be examined, if it finds that the evidence that has been examined is contradictory or unclear, and finds such action necessary in order to comprehensively examine the subject of the evidentiary action (Article 15, paragraph 4 of the CPC). This provision defines one of the basic features of a party's proceedings, that is, the court is taking evidence on the proposal of the parties. The exception is envisaged in paragraph 4 of Article 15 of the CPC, which provided the corrective, or auxiliary, but not active and creative function in the proposition and presentation of evidence in the prescribed conditions (Ivanović, 2014). The Court is therefore acquitted of the obligation of collection and presentation of evidence, i.e. the court is relieved of the obligation to investigate the truth about the criminal event. The court has the obligation to establish (correctly) facts only on the basis of evidence provided by the parties themselves, but it does not have the obligation to investigate the truth *ex officio* (Đurđević & Trajković, 2013). Therefore, according to the provisions of the new Criminal Procedural Code, the criminal court and other state bodies no longer have the obligation to truthfully and fully identify the facts of relevance for the adoption of a lawful decision, as they were in accordance with the regulations in old Criminal Procedural Code. Instead, it is stipulated that the decision to adjudicate the criminal case "can only be based on the facts in which the certainty is convincing (Article 16, paragraph 4 of the CPC), since it previously" impartially assessed the evidence" (Article 16, Paragraph 2 of the CPC).

Conviction in the certainty of facts should be understood as the content of consciousness in which the reasonable doubt is excluded from the subject of knowledge, which represent so called principle "beyond a reasonable doubt" (Ilić, Majić, Beljanski, & Trešnjević, 2012). Which lead us to the need to deeper determination of principle of "beyond a reasonable doubt".

DEFINING PRINCIPLES BEYOND A REASONABLE DOUBT

The principle beyond a reasonable doubt is the concept in which the court must reach the degree of fact-finding in the proceedings beyond any a reasonable doubt. The standard that must be met by the evidence of the prosecution in criminal proceedings: that no other logical explanation can be derived from the facts, except that the defendant committed the crime, thus overcoming the presumption that a person is not guilty until proved guilty. Namely, prosecutors bear the burden of proof and are required to prove their version of events to this standard. This means that the proposition being presented by the prosecution must be proven to the extent that there could be no "a reasonable doubt" in the mind of a "reasonable person" that the defendant is guilty. There can still be a doubt, but only to the extent that it would not affect a reasonable person's belief regarding whether or not the defendant is

guilty. Beyond “the shadow of a doubt” is sometimes used interchangeably with beyond a reasonable doubt, but this extends beyond the latter, to the extent that it may be considered an impossible standard. Beyond a reasonable doubt, is the highest minimum degree of fact-finding and implies a minimum (for a judgment sufficient) determination of legally relevant facts. Certainly, that in proceedings tends to determine all the facts, but usually it is not possible to determine everything completely, so because of that are determining as many facts (truths) as possible and to the minimum level beyond (any reasonable) doubt. This degree of fact-finding, so-called “beyond a reasonable doubt”, that a criminal offense has been committed by a particular person excludes the existence of all kinds of suspicion and creates a certificate in the court that the offense is committed, who is the perpetrator and the conviction of the perpetrator’s guilt. The only suspicion that can exist without diminishing the value of this degree of fact-finding, and does not affect the conviction of the court, is an unreasonable suspicion. In contraries, if there is a reasonable doubt, we did not obstruct the presumption of innocence and did not prove the commission of the act of execution, or the criminal offense of the accused person (Ljevaković, 2017). Evidence that is beyond a reasonable doubt is the standard of evidence required to validate a criminal conviction in most adversarial legal systems (Grechenig, Nicklisch, & Thoeni, 2010). Therefore, that in the criminal procedure, can be pronounced a convicted sentence to the Accused, there is need for existence a minimal number of legally relevant facts which, beyond any doubt, indicate the commission of the criminal offense and the person who committed the crime. The evidence which are available should confirm these facts. Therefore, the facts established by the indirect evidence must be undoubtedly established and mutually firmly and logically related, so that they point to the only possible conclusion that the accused has just committed the criminal offense charged to him. Also, the evidence presented must be in full compliance and not constitute a sum of evidence, but a system of indications that will exclude any other possibility from the one established by the first instance court in its scope and connection.

Taking in consideration adversarial nature of criminal procedure in Republic of Serbia, and the passive role of court in the process of providing evidence, in the light of any decisive fact, the court must be convinced that it is certain, but if for one of them there is not enough party evidence to with level of certainty ensure in its existence, the court is not empowered to investigate whether that fact exists or to gather evidence that it exists. This situation is our start point to for hypothesis that principle of continuity of evidence should be adopted in criminal procedure in Republic of Serbia, because on this way, we could provide condition for providing the stabile evidence on the trial, on which court can base certainty of existing the decisive fact.

THE NOTION OF EVIDENCE AND PROVING

First of all, it should be noted that neither in theory nor in domestic practice there is not a generally accepted definition of evidence. The reason for this is the different approaches in defining the evidence. Namely, there is more definition of evidence, depending on which aspect this term is observed. So for example, in the literature we can find definitions of evidence in the criminal procedural and the definition of evidence in the criminalistic sense of the meaning. In addition, regarding to the definition of evidence, it is further aggravated by the fact that among theorists there is a disagreement over that what is meant by the notion of evidence. Thus, in the theory of criminal procedural law, the term evidence usually involves the following: the base of evidence, the source of evidence, the subject of evidence, the evidence (investigative) measure, the means of evidence, the proof process

or all these segments together. It should also be noted that some theoreticians of criminal procedural law make distinguish between evidence in formal and evidence in material sense. As evidence in formal terms, the actions of the evidence being made by the court are taken into account in order to form their conviction about the existence or absence of facts which may be influenced by its decision, which coincides with the proof process. As evidence in the material sense is considered to be, every base of evidence, or the reason contained in a demonstrable means of proof, which refers to the truthfulness of a fact important to the proceedings (Ivanović & Ivanović, 2013).

Before pointing out some of the definitions of evidence, it is first necessary to indicate what is meant by the notion of base of evidence, under the notion source of evidence, under the notion of evidence (investigative) measure, under the notion the means of evidence, and notion the subject of evidence.

Base of evidence is the content of performed evidence (Stevanović & Stanojević, 2005).

The source of evidence, is the holder of the proof information and may be of a material nature (trace, sample or subject of a criminal offense) or of a psychic nature (a witness who is able to interprets his perceptions regarding the criminal offense). Under proof information is considered to be cognitive information which is “dressed” in the “attire” of criminal process, accordingly, it is evidence in the criminal-procedure sense of meaning (Modly, 1998).

Evidence (investigative) measure are criminal procedural (investigative) actions as a system of criminal process-based means, ways and methods of determining and realizing the reality, that are used to detect, fix, verify, evaluate and use of proof information or evidence of an ordered species (Modly, 1998).

The means of evidence is the form in which they appear and in which the facts or evidence are contained. The means of evidence are actually the results of investigative or evidencing actions undertaken in accordance with the provisions of the Criminal Procedure Code by authorized entities for the purpose of establishing proof information and fixing it. The means of evidence in the criminal procedure are: record of the crime scene investigation, testimony of witnesses, testimony of an expert witness, statement of the defendant and the documents.

The subject of evidence represents the contested legally relevant facts which constitute the content of the criminal matter, i.e. facts which need to be proven.

It should be noted that most theorists (Bauer, 1978; Bejatović, 2014; Grubač, 1996) approach the definition of the concept of evidence by determining its meaning from the criminal procedural aspect. Among them, there are theorists who determine the concept of evidence in a general manner, without making the difference between evidence, means of evidence, source of evidence or subject of evidence. Likewise, there are theorists who distinguish between evidence, means of evidence, and source of evidence or subject of evidence. Theoreticians (Dimitrijević, 1981; Marković, 1930; Vaisljević, 1981) belonging to another group, determine the concept of evidence in the regular and irregular way, on the way that under evidence in the regular sense they consider base of evidence, while in the irregular sense, they under evidence consider means of evidence, source of evidence or subject of evidence. In addition, among the definitions that determine the meaning of the concept of evidence from the criminal procedural aspect, there is a division into those who approach this notion in a narrow (restrictive) and broader (extensive) sense. In a narrower sense, the evidence in the criminal procedural sense is generally understood as the fact based on the determination of the existence or non-existence of disputable legally relevant and other

facts, which are establishing in the criminal procedure (Stevanović & Nicević, 2008). Duško Modly (1998) under evidence consider: “Factual information (proof facts) contained in, by law prescribed, sources of evidence or bearers of evidence (persons, objects and marks) on the basis of which, in the procedure prescribed by the positive regulations, the authorized entities determine the existence or non-existence of a criminal offense, the guilt of the offended person, and other circumstances of relevance for the decision.” Also, the same author points out that the proof can also be defined as: “Criminal law relevant information contained in persons and matters, which is obtained in the law prescribed manner and by use of law envisaged funds” (Modly, 1998: 92).

In a wider sense, under the term evidence, from a criminal procedural aspect, it is considered the established fact used to determine other decisive facts, that is, all that logically seeks to prove or deny the existence of a fact that arises as a controversial issue, or a controversial legally relevant fact that is determined by the criminal procedure. Therefore, in the wider sense, under the notion of evidence, from a criminal procedural point of view, it is considered all that may be of importance for the clarification and resolution of a criminal matter, whose providing has a logical tendency to bring in relation with the outcome, that is, by achieving the goal of the criminal procedure.

As for defining the notion of evidence from a criminalistics point of view, the definition of professor Branislav Simonović (2009) should be emphasized, according to which: “The evidence represents the established ascertained relevant link between the processes that directly or indirectly influenced the appearance of a criminal offense, traces, subjects and peoples. Observed from the gnoseological (cognitive) side, the evidence represents all the changes in the environment of preparation, execution, concealment and enjoyment of the fruits of the criminal offense, which are related to the committed criminal offense. So, for example, not every fingerprint on the knife is proof. In order to become a proof, it must be linked to the execution of the murder by using a specific cold weapon.” (Simonović, 2009: 65) According to the above definition, the same author points out that: “The evidence cannot be created by the organ of criminal procedure by its own actions, it is only caused by the commission of a criminal offense in the process of interaction, the mutual relation between the perpetrator, the means of execution, the object of the attack, and the place of the crime scene. The criminal procedure organ merely states, in the procedure prescribed by law, the existence of this connection, based on the changes that are reflected on the holders of criminal information (signals)” (Simonović, 2009: 65).

Based on all of the foregoing, seeing from a criminal procedural aspect, we can conclude that under the notion of evidence usually consider facts based on which is establishes the existence or non-existence of disputable legally relevant (decisive) and other facts determined in the criminal procedure. From the criminalistic aspect of view, evidence is usually defined as a material or psychological change which appears in connection with the commission of a criminal offense and which carrying information about the criminal offense, perpetrator and other criminal-law relevant facts, and which are fixed in the form and in the way prescribed by the Criminal Procedural Code and by the under this Code authorized entity (Simonović, 2009). Proving within criminal procedure is a complex process that is reflected in:

- disclosure of evidence (source of evidence);
- conducting evidence (investigative) measures undertaken in accordance with the provisions of the Criminal Procedural Code and the rules of forensics sciences by authorized entities with the aim of establishing evidence and fixing it;
- performing of evidence (presentation of their content in the form and in the manner prescribed by the Criminal Procedural Code);

- fixing the performed content in order to preserve the proof fact from destruction or oblivion; and at the end,
- from the evaluation of the evidence, or its assessment by the court, which is reflected in the conviction of the court in the truthfulness of the facts that are determined (Ivanović & Munižaba, 2017).

Between every aforementioned phases of proving there is a phase that does not represent a phase of proving but a link phase between the proving phases, and it is about the phase of handling with evidence. It is about manipulating with the evidence, which is reflected in the taking of evidence from the depot and their delivery to the court, expert, etc., then their re-depositing into the depot, etc. Although this phase does not represent the stage of proving, it is very important from the aspect of continuity in the sense of proof process. This is because disregard of the rules concerning the handling of evidence at this stage could make the evidence contaminated and therefore to put in doubt its credibility. Also, in the case of irresponsible and perfunctory handling during manipulation with evidence they could be destroyed or lost. Unfortunately, in practice, these things are happening. Therefore, it is very important that any manipulation of evidence is recorded in order to know at any moment who, when and on what grounds, had access to a concrete evidence or evidence. This is related to so called “chain of custody” about will later in the paper be more words.

DEFINING THE PRINCIPLE OF CONTINUITY OF EVIDENCE

From all of the foregoing, we can see that proving in a criminal procedure is a very complex process in which there is a great chance of making a mistake. Therefore, at every stage of the evidence, the procedure must be followed carefully and with strict adherence to the provisions of the Criminal Procedural Code and the rules of forensic science, i.e. there must be continuity in the way of proof (principle of continuity of evidence).

Therefore, we come to the question of what is considered under the continuity of evidence in the criminal proceedings, or what is meaning of the principle of the continuity of the evidence. Before embarking on the definition of this notion, I would first like to emphasize that this is a notion that is characteristic of the Anglo-Saxon criminal procedural system, and that this notion is almost unknown to the criminal procedural theory and practice of the Republic of Serbia and the countries of the former Yugoslavia. As can be seen from the introductory part, the criminal procedural legislation of the Republic of Serbia has adopted many elements that are characteristic for the Anglo-Saxon model of criminal proceedings. In this regard, we think that the continuity of the evidence should be recognized also by the legislator, by the theoreticians, and by the practitioners of criminal procedural law in the Republic of Serbia. Of course, here we do not want to advocate the idea of simply transplanting a segment of the Anglo-Saxon criminal proceedings into our domestic proceedings, without its adjustments with the circumstances underlying domestic criminal procedural law. We rather want to advocate introducing the new notion and principle into the criminal procedural theory and practice of the Republic of Serbia, by considering all characteristic of domestic criminal procedural law and its purpose, which should provide a greater degree of security and admissibility of evidence in court. Namely, in the Anglo-Saxon model of criminal proceedings, such as the United States, there are Federal rules of proof. These rules determine what evidence must or must not be considered by the trier of fact in reaching its decision. The trier of fact is a judge in bench trials, or the jury in any cases involving a jury. Important rules that govern admissibility concern hearsay,

authentication, relevance, privilege, witnesses, opinions, expert testimony, identification and rules of physical evidence. There are various standards of evidence or standards showing how strong the evidence must be to meet the legal burden of proof in a given situation, ranging from a reasonable suspicion to preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt. In the criminal procedure law of the Republic of Serbia, we do not have such rules, instead of that everything regarding the work with evidence is regulated by the Criminal Procedural Code of Republic of Serbia, which does not define precise standards and procedures of proof, but only general rules on working with evidence in the sense of undertaking of investigative measures. This results in a large level of conformism and a different approach in undertaking investigative measures in practice, and therefore to the mistakes within the work with evidence. In this regard, there is a need for mechanism, which will ensure that certain guidelines are set out to be respected in order to ensure that the evidence presented to the court can be considered trustworthy. In that sense, we consider that the recognition of the principle of continuity of evidence by the legislature, theory and practice in the Republic of Serbia can contribute to the better reliability of evidence in criminal proceedings. It should be underlined that in Republic of Serbia this principle should be adopted in a slightly different way from how has it been understood in the Anglo-Saxon model of criminal procedure, i.e. in broader sense than it is determined by so-called “chain of custody”.

Before we present our view of the principle of continuity of evidence, which, in our opinion, would be adequate for the application in the Republic of Serbia, we will first point out what is considered under the notion “continuity of the evidence” in the criminal process theory of the Anglo-Saxon legal system. We did this because this model has served to us as an inspiration for defining our view of *delege ferenda* principle of the continuity of evidence in criminal proceedings of Republic of Serbia.

In order to understand the meaning of the principle of the continuity of evidence in the Anglo-Saxon model of criminal procedure, we first have to start from the very meaning of the term “continuity”. Namely, usually under term “continuity” is considered: “the state of being continuous; uninterrupted succession ...”, also, it means “uninterrupted connection; cohesion; close union of parts ...” (Thatcher & MacQueen, 1984: 185). Continuity, also involves the movements of something from one place to another, on the way that thing at point A is the same thing at point B.

The issue of continuity of evidence or what is sometimes referred to as “continuity of possession” or what some American jurisdictions have termed “chain of custody” arises when real evidence including articles of physical evidence is tendered in legal proceedings such as a trial (Clife & Clark, 2015). “Chain of custody” is a term that refers to the maintenance of an unbroken record of possession of a sample from the time of its collection through some analytical or testing procedure and possibly up to and through a court proceeding. For some laboratories, especially those dealing with forensic, pathological, and environmental samples, the establishment of the chain of custody procedures is of paramount importance, as the results of testing or analysis might eventually be held as evidence in a trial or hearing. Such organization is designing their sample handling documentation system so that, during each step of sample collection, delivery, receipt, storage, analysis, disposition, or other handling, someone individual is responsible for the custody and the identification of the sample and its accompanying documentation (Ratliff, 2003).

Continuity of evidence is an important legal requirement for evidence to be regarded as admissible. The term refers to the handling, processing, access or security of any evidence

from the time of collection to the time of presentation to the court. Evidence should be protected and secured at all times to ensure it is original, undisturbed and unaltered. If the evidence is left unsecured, this is a „break“ in the continuity of evidence, and hence it may be inadmissible in court. Video, photographs, statements or any others evidence should be secured by the investigator at all times, and handed to specific, authorized personnel. Ideally, the progress or transferring of the evidence to others should be logged in a register, which can prove the continuity in the court (Cooper, 2006). Continuity of evidence, or so-called chain of custody, with confidence in sample integrity, is critical for criminal procedure, since, if there is any possibility that there has been a mix-up with evidence material, then a result of examination of evidence may properly be considered to be more prejudicial and are thus inadmissible (Hogg, Tan & Comar, 2004). Adherence to chain of custody principles has two main goals: (a) to ensure that the sample which is taken or collected is the same sample that is analysed; and (b) to ensure that the sample is not altered, changed, substituted, or tampered with between the collection or acquisition and the analysis or testing.

The chain of custody of the evidence, example material trace or sample regarding to criminal offense must document the handling of the trace or sample (time, person, and place) from the time of the first collection. Policies and procedures that influence trace or sample handing and testing must be documented and the system must be audited to demonstrate and document adherence (Hogg et al., 2004). In the adversarial model of criminal procedure if the party attempting to introduce analytical or test results as evidence is challenged by the opposing party, he or she may be obligated to demonstrate an adequate chain of custody. This brings up the important question of what constitutes „adequate“ chain of custody. In the case *Gallego v. United States of America* (1960), the court stated that all that is necessary is that a „reasonable probability the article has not been changed in important respects“ be established. Also, in the case *United States v. Robinson* (1971), the court stated that the „probability of misidentification and adulteration must be eliminated not absolutely, but as a matter of reasonable certainty“ (Ratliff, 2003: 10). This means that absolute security, according to the states of court, is not necessary for an acceptable chain of custody in criminal procedural system of United States (Ratliff, 2003). A proper foundation of every evidence in criminal procedure rests on three points (Stuesser, 2005). First, the proposed exhibit must have relevance to the proceedings. In other words, it has probative value in proving a fact in issue. Second, it is what it purports to be and accordingly is authentic and/or identifiable. Third, a witness or witnesses must verify the authenticity or otherwise identify the proposed exhibit. Continuity is relevant to the second point. In this regard, it must be shown for example that the proposed exhibit is the same one which was seized or received during the investigation and if its source is relevant, that it came from the particular source, that it has not been tampered with, or its chemical composition if relevant has not been altered, contaminated or modified in any manner prior to its forensic analysis. Regarding to this failure to prove continuity can have adverse and drastic consequences for the party, which introduced that evidence (Clife & Clark, 2015).

Taking in consideration everything mentioned above, we can conclude that in criminal procedure in the United States, continuity of evidence, generally speaking, means that material evidence (sample, trace, or other item connected with committing of criminal offense) can be traced hand to hand from the time of its collection to the time of presentation on the court.

Considering the lack of standards in the implementation of forensic procedures in the criminal procedure of the Republic of Serbia and the adversarial model of criminal

procedure, in the next part of the paper we will propose our view of the principle of continuity of evidence. This principle, at our opinion, would be adequate for the application in the criminal procedure law of the Republic of Serbia, all with the aim of raising the level of standards in working with evidence and ensuring their reliability and sustainability in criminal proceedings.

Without the intention to be a more Catholic than the Pope (himself) believe that the principle of the continuity of evidence should not only apply to manipulating evidence from hand to hand, but that continuity of evidence must be established from the moment of gathering evidence. In response, we think that the continuity of the evidence starts from the first phase of the work with the evidence, that is, from its discovery and the conduct of investigative actions, and proceeds further with its manipulation, until its final presentation in court. In this regard, we emphasize the first phase as very important, because if it does fail in this phase, further respect for the chain of custody has no sense.

In our opinion, the continuity of the evidence, that is, the principle of the continuity of evidence implies the existence of a constant respect for the provisions of the Criminal procedural code and the forensic sciences rules in the process of proofing, starting from the detection phase to the evaluation phase, or evaluating the evidence. Namely, evidence can be used and useful only if it is credible. This means that the entire work with him was done professionally, objectively, fairly and transparently and in accordance with the provisions of the Criminal procedural code (Munižaba & Ivanović, 2013). From moment of finding at the crime scene until to the moment of presenting before the court, it must be clearly seen what was done with the evidence, way and methodology of collecting, recording, transporting, and storage, as well as why somebody has contacted the evidence material, what procedures were used during its analyse in the lab, and what scientific principles the conclusions are based on (Maver, 2009). At this place, we want to remind that one of the purpose of this principle is to ensure that the proposed exhibit is the same one that was discovered at the crime scene. The continuity of the evidence, therefore, exists when each stage in the process of proofing was completely implemented in accordance with the provisions of the Criminal Procedural Code and the rules of forensics sciences. Otherwise, if this rule is not respected, the continuity of the evidence will not exist, that is, it will be interrupted, which puts into doubt the probative credibility of the evidence on the basis of which the existence or absence of a decisive fact is established, and, therefore, the existence or non-existence of that decisive facts (Munižaba & Ivanović, 2013).

In this regard, if continuity in the work with evidence is interrupted by the compromising of an investigative measure which determines the existence or absence of any decisive fact taken in the heuristic segment of the criminal procedure, that is, at the stage of the pre-investigation or in the investigation phase, the court will be permanently brought in doubt about the existence or absence of any essential characteristic of the criminal offense or in relation to the facts on which the application of some provision of the Criminal Code or the Criminal Procedural Code depends. Namely, the compromising of the investigative measure undertaken in the pre-investigation phase or in the investigation phase has the effect of permanently bringing into question the credibility of the evidence obtained through this action, by which the existence or absence of certain determined facts is established, which constitutes a material and procedural precondition for applying the principles *in dubio pro reo*.

We consider compromising of the evidence as a situation in which the evidence that determines the existence or the lack of an essential characteristic of a criminal offense or the facts on which the application of some provision of the Criminal Code or the Criminal

Procedural Code depends not fully undertaken according to the provisions of the Criminal Procedural Code and the rules of forensic sciences. Not undertaking evidence (investigative) measures fully in accordance with the provisions of the Criminal Procedural Code and the rules of forensic sciences can result in the contamination of material and subject of criminal matters, which results in a permanent suspicion of the certainty of the existence or lack of an essential characteristic of the crime or facts on which the application of some provision of the Criminal Code or the Criminal Procedural Code depends, and hence the creation of material and procedural preconditions for the application of the principle *in dubio pro reo*. Please note that in this case, there is a permanent suspicion, since this type of omission when undertaking investigative measures cannot, as a rule, be later reimbursed (Munižaba & Ivanović, 2013).

The undertaking of an investigative measure contrary to the provisions of the Criminal Procedural Code can be seen, for example, in the case of investigative measure recognition of persons or objects. For example, the law require that the person who should be identified by recognizing by witness, should be done together with other persons unknown to him, and whose basic characteristics are similar to those described by him (Article 103, paragraph 1 of the CPC). This mean that persons in line must have the same group features as well as a critical person (for example, if the defendant is shown as lower person and with a beard all other presented persons in line should have a similar look like to him, if he wears glasses and other faces should have them) (Simonović, 2009). In the practice there is often cases that persons were showed it in such a way that critical person appears together in the line with other persons who, by group characteristics, are clearly distinguishable from the person who should be recognized.

Also, undertaking of an investigative measure contrary to the provisions of the Criminal Procedural Code and the rules of forensics sciences, in the case of examination of crime scene, can be seen in the wrong and careless dealing with the suspected person at the scene of the criminal event. Namely, there is often a need for a suspected person to be brought or held on the scene of a criminal event, which requires a high degree of caution and additional precautionary measures. However, in practice, unfortunately, a very often suspected person brings or holds at the crime scene in such way that he is introduced into the narrower circle of crime scene where are the objects and traces (before and during the conduct of the crime scene examination), which is from the criminalistic and, ultimately, from the criminal procedure point of view contradictory, because of traceological reasons, for example, the danger of contamination of the site of the event and the presumptive microtraces of crime, etc., which later calls into question their probative validity. Also, bringing of the presumed accused in the place of examination of crime with clothing and footwear, for which there si presumed that he had on himself in time of committing the crime (*tempore delicti*), prevents the subsequent traceological exploitation of these objects and is considered to be traceological dilettantism (Modly, 1999). Then, in case of expertise, when the expert examination is performed by a person who is incompetent for such a type of conservation, etc. All of these errors have the effect of compromising the evidence and discontinuing continuity in the way of proof, and thus creating the material and process assumptions for the application of the principle *in dubio pro reo*.

One example that best illustrates to us how an interruption in the continuity of the evidence due to the compromising of the investigative measure, that is, the actions of authorized entities that are not in accordance with the provisions of the Criminal Procedural Code and the rules of criminal forensics sciences can have the effect of provoking suspicion

in terms of existence, or lack of decisive facts, is the case of O. J. Simpson from United States criminal law practice. (In this case, compromising of the investigative measure was indicated just at the main trial). In 1994, O. J. Simpson was charged with a double murder. In the aforementioned procedure, the defense brought into question the credibility of some of the key evidence of the charge, and thus created doubts as to the existence or absence of facts established on the basis of this evidence. Namely, during the crime investigation of the aforementioned crime, the detective of the Los Angeles Police, Mark Fuhrman, was without warrant for search and the authorization of the prosecutor, entered the Simpson estate and spent there alone about eighteen minutes. During that time on the Simpson estate, Fuhrman found the right leather glove with a plenty of blood-soaked material, after which he concluded that this glove was found identical to a glove that was found near the face of the crime scene whereby Simpson's property pronounced the secondary face of the crime scene. A further search of O. J. Simpson's property near his car found a few drops of blood that was later found to coincide with the blood of the victims of this crime. Based on material evidence and other facts against O. J. Simpson, an indictment has been filed for the criminal offense of Double Murder. At the main trial, the defendant's defense argued that the innocent defendant was based on the fact that the detective Fuhrman spent eighteen minutes at the Simpson estate without the warrant for search, and that he could have plant the subject glove. Also, in connection with this finding, the defense also stated that Fuhrman, just before he went to the Simpson estate, was on the primary crime scene, so it is possible that the five blood drops, found on the door of the Simpson property, Fuhrman could bring on its shoes, from the primary place. Namely, in order to avoid these situations, in the United States the instruction for the work on the crime scene prescribes that two investigative teams should be formed, precisely because there would be no possibility to transfer of traces from the primary crime scene place to the secondary crime scene place (Ivanović, 2008), which was not done in this case. Due to the omission made by the detective Fuhrman in this case, the credibility of the material traces found that were the key elements of the charges was questioned, and in accordance with the principle of *in dubio pro reo*, any doubt or ambiguity regarding the existence of a decisive fact must be reflected in favour of the defendant, which was done in this case, so that O. J. Simpson in 1994 has been acquitted of the murder of wife Nicole Brown Simpson and her friend Ron Goldman.

Respecting the principle of the continuity of evidence, it is very important that the court makes a decision on the basis of its discretion, therefore, if the principle of continuity of evidence is not respected, and some evidence has been obtained contrary to the rules of criminal procedural law and the rules of forensic sciences, then there is no proper judicial conviction based on this evidence, nor a proper court decision. The importance of the existence of the principle of continuity of evidence is reflected in the fact that, if continuity in the method of proof is interrupted or disturbed at some stage of the criminal procedure, this will result in incorrect determination of decisive facts, i.e. misrepresentation of evidence by the court, and consequently misapplication of the legal regulations of criminal and procedural law, or incorrect connection of the legal consequences. Therefore, the principle of the continuity of the evidence is a prerequisite for the proper decision at its discretion of the court, and consequently a proper court judgment, while disregarding the principle of continuity of evidence raises doubts about the existence of a decisive fact, which is, the existence of material and procedural assumptions for the application of the principle *in dubio pro reo* (Munižaba & Ivanović, 2013).

In the end, it should be noted that the principle of continuity of evidence and the principle *in dubio pro reo* are mutually exclusive, i.e. if the principle of the continuity of evidence is fully respected, then there is no basis for applying the principle *in dubio pro reo* for the unlawful conduct in determining decisive facts, while disregard of the principle of continuity of evidence results in the existence of material and procedural preconditions for the application of the principle *in dubio pro reo*. Also, this brings us to the issue of relationship between principles beyond a reasonable doubt and the principle of the continuity of evidence.

CONCLUSION

The importance of continuity in the proof process for establishing a reasonable doubt is best demonstrated by bringing in a connection with principle *in dubio pro reo*, prescribed by Criminal Procedural Code of Republic of Serbia. Namely, if there is the suspicion regarding the existence of some important characteristic of a criminal offense or in relation to the facts on which the depends application of some provision of the Criminal Code or the Criminal Procedural Code leads to the court's obligation to make a decision in the criminal procedure more favourable for the defendant. This is therefore the existence of material and procedural assumptions for the application of the principle *in dubio pro reo*. Namely, principle *in dubio pro reo* in the criminal procedural legislation of the Republic of Serbia are regulated by Article 16, paragraph 5 of the CPC, which stipulates that if, even after obtaining all available evidence and their performance in criminal proceedings, only doubt remains in relation to the existence of some essential characteristic of a criminal offense or in relation to the facts on which the application of some provision of the Criminal Code or Criminal Procedural Code depends, the court will make a decision that is more favourable for the defendant.

If start from the fact that for a reasonable doubt about the existence of a decisive fact, it is necessary to exclude a reasonable doubt, then we can conclude that the existence of a reasonable doubt is in fact a condition for the application of the principle *in dubio pro reo*. Therefore, the principle *in dubio pro reo* and the principle beyond a reasonable doubt are mutually exclusive. On the other hand, if the role of the court in securing and delivering evidence is completely minimized, and all the work in dealing with evidence is transferred to parties in the proceedings, then must be established strong guarantees which provide that at the main hearing are presented only the evidence which in no case were not obtained in contravention of the law and rules of forensic science, i.e. standards must guarantee verifiable and reliable evidence. This leads us to the need for the principle continuity of evidence. Under the principle continuity of the evidence, we do not consider the rules to ensure continuity from the moment of securing evidence until the moment of its presentation in the court, of so-called chain of custody. Instead of that under the continuity of the evidence, we consider the principle that guarantees the continuity of evidence from the moment of its creation at the time of the commission of the criminal offense until the moment when it is presented at the court. In this way, a guarantee is provided that the proposed exhibit resulting from the commission of a criminal offense is in fact a material trace or subject presented to the court exactly form in which it was created at the time of the commission of the criminal offense.

According to all of the foregoing, we think that the recognition of the principle of continuity of evidence by the criminal procedural legislation of the Republic of Serbia would lead to raising the level of work with evidence, a greater degree of sustainability

of evidence at the main trial and creating conditions for the conviction of a court in the existence of some fact with the level of certainty, or so-called beyond the reasonable doubt.

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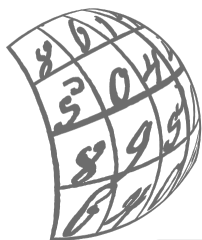
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