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TEMATSKI ZBORNIK RADOVA MEĐUNARODNOG ZNAČAJA

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THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE

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PREFACE

Dear readers,

In front of you is the Thematic Collection of Papers presented at the International Scientific Conference "Archibald Reiss Days", which was organized by the Academy of Criminalistic and Police Studies in Belgrade, in co-operation with the Ministry of Interior and the Ministry of Education, Science and Technological Development of the Republic of Serbia, National Police University of China, Lviv State University of Internal Affairs, Volgograd Academy of the Russian Internal Affairs Ministry, Faculty of Security in Skopje, Faculty of Criminal Justice and Security in Ljubljana, Police Academy "Alexandru Ioan Cuza" in Bucharest, Academy of Police Force in Bratislava and Police College in Banjaluka, and held at the Academy of Criminalistic and Police Studies, on 3 and 4 March 2015.

International Scientific Conference "Archibald Reiss Days" is organized for the fifth time in a row, in memory of the founder and director of the first modern higher police school in Serbia, Rodolphe Archibald Reiss, PhD, after whom the Conference was named.

The Thematic Collection of Papers contains 168 papers written by eminent scholars in the field of law, security, criminalistics, police studies, forensics, informatics, as well as members of national security system participating in education of the police, army and other security services from Spain, Russia, Ukraine, Belarus, China, Poland, Armenia, Portugal, Turkey, Austria, Slovakia, Hungary, Slovenia, Macedonia, Croatia, Montenegro, Bosnia and Herzegovina, Republic of Srpska and Serbia. Each paper has been reviewed by two reviewers, international experts competent for the field to which the paper is related, and the Thematic Conference Proceedings in whole has been reviewed by five competent international reviewers.

The papers published in the Thematic Collection of Papers contain the overview of contemporary trends in the development of police education system, development of the police and contemporary security, criminalistic and forensic concepts. Furthermore, they provide us with the analysis of the rule of law activities in crime suppression, situation and trends in the above-mentioned fields, as well as suggestions on how to systematically deal with these issues. The Collection of Papers represents a significant contribution to the existing fund of scientific and expert knowledge in the field of criminalistic, security, penal and legal theory and practice. Publication of this Collection contributes to improving of mutual cooperation between educational, scientific and expert institutions at national, regional and international level.

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

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

Belgrade, June 2015

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INTRODUCTORY PAPERS

UDC: 378.094:351.74(436.1)

GENERAL INFORMATION ABOUT THE CAREER AND TRAINING SYSTEM OF POLICE IN AUSTRIA

Colonel Peter Lamplot[1]
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GENERAL FACTS

The Republic of Austria is a country located in the centre of Europe. About 8.5 mio inhabitants are living on 84.000 square kilometres. The entire Republic includes 9 equal federal countries (also the capital city Vienna is one of these federal countries). Internal security is task of the Federal Ministry of the Interior. About 27.000 police officers are incorporated in the Police organisation which is a part of the MoI. (Ratio between inhabitants per police officer 315: 1) Police is structured geographically in the Police Directorates of each federal country (plus the headquarter within the Ministry of the Interior) and in 3 hierarchical levels (basic level – middle level – higher level = senior officers). An externally entering the police force isn't possible, that means every police officer has to begin in the basic level and is able to be selected for the next (middle) level and from there to the senior-officers-level.

The task of an Austrian police officer is the entire field of policing (traffic police, security police, border police, criminal investigation etc. but also eg community policing). Although this general tasks for everyone, also specialized police departments (and of course police officers) exists. Such specialists act if the fulfilment of a task needs more specialised, trained and experienced officers for example dog handlers, special traffic police tasks, fighting heavy crimes, criminal investigation, forensic issues, counter-terrorism or even riot-policing.

RESPONSIBILITY FOR TRAINING

"Sicherheitsakademie - .SIAK", department I/9 of Austria's Ministry of the Interior, is responsible for all general training and education activities for police officers and civil servants of the MoI, as well as for Science and Research and international cooperation.

Special training, eg dog handlers training (canine), forensic-training, training for traffic police, riot police or anti-terror squad etc., is a task of the respective special departments within the MoI or the Police organisation.

The strategic assignments of .SIAK are: Steering, coordination and controlling of all the training measures and activities.

The operative assignments are: Organisation of the training courses for every level, trainings for qualified teachers and police personnel, in-service training in selected areas, and performing international cooperation in the field of police training as well as involvement and performing police related science and research.

To organise training in a way that all the needs for an effective police work are met, a structured circle of communication and evaluation between .SIAK and the other relevant departments in the Ministry and the Police Directorates of the federal countries is organised (regular meetings on operative level - yearly conference on strategic level).

FIELDS OF POLICE TRAINING

Under the umbrella of .SIAK 10 Police-training-centres all over Austria (in every federal country one, in the biggest country two) are existing. In these Training-centres the training courses of the basic level and the In-service training of the personnel of the respective Police Directorate of this federal country are realized.

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The responsibility for In-service training is divided. On the one hand it is task of .SIAK with execution of a standardized in-service training (yearly training days for every police officer), running an – annually offered - seminary-catalogue (covering different policing issues from police ethics to interview techniques) as well as a language training program and on the other hand a task of the Police Directorate of the federal countries, to cover their local training needs.

The basic training is focusing on police officers as generalists, lasts 24 month (theoretical and practical parts) and ends with a final exam. All over Austria about 1000 police officers start the basic training yearly (courses/classes can start every month depending on the needs).

The mid-level training takes place in the Training centres of Vienna, Traiskirchen (which is a training centre in Upper Austria) as well as Tyrol and lasts 9 month (alternately theoretic and practical parts). This training yearly starts in September and is open for about 220 participants.

During this course participants will be prepared for their future tasks in leading or other specialised functions (eg station commanders/deputies, shift leader or criminal investigators). Depending on which free position an applicant will get, he or she has to pass some additional modules (criminal investigation, border police, police station or other special police tasks).

As .SIAK is not entitled (accredited) to run academic programs, cooperation with a civil University (University of Applied Sciences) had been started in 2006 to develop and run a training-program for the higher level (senior officers). This is a 3-years bachelor study program (Police leadership) which takes place in Wiener Neustadt (a city 75 km in the South of Vienna). Yearly 20 students start this training program, which should prepare participants for their future job as senior police officers (Commander or deputy of a police district, a city or a country, or other specialised departments, strategic tasks in a head-quarter etc.). The focus of this program is Leadership and Police strategy. Passing this study participants get the academic level of a "Bachelor". Participants of this study program have to do in parallel their ordinary duty as police officer (so they are part time police officers and part time students).

Teachers working in the Training centres are basically police officers from the middle level. All these teachers are specially trained in pedagogics and andragogy's. This pedagogical training lasts one year (2 semesters) and is organised and carried out by the University of Applied Science in Wiener Neustadt. During this time participants have to do in part time their job as police teacher and in part time their training program.

The latest development was the implementation of a academic training program "Master of Strategic Security Management". The target group of this Master-program are police officers and civil servants from the MoI and is a precondition to cover a top position in the MoI. But this program also should be open for other interested persons from the civil society. The Master-program lasts 2 years (4 semesters) and participants have to do it in parallel their daily work. Big parts of this program have to be completed in their free time.

The most important target of the training-courses of each level is the development of social competences as well as necessary job skills and (juridical and practical) knowledge for the respective level.

The middle level and higher level trainings additionally focuses on leadership competences, project management as well as strategic thinking.

METHODOLOGY AND DIDACTICS

We try to perform the lessons in a student-focused interdisciplinary way. It is a challenge to find out a balance between practical and theoretical contents, but for this we invite NGO´s, GO´s and other relevant organisations to come to the police training centres, to show the future officers or participants of the courses also this point of view (eg training in human rights is done from a teaching team consisting of a police officer and an expert from "Amnesty International", or training in the field of anti-racism the ADL – Anti-Defamation League – is invited to perform seminaries).

Of course there are also experts from the policing field, eg Criminal investigators or other experts of different police branches invited.

In the schedule of the higher-level-course (bachelor study) inputs of Judges, Prosecutors, different scientists, or experts from other public bodies are foreseen.

During the practical part of the basic training, applicants work some month in a police station, doing service in a shift under supervision and together with experienced police officers (mentors).

During the practical parts of the mid- and higher level courses, applicants spend some weeks on a workplace they probably hold in the future (eg in a head-quarter, or in the leading team of a police district but of course under mentoring support). Additionally applicants of the higher level course (senior officers

training) have to do a three weeks lasting operative placement in a foreign country, to get in touch with the experience of police officers of other European countries.

THE WAY OF CAREER

If somebody in Austria would like to become a Police officer, he or she have to fulfil some prerequisites (Austrian citizenship, full capacity to act, personal and professional suitability, minimum age of 18 years, completed professional training or compulsory schooling diploma, male applicants have to had completed their military service or as alternative to military service a community service) and successful passing the entrance examination (selection procedure: psychological test, basic general knowledge, test in writing German language and an exploration). A minimum height is not necessary any more. About 5000 (sometimes 6000) persons per year would like to start a career as police officer. After the selection procedure only 1000 of them can start in the basic training for Police.

After successfully passing this basic training he or she has to do a minimum of 3 years practical/operational police work in one of the (about 900) police stations somewhere in Austria.

If he or she wants to make further career they has to pass another selection procedure (5 applicants: 1 successful) to be admitted for participation in the mid-level training, which lasts 9 month (see above).

After passing the final examination of the mid-level training, he or she has to do a job in this level for at least another 3 years to be again selected (4 applicants : 1 successful) for admitting participation of the higher-level-training (senior police officer).

To reach the highest level of a police career, someone needs at least 12 years of experience in the police-service.

About 2/3 of our police-personnel is in the basic-level, 30 % in the middle level and 2 % in the higher level.

The age of retirement is generally 65 years (with this age the police pensioner receive 80 % of the average monthly salary of the last forty years). If somebody wants to be retired earlier (possible is the retirement with 60 years) this sum is to be reduced up to another 6 %, but if somebody have to be retired earlier because of accident or health reasons there is no reduction.

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THE FIGHT AGAINST TRANSNATIONAL ORGANIZED CRIME

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Abstract: The paper deals with the novel forms of Organized Crime, as a treat both to the international security and the national Spanish security. While traditionally Organized Crime was considered as an internal matter, the new tendencies and links between Organized Crime Groups have initiated a wide range of necessary actions on international level as well as an establishment of a set of laws and indicators, designed to differentiate criminal activities and as a consequence sanctions which derive from such illicit conduct. Special attention was dedicated to the police and judiciary actions enforced in such cases, with a particular emphasis on the actions conducted by the Spanish Police Bodies and legal aspects of the country in question.

Keywords: organized crime, definition and indicators of organized crime, legal frame, criminal manifestations detected in Spain.

INTRODUCTION

The term Organized Crime represents the superior scale of the organized delinquency which exists and acts as a true "criminal enterprise", which achieves its maximum expression with the existence of the mafia organizations. Organized Crime Groups fulfil all of the requirements defined by the 11 indicators of the European Union, which will be explained further along. Slightly below on the scale are:

– Criminal groups, which represent a certain number of persons, united for the purpose of committing criminal activities, but have no stable existence and continuity and whose actions are occasional rather than regular.

– Gangs, which are previously united for the purpose of committing criminal acts, and in some cases, if they coincide with the indicators of the European Union they can be considered as Organized Crime.

Unlike the traditional understanding of crime as such, Organized Crime is an "enterprise" with its hierarchy which generates multiple benefits for its members. Its drive is purely economic.

Organized Crime is a structure, a hierarchy, a distribution of functions, it is continuity, an enterprise in its full sense and as such, it has the need for members of different specialties, a need for coordination and security (which is why it is often related to corruption in order to ensure the effectiveness of its illegal activities), but most of all it possesses enough of an attractive drive and motivation for each and every one of its members: getting rich fast, without any regard for ethics and morality.

From the Police point of view, it produces a number of difficulties during investigations, mostly due to its great appeal, caused not only by the fact that it promises great economic benefits in a short period of time, but also, because to this day sanctions for such illicit activities remain low, even though it is a threat to various aspects of modern societies, such as state budget, national security, public health and freedom in general. It is a threat difficult to extinguish, which is why it requires a special legislative support.

The Organized Crime represents a threat to the world peace and its sustainable global development. In addition, it is more than a threat; it is a challenge too, since its characteristics are such that it spreads in different places of the world in a coordinated and connected manner. It is also important to underline, that the Organized Crime Groups are controlling millions of dollars, which facilitates corruption. Certain crime structures have access to nuclear, biological and chemical weapons, although there is a clear difference which distinguishes ones from the others. On the global level, perhaps the most important treat would be that these crime groups have gained so much power that in more than one occasion, they have actively participated in the governmental decision making in some countries. For example, the Drug Trafficking is often used as a financial source of Terrorism and wars and conflicts in some parts of the world.

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Among numerous aspects which have been previously mentioned, another reason why Organized Crime requires a special legislative support is the fact that many Organized Crime Groups, in their intents to execute their primary illicit activity, get involved in other related illicit activities (the groups which control illegal migrations often resort to extortions in order to obligate the immigrants to do something for them), which is when the primary crime generates other related crimes, sometimes even of greater importance, but the economic benefits eliminate the human capacity of understanding the graveness of their actions. The statistics, published by the International Monetary Fund are devastating:

– Between 0.6 and 1.5 billion dollars of unreported funds circulate the fiscal paradises every year.
– The amounts which circulate thanks to Money Laundering represent between 2% and 5% of the world GDP.
– Annual benefits gained from Drug Trafficking represent between 8% and 10% of the world trade.
– The product of the entire world crime surpasses one billion dollars annually, which is 20% of the world trade.
– More than 5,000,000 persons live from and for crime, which means that there is a whole multinational crime community.

THE LEGAL CONCEPT OF ORGANIZED CRIME

• International Global Perspective:

The United Nations Convention against Transnational Organized Crime.

• European Concept:

The establishment of the 11 indicators which determine whether a group or a gang can be considered as Organized Crime.

• Conceptual determination in Spain:

Constitutional Law 5/1999, of the 13th of January, which modified the Law of Criminal Indictment in regards of perfecting the police investigation activities related to Drug Trafficking and other serious illicit activities.

UN DEFINITION OF ORGANIZED CRIME

UN defines organized crime as an "Organized Criminal Group", a structured group of three or more persons which exists for a period of time and acts with the purpose of committing one or more serious crimes, defined by the above mentioned Convention, with the intention to gain, directly or indirectly, an economic or any other material benefit.

"Serious crime" is defined in the Organized Crime Convention as meaning "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty."

"Structured group" is a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

The above mentioned Convention refers to crimes committed in more than one state, having in mind the sovereignty of each and every one of them, which is why the countries are required to develop legislation in order to be able to respond to such problems. For this reason a system of adoption of preventive measures has been established, which allows a confiscation of property in the countries different from the country of commission of crime as well as it is encouraged to enforce extraditions between the participants of the Convention, in accordance with the internal legislation of each and every one of them.

One of the options which is being considered is also the reciprocal judicial cooperation, concentrated on the temporary extradition of criminals, in order for them to face the tribunals in other countries, as well as the establishment of the mixed investigation teams between different countries. What should be taken into consideration is also the possibility to include previous criminal records from other countries, in the judicial process conducted in one of them, with the goal to aggravate the sanctions imposed.

CONCRETE ACTIONS IN THE FIGHT AGAINST ORGANIZED CRIME WITHIN THE U.N.

The adoption of the U.N. Convention on Organized Crime represents the first global instrument in the fight against Organized Crime, which calls upon concrete actions on a global level.

GOALS

- Synchronization of penalties (double incrimination)
- Development of judicial cooperation in order to enhance the mutual aid and the extradition within the universal frame, as well as to establish joined investigation teams.

E.U. 11 INDICATORS OF ORGANIZED CRIME

As written in the document 6204/2/97 Enfopol 35 of the European Union, in order to be able to determine whether or not we are in a presence of an Organized Crime Group, there is an obligatory requirement for it to match the eleven indicators, out of which at least six must coincide, some underlined as obligatory.

The main objective for the establishment of the above mentioned indicators is to unify the criteria between different member states, thus creating a base for the legislative and judicial synchronization. It is only based on some common concepts that we can activate the reciprocal legal and process actions, as well as bilateral and multilateral conventions. By following this concept line we can establish politics of prevention, as well as have relevant and accurate studies related to the mater.

E.U. OBLIGATORY INDICATORS OF ORGANIZED CRIME

- Collaboration of two or more persons: It must be collaboration with the intention to commit crime, without having to be formal.
- Actions committed for a period of time: Punctual crime commission is not included. In this case the minimal period of time considered is of six months.
- Reasonable doubt that a serious crime has been committed: This indicator is not directly related to the penalty or sanction imposed for one such crime, due to the fact that there is no homogeneous definition in that sense for all of the member states. Nevertheless, it does only refer to the serious crimes.
- Gaining personal benefit or power: This is one of the basic indicators, which naturally forms part of any criminal activity; however it should never be related to the terrorist organization.

E.U. INDICATORS OF ORGANIZED CRIME-OPTIONAL FOR SPAIN

- Specific distribution of tasks: Meaning that it must be an organism far from provisional. This kind of distribution of tasks and functions increases the efficiency of the criminal group members, paying special attention to the specific abilities of each and every one of them.
- Existence of discipline, hierarchy or internal control: This indicator is tightly related to violence or intimidation and it represents a clear manifestation of the existence of hierarchy and of how dangerous an organization is.

E.U. OPTIONAL INDICATORS OF ORGANIZED CRIME

- Use of violence or intimidation: Persons who give in to the pressures of the Organized Crime Group members and become their tools for commission of criminal acts or protect the impunity of the group components.
- Use of commercial and company structures: For this indicator to be taken into consideration, it is necessary for the group to dispose of commercial structures utilized as a cover for their crime acts or as a cover for the income obtained by the commission of the same. When an objective becomes money laundering this indicator is taken into consideration, along with the one of the money laundering.

– Money laundering: Understood as a process through which the money, obtained by commission of criminal acts, becomes, in a fraudulent manner, legal, by the use of different economical channels.
– Use of influence or corruption: It is understood as the effort employed to gain the cooperation of the judges, police officers and politicians, company managers and the media.
– Illicit activities on the international level: When it comes to this particular indicator, it is important to bear in mind the dimension of the small countries, such as Monaco or Luxemburg. The decisive factor is that the criminal groups abuse the advantages of the international dimensions in any aspect.

E.U. INDICATORS OF ORGANIZED CRIME – CONCLUSIONS

The Organized Crime Groups are divided into five different levels, based on a specific character and with the use of the system of logistics, specificity and objectivity, into very high, high, medium, low and basic.

The said classification is the product of a combination of the "quality" factors, such as the number of members, the use of violence, the corruption, the employment of experts, the professionals or special skilled members, which guarantee the execution of criminal acts, as well as the use of sophisticated technical support, and finally the isolation, understood as the ability of the primary members of the organization to protect themselves from arrest, with the use of subordinates, covers or corruption.

TOOL USED IN THE EUROPEAN FIELD: EUROPEAN JUDICIAL NETWORK

Thanks to the Joint Action 98/428/JAI, on the 29th of June, 1998, adopted by the Council, a European Judicial Network is created, with the objective to improve, from the legal and practical point of view, the mutual judicial aid among the member states of the European Union, particularly in the fight against all serious crimes, such is the Organized Crime.

With the use of liaison magistrates points of contact have been created in order to enhance the coordination, cooperation and the exchange of information between different judicial authorities of the member states.

TOOL USED IN THE EUROPEAN FIELD: EUROJUST

By the Council's decision, of the 28th of February of 2002, EUROJUST was created as one of the tools which will aid the fight against Organized Crime.

The European Union, in its intent to develop cooperation in the fight against Organized Crime has created EUROJUST, an instrument authorized for investigations and actions related to serious crimes, committed at least in two of the member states. Its role is to promote coordination between competent authorities of the different member states and to facilitate the application of judicial international cooperation, as well as the execution of the investigative commissions and extraditions. Among the above mentioned tasks, EUROJUST also has the essential role in all of the matters related to the fight against Terrorism.

Its most important characteristics are as follows:

– Instrument of the EU, authorized with its own legal personality.
– Its headquarters are in The Hague.
– Each state names one member for the function of Prosecutor or Judge.
– It acts in the matters which affect more than one member state.
– Roles: promotes coordination between competent authorities of the different member states and facilitates the application of judicial international cooperation, as well as the execution of the investigative commissions and extraditions.
– Types of crime which are within the EUROJUST competences coincide with the ones of EUROPOL, including the Organized Crime.

SPANISH LEGAL FRAME: CONSTITUTIONAL LAW 5/99 ON THE REFORM OF THE LAW OF CRIMINAL INDICTMENT

The Organized Crime Group is an association of three or more persons, united with the goal to commit, constantly or repeatedly, one or more of the following crimes:

a) Kidnapping.

b) Crimes related to prostitution.

c) Crimes against property and socioeconomic order.

d) Crimes related to intellectual or industrial property.

e) Crimes against the rights of workers.

f) Crimes of endangered species trafficking.

g) Crimes of nuclear and radioactive material trafficking.

h) Crimes against public health.

i) Crimes of Money forgery.

j) Trafficking and deposit of fire arms and ammunition.

k) Terrorism.

l) Crimes against historic heritage.

SPANISH LEGAL FRAME: ARTICLE 515 OF THE PENAL CODE

The illicit organizations with the following characteristics are punishable by Law:

1) The ones that have as a goal the commission of a criminal act, and after they form an organization, they promote the said commission.

2) Armed gangs, organizations or terrorist groups.

3) The ones that, always with the objective to commit crimes, use violence, intimidation or control of personality to ensure its execution.

4) Organizations with paramilitary character.

5) Organizations which promote discrimination, hatred and violence against persons, groups or associations due to their ideology, religion or beliefs, or due to the affiliation of its members in a certain ethnic, race or national group, its sexual orientation, family situation, illness or minority.

Based on the above quoted Law, the penalty for the promoters or chiefs of the armed gangs is between 8 and 15 years of incarceration, while for the members the penalty is between 6 and 14 years. The founders of the illicit organization are faced with the penalty between 2 and 4 years of incarceration, while the active members of the same receive penalty between 1 and 3 years.

MOST FREQUENTLY DETECTED CRIMINAL MANIFESTATIONS IN SPAIN

Among the most frequently detected criminal manifestations it is important to underline the following: Drug Trafficking, Money Laundering, Forgery and Crime against property and socioeconomic order.

Spain, due to its geographical position, represents an important point for transit and settlement of Organized Crime Groups. Spain is the southern border of Europe, which puts it in a similar position of that of Poland with Ukraine. Its internal borders (France), thanks to Schengen represent a benefit for these illicit organizations, allowing their members to circulate freely, without an adequate filter.

All of the above mentioned works in favour of the global Organized Crime, not just in the sense of criminals of different nationalities, but also when it comes to foreigners which create their criminal networks on the European territory, without any obstacles (Galician clans, "cosa nostra").

Existence of tax paradises in the zone of Spanish influence, such as Gibraltar and Andorra, are the fundamental elements for Money Laundering. In addition, the disintegration of the eastern European block has significantly contributed to the increase of the crime rate in Spain.

To conclude, we cannot go without mentioning the general globalization which has introduced us to the new tendencies such as the use of technologies, most of all the Internet, which has become one of the indispensible tools in our homes and work places, but also for the criminal groups.

Among the Organized Crime Groups which operate on the Spanish territory, the most important ones are as follows:

– French Organized Crime Groups, which are usually involved in drug trafficking, robberies and assassinations due to accounts settling.

– Italian Organized Crime Groups, which usually deal with money laundering and kidnappings, as well as bank robberies and drug trafficking.

– British Organized Crime Groups, situated in the Costa del Sol and mostly involved in drug trafficking.

– Baltic Organized Crime Groups situated on the Mediterranean cost and involved in loan sharking, human trafficking, robberies of houses and industrial boats.

– Russian Organized Crime Groups, situated in the Costa del Sol, involved in firearm trafficking, extortions, human trafficking, and hired assassinations.

– Columbian Organized Crime Groups, situated in the centre of the country and the Galician cost, involved in drug trafficking, armed robberies of jewelleries and assassinations due to accounts settling.

– Nigerian Organized Crime Groups, situated in the Canary Islands and the centre of the country, involved in drug trafficking, human trafficking and frauds.

– Rumanian and Bulgarian Organized Crime Groups, situated on the cost of the Mediterranean Sea and the centre of the country, involved in human trafficking, forgery, loan sharking and extortions.

– Moroccan Organized Crime Groups, situated on the cost of the Mediterranean Sea and the centre of the country, involved in drug trafficking and illegal migrations.

– Albanian/Kosovo Organized Crime Groups, situated on the cost of the Mediterranean Sea and the centre of the country, involved in house robberies and robberies in the industrial zone.

With regard to the above mentioned groups a special attention should be put on the groups whose members originate from the eastern European countries. The political destabilization of the said zone has initiated the creation of important Organized Crimes Groups in that area, whose members often come from, now extinguished, military, police or espionage bodies, have had paramilitary training, and are equipped in the knowledge of new technologies and intelligence gathering, with the high level of specialties, professionalism and efficiency.

POLICE TOOLS USED IN THE FIGHT AGAINST ORGANIZED CRIME

A following legislative and constitutional frame was created in order to establish a solid base for judicial and police actions:

– Penal Code.

– Law 19/93 of the 28th of December, regarding prevention and money laundering.

– Law 12/03 of the 21st of May, regarding prevention and financing of terrorism.

– The U.N. Convention on Transnational Organized Crime, adopted in New York on the 15th of November, 2000, ratified by Spain on the 1st of March, 2002.

– Intelligence Centre for Organized Crime (CICO).

– National Centre for Antiterrorist Coordination (CNCA).

– EUROPOL

– INTERPOL

– EUROJUST

– The creation of European Public Prosecutor's Office, which coordinates all of the activities.

– Police specializations.

Other tools available to the Police bodies in their more efficient fight against Organized Crime are also bilateral agreements, which Spain has signed with Germany and France, as well as the employment and distribution of Lesion Officers.

The creation of Special Prosecutor's Offices has been proven as efficient, which is why Spain currently has two Special Prosecutor's Offices, one for Drug Trafficking and another for fight against Corruption and Organized Crime.

CONTROLLED DELIVERY, ARTICLE 263 OF THE CODE OF CRIMINAL PROCEDURE

Controlled delivery is a tool employed by the criminal prosecution authorities which is indispensable to effectively detect international organized crime. It is to be understood as controlled importation, controlled exportation and controlled transit. It provides the possibility to authorize the circulation or controlled delivery of drugs and illicit substances within the Spanish territory, without the intervention of the police agents, but under their supervision, with the goal to reveal or identify the persons involved in Drug Trafficking or other related crimes.

The goods which are the objective of a controlled delivery are stupefying and psychotropic substances, precursors used for illegal production of drugs, goods and earnings obtained by money laundering or by commission of serious crimes, endangered species, forged money, firearms and ammunition from wars, chemical firearms and explosives.

The authorization for a controlled delivery derives from judges, when a criminal proceeding is in course, from prosecutors, when there is no criminal proceeding initiated and from police chiefs when there is a necessity to act urgently, who later inform either the judge or the prosecutor, depending on whether or not a criminal proceeding exists.

When it comes to international controlled deliveries, it is necessary to act based on the agreements in force, where the country of destination is the one who needs to authorize the controlled delivery.

UNDERCOVER AGENT, ARTICLE 282 OF THE CODE OF CRIMINAL PROCEDURE

When it comes to investigations which are related to Organized Crime, one of the possible police tools is also the use of undercover agents. The use of this tool in particular is always encouraged by the U.N. due to high efficiency and satisfying results.

The undercover agent occults his identity in order to infiltrate the criminal structures with the goal to obtain as many information as possible, thus insuring the localization and identification of the delinquents.

His objective is to infiltrate the organized crime groups, while participating in their criminal ambience, in order to discover the commission of crimes and further inform his supervisors. He helps gather the necessary evidence, which are later used on trial.

The undercover agents must be members of the police, but no policeman can be forced into playing such role. One agent cannot be used in various cases of Organized Crime.

In Spain the Judge of First Instance or the Prosecutor are the ones who authorize the use of an undercover agent. An undercover agent maintains his/her undercover identity throughout the course of the entire criminal proceeding, obtaining the status of the protected witness.

The duties of an undercover agent are to maintain his/her superiors informed, who later inform the authorized Judge, and however, an undercover agent cannot provoke the commission of a crime, since his actions while being undercover are strictly limited to participation in distribution and transport of crime instruments, otherwise, by breaching this authorizations an undercover agent could face trial.

When it comes to a profile of an undercover agent, he/she should possess the following qualities:

– an extroverted person,
– a good actor,
– possess courage,
– good people skills,
– has the experience as an investigator,
– knows criminal surroundings,
– has mental flexibility,
– has good memory.

INTERPOL

INTERPOL is an organization of the international police, formed by 187 member states, the fact that makes it the third biggest international organization in the world, just behind the U.N. and FIFA. INTERPOL was created in the 1923 and its role is to support all of the organizations, authorities and services, whose mission is to prevent or fight against Transnational Organized Crime.

Due to its politically neutral role, the constitution of INTERPOL bans every type of action related to criminal activities which does not affect various member states or criminal activities related with politics, army, religion or radical groups. Its work is centred in public safety, terrorism, organized crime, drug trafficking, firearm trafficking, human trafficking, money laundering, child pornography, financial crimes and corruption.

EUROPOL

EUROPOL is the organ in charge of facilitating the operations against criminal activities, committed in the European Union. Its creation was the product of an agreement of the U.E. It started its activities in the year 1994, as the intergovernmental criminal police office, which facilitates the exchange of information between national police bodies in the matters regarding drug trafficking, terrorism, international crime and pederasty. EUROPOL is authorized to act on the entire territory of the E.U. and it coordinates and centralizes the investigations of organized crime groups of European and international dimensions. EUROPOL creates mixed investigation teams and a structure of liaison of the officials from different European police bodies (task force), in order to enhance the exchange of experiences and practices in the fight against Transnational Organized Crime.

SIRENE

It is a body created by the Schengen agreement and it refers to the free circulation of persons (border control) and police cooperation within the "Europe without borders". "Supplementary Information Request at the National Entry", the very name defines the primary function of SIRENE, created in all of the Schengen states, in order to facilitate the exchange of supplementary information between member counties.

All people have the right to circulate freely within the Schengen zone, which requires a more effective cooperation between national police bodies, border police, the authorities in charge of the external border control and the judicial authorities of the member states.

SIS-SCHENGEN SYSTEM OF INFORMATION

SIS is a European data-base which contains information regarding the public safety, support to police bodies and judicial cooperation, as well as the management of external border control. The member states facilitate data in relation to personas which are wanted by the police and of those who have been banned the entry.

THE CRIMINAL INVESTIGATION

It is a set of police activities, designed for identification of a crime committed and its' perpetrators as well as the clarification and arrest of all responsible members in order for the trial to be conducted. The objectives of a criminal investigation are the protection of human rights, through prevention and reaction against crime, due to which, it is a united task which is to be performed in cooperation with the public administration institutions. Criminal investigation must be conducted in accordance with the laws and human rights. It is, bluntly put, the beginning of the global administrative response to crime.

Criminal investigation can be:

– Investigation for prevention: when there is knowledge of a perpetration of a crime in the near future and an investigation begins in order to prevent its realization (Intelligence).

– Investigation for intervention: It is a quick investigation labour, used to immediately determine the authors of a crime.

– Investigation for clarification: It is an investigation which has as a goal clarification of a crime which has already been committed.

When it comes to the methods in use, it is important to underline the following:

– Identification of all components and their surroundings.

– Means of transport.

– Location of components and their routine.

– Detailed organization chart.

– Confirmation of the criminal records.

– Use of sources.

In the process of the verification of a crime, the investigation strives towards determining the existence of a primary crime and based on it, the investigators gather further information on the criminal surroundings, which serves as an indicator of whether or not we are talking about an Organized Crime Group, based on which the trial and the related sanctions depend.

In the case of an Organized Crime Group, each member of the organization stands accused before the judge for organized crime activities, as well as numerous other crimes committed as a result of such actions, either in the status of an author or accomplice or accessory.

The objective of said investigation is to, first of all, identify the perpetrators and gather evidence of their illicit activities, followed by the determination of their system used for money laundering, and their locations, after which the police agents proceed to arrests and search of the premises.

However, although clear in theory, in practice, the criminal investigation encounters many difficulties, such as: long period of time necessary for its efficient execution, a great number of telephone interventions, numerous searches of premises, many international requests, etc.

When it comes to Organized Crime, one of the crucial problems is its lack of restriction to just one territory, a characteristic which calls upon immediate reaction, often delayed due to long legal procedures. It has happened more than once that First Instance Judges either have small knowledge of the said cases or fail to react due to the fear of stepping into area out of their competences and authorities. For the said reason, one of the possible solutions could be passing all the Organized Crime Cases to National Court.

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UNVEILING DIRECTIVE 2013/40/EU: THE CASE OF ATTACKS ON EU'S AND MEMBER-STATES' INFORMATION SYSTEMS

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Abstract: Today's society is growing increasingly dependent on information systems, making cybercrime a progressively higher threat for the European Union and its Member-States. Being an unquestionably borderless type of crime, its complexity is incontestable. Furthermore, large scale attacks against information systems are usually linked to organized crime groups which increase the menace, and consequently, the fear of terrorist and politically motivated attacks. Regarding this scenario, adopting a legal instrument at the European level is mandatory. Granting the security of information systems is consequently paramount in order to allow the achievement of a safer information society, a true area of freedom, security and justice, and it is vital for the development of the internal market and a competitive economy at the European level.

The Directive on attacks against information systems was adopted under the legal framework of article 83.º of the Treaty on the Functioning of the European Union and it substitutes the previous legal framework. Its main objective is to approximate Member-State's criminal law concerning attacks against information systems by establishing minimum rules. This Directive does not revolutionize the legal framework of attacks against information systems. Although it substitutes the previous framework decision, on the one hand it maintains its provisions but, on the other hand, it provides new aggravating circumstances such as large scale attacks, it introduces the crime of illegal interception, it criminalizes the production, sale, acquisition, import or distribution of tools to be used to commit offences, and it introduces measures to improve cooperation.

The main discussion of this paper is the lack of a straight forward definition of critical infrastructure. Being an aggravating circumstance its densification is left for Member-States, the Directive simply provides for an informal concept in its recitals. Furthermore, the Directive does not provide a definition of large scale attacks, once again, it simply gives Member-States a few hints in its recitals.

Taking into consideration the increasing dependence of Member-States and the European Union on information technology, the lack of a definition of critical infrastructure and the legitimate fear of an attack against a Member-State's information system (which has already happened for instance in Portugal), we must ask if leaving the establishment of more severe penalties for such attacks to Member-States' discretion is or not the right solution.

Keywords: minimum rules; information systems; large scale attacks; critical infrastructure.

INTRODUCTION

"Technology … is a queer thing.
It brings you great gifts with one hand, and it stabs you in the back with the other"[2].

Nowadays criminal groups and abstract threats are harder to fight because of globalisation and the internet. Cybercrime relies upon and targets internet infrastructures and their users. The ability of putting a plan into action has been seriously increased by globalisation: it is easy to travel, to transfer money, to communicate – this means it becomes easier to spread criminal activities.

Bearing this in mind, it is unquestionable that today's society has become progressively more dependent on information technology – on the internet. Among many other examples which could be used, nowadays most of us not only use e-mail addresses as the regular address to exchange correspondence at a personal level but also at a business level, save information in the *cloud*, post personal information on social networks, book flights and so on. One of the main issues related to information systems is that they tend to create a dependency to its users. In fact, even national authorities have surrendered to the internet and

1 joanawhyte.cedu@direito.uminho.pt
2 C. P. Snow, Scientist and Novelist, New York Times, 1971.

its overwhelming power, for instance, they have transformed their justice systems in internet dependant systems[3].

Consequently, criminal activities related to internet use affect today's society and the economy in many different ways, for example, selling counterfeit goods on the internet generates huge profits for criminal groups but it also constitutes a threat to public health and/or safety, it affects the European Union's common market, and it infringes intellectual property rights. Furthermore, also terrorist groups are using the internet to spread their message, network, recruit new followers and disseminate terrorist messages globally. Organized crime and terrorist threats are accompanying the evolution of society and its habits – "Cyber-attacks are one of the greatest threats to international peace and security in the 21st century"[4].

On the other hand, there is another issue arising which is the increased dependency of the European Union and Member States of information technology. The European Union has created several data basis hosting European and third Countries nationals' sensitive information, such as the Schengen Information System (SIS), Visa Information System (VIS), and/ or the Entry Exit System (EES). By creating this dependency, information technology has also created a new form of vulnerability, allowing, for instance, terrorists, to approach targets which would otherwise be impregnable, such as national and government information systems or air traffic control systems.

INTERNATIONAL LAW ON CYBERCRIME

Cybercrime is the prime example of a borderless crime, therefore, the adoption of specific international legislation became essential but also the adoption of measures which facilitate cooperation between judicial and police operators internationally.

At the international level, the Council of Europe was the pioneer. In 2001 it adopted the Convention on Cybercrime, signed in Budapest, which entered into force in 2004. This Convention is considered the most complete international legislation on the matter as it provides a comprehensive and coherent framework covering various aspects of cybercrime. The Convention was opened for signature by the member States of the Council of Europe and by non-member States which have participated in its elaboration.

Being the first international treaty on cybercrime, it intends to harmonize the various existing States' legislations on the matter, promote international cooperation as well as facilitate transnational criminal investigations.

For this purpose, this convention focuses on substantive and procedural criminal law. Concerning substantive criminal law, this Convention criminalizes Offences against the confidentiality integrity and availability of computer data and systems (Illegal access; Illegal interception; Data interference; System interference; Misuse of devices); Computer-related offences (Computer-related forgery and Computer-related fraud); Content-related offences (Offences related to child pornography); Offences related to the infringements of copyright and related rights; Offences related to infringements of copyright and related rights. Regarding International Cooperation, it establishes general principles relating to international co-operation[5], principles relating to extradition, general principles relating to mutual assistance, procedures pertaining to mutual assistance requests in the absence of applicable international agreements, mutual assistance regarding provisional measures, mutual assistance regarding investigative powers, trans-border access to stored computer data with consent or where publicly available, mutual assistance regarding the real-time collection of traffic data, mutual assistance regarding the interception of content data.

CYBERCRIME IN THE EUROPEN UNION

"The European Security Strategy in Action" (The ISS in Action) adopted by the European leaders in 2010 is an evident statement that security is a fundamental element of a high quality of life in the European Society, which includes a strong method of protection of critical infrastructures through preventing and

3 The case of Portugal and *Citius* the internet based system to submit pleadings and receive/send Court notifications which was out of service for over a month due to technical issues causing great loss for the people and the State.

4 Jeffrey Carr, Inside Cyber Warfare, Sebastopol, CA: O'Reilly, 2010.

5 Article 23.º of the Council of Europe's Convention on Cybercrime establishes the following on General principles relating to international co-operation: "The Parties shall co-operate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international co-operation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence".

tackling common threats[6]. The ISS in Action constitutes a common European agenda and it identifies five strategic objectives where the EU can bring real added value for the coming years: disruption of international criminal networks; prevention of terrorism and addressing radicalization and recruitment; raising the levels of security for citizens and businesses in cyberspace; strengthening security through border management; increasing Europe's resilience to crises and disasters.

The Commission explains in the final implementation report of the EU Internal Security Strategy 2010-2014 that the EU should update the internal security strategy by reviewing each of the objectives established in 2010, which being valid should be confirmed, and prepare actions for the period of 2015-2020. Considering that the final evaluation of the Strategy was indeed positive, the Commission believes that the Strategy should be revised in a framework of complete cooperation between the Commission, the Member-States and the European Parliament.

Having a European Security Strategy which constitutes a true European security model tackling common threats and challenges is paramount in order to effectively tackle serious transnational crime.

Addressing the specific subject of our paper – cybercrime – we can firmly state that in the past years the European Union has in fact adopted not only a legal framework, but it has also created the necessary agencies in order to facilitate and enhance the cooperation between Member-States, and between Member-States and the European Union, for instance, the European Union Agency for Network and Information Security (ENISA)[7], and the European Cybercrime Centre (EC3) within Europol.

The objectives established in art. 1 of the Regulation which creates ENISA are: The Agency shall enhance the capability of the Community, the Member States and, as a consequence, the business community to prevent, address and to respond to network and information security problems; The Agency shall provide assistance and deliver advice to the Commission and the Member States on issues related to network and information security falling within its competencies as set out in this Regulation; Building on national and Community efforts, the Agency shall develop a high level of expertise. The Agency shall use this expertise to stimulate broad cooperation between actors from the public and private sectors; The Agency shall assist the Commission, where called upon, in the technical preparatory work for updating and developing Community legislation in the field of network and information security.

On the other hand, the EC3 within Europol, was created to serve as a single contact point in this field ensuring a coordinated response to cybercrime, and to tackle, for instance, insufficient intelligence-sharing capabilities; engage dialogue with Member-States judiciary, law enforcement authorities, the private sector and civil society; technical difficulties in tracing the origins of cybercrime perpetrators; disparate investigative and forensic capacities; scarcity of trained staff, and inconsistent cooperation between Member-States and Member-States and the European Union.

Work on approximating substantive criminal law within the European Union began under the third pillar of the Treaty of Maastricht. During this period several legal instruments were adopted, such as: the 1995 Convention on the protection of the European Community's financial interests; the 1997 Convention on the fight against corruption or about the different joint actions adopted at the time in the field of participation in a criminal organization, trafficking in human beings, racism and xenophobia, corruption in the private sector and so forth. The work was then pursued under the third pillar of the Amsterdam and Nice Treaties. This was the case of the first legal framework on cybercrime in the European Union.

However, while on the one hand progress in this area has been positive from a quantitative point of view, the results have been mixed from a qualitative point of view – EU work in this area has been criticised from various reasons[8], such as: the low level of ambition of most instruments, which were limited to a lowest common denominator approach; their limited approximation impact – we must refer do Daniel Flore[9] who has spoken about approximation en "trompe-l'oeil" and approximation "de façade"; the lack of thought behind them; the limited place given to general principles of criminal law (for instance the case of the principle of legality)[10].

6 Nunzi, Alfredo, "Cybercrime A new challenge for the European Union", Revue Intenationale de Droit Pénal, 2012/1, Vol. 83, p. 289-296.

7 Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency (Text with EEA relevance), Official Journal L 077 , 13/03/2004 P. 0001 – 0011.

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The Tampere European Council which took place in October 1999, was of paramount importance for the development of Judicial Cooperation in Criminal Matters in the European Union. In fact, the need to approximate provisions concerning offences and sentencing in the area of cybercrime was recognised and moreover reaffirmed in a Communication entitled: "Creating a Safer Information Society by Improving the Security of Information Infrastructures and Combating Computer-related Crime".

The first legal framework adopted by the European Union to tackle attacks against information systems was the Council Framework Decision 2005/222/JHA of 24 February 2005, which introduced a minimum level of approximation of Member-States' legislations. The Framework Decision established the following crimes: Illegal access to information systems – article 2.º; Illegal system interference – article 3-º; Illegal data interference – article 4.º; Instigation, aiding and abetting and attempt – article 5.º.

However, the Framework Decision did not establish specific penalties, under article 6.º, it stated that "1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 2, 3, 4 and 5 are punishable by effective, proportional and dissuasive criminal penalties; 2. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment".

In article 7.º the Framework Decision also provided the following aggravating circumstances: "1. Each Member State shall take the necessary measures to ensure that the offence referred to in Article 2(2) and the offence referred to in Articles 3 and 4 are punishable by criminal penalties of a maximum of at least between two and five years of imprisonment when committed within the framework of a criminal organisation as defined in Joint Action 98/733/JHA apart from the penalty level referred to therein. 2. A Member State may also take the measures referred to in paragraph 1 when the offence has caused serious damages or has affected essential interests".

The Framework Decision also creates guidelines for Member-States to establish their jurisdiction under the traditional principles of territoriality and nationality.

However, the recurring issue is the urgent need of full implementation of European Union's legislation. Effectively fighting cybercrime is part of the European Agenda on Security, the first step in confronting cybercrime is, still, ensuring full and correct implementation of existing European Union legislation by Member States[11] and increase cooperation between Member States' law enforcement and cyber security authorities.

LEGAL BASIS

Since the entry into force of the Treaty of Lisbon in December 2009, the European Parliament and the Council acquired a real competence to adopt Directives under the ordinary legislative procedure, on procedural criminal law and substantive criminal law, under articles 82 and 83 of the Treaty on the functioning of the European Union (TFEU) respectively. However, limited approximating (of the former) European Community competences had already been recognised by the European Court of Justice in cases of 2005 and 2007 Commission vs. Council[12].

The new legal basis, under the Treaty of Lisbon, is more developed than in the Third Pillar of the Treaty of the European Union. While under the Third Pillar only part of one article was directly devoted to the area - 31.º e) TEU, under the Treaty of Lisbon there is one whole article aiming to the approximation of substantive criminal law.

As stated before, under the new legal basis, the approximation of substantive criminal law must be done through the adoption of Directives. Well, according to article 288 of the Treaty on the Functioning of the European Union directives are binding, as to the result to be achieved, upon each Member-State to which it is addressed, but it leaves a choice of form and methods to the national authorities. Therefore, Directives are the privileged instrument of approximation of legislation and, in principle, need the adoption of internal transposition measures. In comparison with the previous legal basis, the adoption of framework decisions is that directives may have direct effect. Nevertheless, such direct effect is subordinated to several conditions and important limits. Following the jurisprudence of the Court of Justice of the European Union, the provisions must be sufficiently precise, unconditional and not contingent on any discretionary implementing measures[13]. Furthermore, the direct effect is limited to a vertical descendant direct effect, meaning that private individuals may only invoke it against Member-States which either failed to implement the directive within the prescribed period or implemented it incorrectly. Directives may not be given direct

11 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, from 28 April 2015. The European Agenda on Security.
12 European Court of Justice, 13 September 2005, C-176/03, Commission vs. Council and 23 October 2007, C-440/05, Commission vs. Council.
13 ECJ, 19 January 1982, Becker vs. Finanzamt Münster-Innenstadt, case 8-81.

effect to the detriment of individuals. They are deprived of any vertical descending direct effect, from the Member-State and its authorities against individuals and any horizontal direct effect – between private individuals[14].

Various new developments have occurred in the field of approximation of substantive criminal law, under article 83. TFEU. This is the area where the largest number of initiatives has been introduced.

The Directives adopted under this legal framework establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Furthermore, article 83. TFEU establishes the so-called "*eurocrimes*": terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. It is under this legal framework that the Directive on Attacks on Information Systems was adopted.

THE DIRECTIVE ON ATTACKS AGAINST INFORMATION SYSTEMS

The Directive on Attacks Against Information Systems was adopted on 12 August 2013 and its replaces the previous Framework Decision, the deadline for transposition is 4 September 2015.

Its objectives are clearly stated on its recitals, on the one hand to approximate Member States' criminal law, and, on the other hand, to improve cooperation between competent authorities, including police and specialized law enforcement authorities from Member States, and European Union's competent agencies and bodies (such as Eurojust, Europol, the European Cybercrime Centre and the European Network and Information Security Agency).

This Directive criminalizes the following behaviours from article 3 to article 8: illegal access to information systems; illegal system interference; illegal data interference; illegal interception; as well as it criminalizes the intentional production, sale, procurement for use, import, distribution of tools, computer password, code or similar data, designed or adapted for the purpose of committing the offenses referred in the Directive; incitement, aiding, abetting and attempt will also be punished. The penalties for these crimes are established in article 9, and they must be effective, proportionate and dissuasive. The Directive allows the application of the penalty of imprisonment.

It also adopted norms to ensure that legal persons will be held liable for the referred offences committed for their benefit by any person, acting either individually or as part of a body of the legal person and having a leading position within the legal person. In the case of legal persons the sanctions include criminal and non-criminal fines and other sanctions, such as: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishment which have been used for committing the offence.

This Directive clearly demonstrates the importance given to an effective police and judicial cooperation. On article 13 the Directive creates an obligation for Member States to establish a national point of contact and that they make use of the existing network operational points of contact available 24 hours a day and seven days a week. Furthermore, Member States shall ensure that they have procedures in place to answer urgent requests for assistance, for the matter, the competent authority can indicate (within eight hours of receipt) at least whether the request will be answered and the form and estimated time of answer. Moreover, Member States shall also ensure that there is a system for the recording, production and provision of statistical data on the offences referred in the Directive which must be transmitted to the Commission.

THE SPECIFIC CASE OF ATTACKS ON MEMBER-STATES' AND EU'S INFORMATION SYSTEMS

The increasing fear of a large scale politically motivated attack, or terrorist attack, against Member States' and/or European Union's critical infrastructures has been stated not only in the Directive but it has also been restated in the European Agenda on Security from 28, April 2015[15]. However, the concept of critical infrastructure is only referred to in the Directive's recitals, therefore, the adoption of a definition

14 ECJ, 5 April 1979, Case C-148/78, Ratti; ECJ 8 October 1987, Case 80/86, Kolpinghuis Nijmegan; ECJ 26 February 1986, Marshall I, Case C-152/84. Weyembergh, A., in collaboration with Biolley, Serge de, "Approximation of substantive criminal law: The new institutional and decision-making framework and new types of interaction between EU actors", Approximation of substantive criminal law in the EU – The way forward, Ed. Francesca Galli and Anne Weyembergh, Editions de L'Université de Bruxelles, 2013, p. 31.

15 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – COM (2015) 185 final.

of "critical infrastructure" on the Directive is lacking. Furthermore, the Directive alerts for the issue of sophisticated large scale attacks through "botnets" and its possible impact on Member States or particular functions of the private and public sector. Nevertheless, once more it leaves a wide margin of definition to Member-States when it comes to determine "serious damage". Concerning this issue the Directive states that "Member States *may* determine what constitutes serious damage according to their national law and practice, such as disrupting system services of significant public importance, or causing major financial cost or loss of personal data or sensitive information[16]".

The specific case of attacks on Member-States' and EU's information systems was, in our opinion, left behind in this Directive. This particular situation is vaguely referred in recital no. 13, "It is also appropriate to provide for more severe penalties where an attack in conducted against a critical infrastructure of the Member-States or of the Union". The same occurs when referring to the need of increasing the resilience of information systems, once again it is left to Member States' discretion. Considering the ever growing dependence of Member States' and the European Union itself on information systems, having distinguished this case from the types of crimes included in the Directive would be of paramount significance. Leaving almost total discretion to Member States during the Directive's transposition will result in a total frustration of the Directives' objectives, and, this Directive's application will not be consistent throughout the Member States Judicial Systems.

Ultimately, the lack of definitions[17] and, finally, not having a solid legal framework on this matter will result in non-approximated practical results – meaning – different judgements and different checks and balances within the European Union, which will finally result in the non-accomplishment of the Directive's primary objectives. Considering the enormous commercial and economic impact such an attack would have, such an event would put at risk the European Union's four freedoms.

CONCLUSION

Cyber security constitutes a priority in the European Union's internal security strategy, EU action within the common Foreign Security Policy has been limited because of the reluctance of Member States to cooperate in this field. As we have stated before, the main issue of cybercrime is that "no crime is as borderless as cybercrime, requiring law enforcement authorities to adopt a coordinated and collaborative approach across national borders, together with public and private stakeholders alike. It is here that the EU can, and does, add significant value[18]".

After this short analysis of Cybercrime we can state that, in order to effectively tackle it, we need not only a specific and solid legal framework, but also an effective operational network. Therefore the role of ENISA and EC3 at Europol is paramount. Most of all, the need of having an effective group of agencies working side by side not only with EU's Member States, but also with third countries, is a direct consequence of cybercrime being a crime without borders. The EU has also engaged closely with international partners, for example, through the ongoing EU-US working group on cyber-security and cybercrime.

Concerning specifically the Directive on Attacks against Information Systems, the Directive is itself a step forward considering the previous Framework Decision, however, the European Union still lacks a solid and approximated legal framework considering attacks on Member State's information systems and their critical infrastructures.

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16 Recital number 5 of the Directive.
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EXTREME FLOODS IN SERBIA OCCURRING SIMULTANEOUSLY WITH THE HIGH WATER LEVELS AND HEAVY RAINS
CASE STUDY

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Abstract: This paper discusses possible development or so-called scenario of extreme floods in the Republic of Serbia that would be caused by simultaneous occurrence of high-water levels/discharges on the rivers and heavy rains. As illustration, two scenarios are presented based on independently recorded cases of high water levels and heavy rains of May 2014. A scenario of the floods caused by the interaction of reached high water levels and observed heavy rains is particularly examined. Research of the floods is proposed with the parameters of flood waters that would not have highly unexpected values, but would be more extreme than all the past ones. Scenarios would yield new potentially useful information on the influence of floods on human communities. Proposals are presented for more efficient controlling and regulating of floods in the Republic of Serbia.

Keywords: floods, scenario, water level, discharge, rains, damages.

INTRODUCTION

In the past years we witnessed the increase of the sources of threats to human communities both from the detrimental events in social relations and technogenic and natural disasters. Recently, among the nat-

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ural disasters, extreme geophysical events have increasing importance, like heavy rains, high water levels, extreme torrents and vast landslides not recorded in regular evidence dating back hundred years of their existence. Until now (regularly) recorded geophysical data were accepted by human communities as universal laws of the nature, considering them as almost unchangeable. Sporadically, some geophysical events had increased intensity. As such, they created extraordinary situations causing deaths and damages, so they were recorded and classified as natural disasters. Also, for a long time these events were regarded as an exception that can always be mitigated. The conditions have changed lately. The frequency and the force of natural disasters have increased. That led to the increase in deaths and damages which considerably decreased the human power of easy mitigation. It seems that the treatment of natural disasters would have to be based more on the planned approach. Exact forecasting of the place of occurrence and duration of disasters would be the best plan. Unfortunately, deterministic approach to the forecasting of natural disasters is impossible. Disasters are nonlinear manifestations of irregular, complex and strange geophysical occurrences and, as such, they are deterministically impossible to forecast (Mladjan and Gavrilov, 2014). The acceptable planned approach in the treatment of a natural disaster would be in hypothetical assigning of parameters for a disaster and presenting a possible development of the event (so-called scenario) and/or its (numerical) simulations. Parameters of scenario/simulation should not have extremely unexpected values, but should be more extreme than the past ones. Such approach would create multitude of other data on the characteristics of simulated disaster. This would enable direct implementation of the obtained data in the plans for the protection of people and property as well as creating and implementing of the plans for the disaster management, even obtaining some benefit from it. The creation and studying of the "worst case scenario" and the assessment of the risk of the disaster achieve an important place in planning the protection in many countries (Alexander, 2002).

For human communities the safest preparation is for the worst scenario, but that is often economically unjustifiable. High protection levels are expensive because the benefit of the full protection cannot always justify all the costs. That is why the level of acceptable damages is determined through the setting of the frequency of the recurring period of the disaster. For example, in the world today scenarios are made of great flooding for the recurring periods of 50, 100 and 200 years. At the same time, the Netherlands being greatly endangered by floods defined by the law that the minimum recurring period is of 1,250 years and, in some cases, even 10,000 (Varga and Babic, 2005). Sometimes, it is necessary to shorten the recurring periods. For example, due to the climate changes and deforestation, the probability of floods has increased, so the existing statistical distribution is not sufficiently credible for the assessment of future events. That is why the recurring periods of floods in Germany on the Danube and the Rhine have been changed from 100 years to a period of 20 or even 10 years (Thywissen, 2006).

The main idea of this paper is the creation of a scenario of extreme floods in Serbia caused by the simultaneous occurrence of two different types (Lukić et al., 2013) of disasters of (a) high water levels/discharges on the rivers; and (b) heavy rains as well as the interaction of both disasters. In the case of (a) floods primarily happen by flooding of international rivers when the water is coming from the territory of other states, while in the case of (b) floods occur due to heavy rains lasting for many days on the territory of Serbia.

RECORDED HIGH WATER DISCHARGES

Table 1 shows discharges, water levels and flood defence stages of the rivers significant for the following discussion: the Danube, the Tisa, the Tamis, the Velika Morava, the Mlava, the Pek, the Kolubara and the Drava. The locations of hydrological stations from Table 1 are shown in Figure 1.

Table 1- *Maximum, minimum and mean discharges and water levels on major international and national rivers of Serbia as per date and place of measuring flood defence stage (Internet 1; Dukić, 1984; Document 1)*

River	Maximum		Measuring date	Measuring place (hydrological station)	Flood defence stage			Minimum discharge (m^3/s)	Mean discharge recurring periods (m^3/s)
	discharge-Q_{max} (m^3/s)	water level-H_{max} (cm)			regular (cm)	extraordinary (cm)	critical (cm)		
Danube	8,380	776	24 June 1965	Bezdan	500	700	920	898	2,400
Danube	14,820	845	16 April 2006	Smederevo	600	700	822	1,750	5,260
Sava	6,600	863	17 May 2014	S. Mitrovica	650	750	938	200	1,620
Tisa	3,720	926	21 April 2006	Senta	600	800	1,045	122	727
Drava	-	-	-	Osijek	-	-	-	-	620
V.Morava	2,930	692	16/18 May 2014	Bagrdan	500	600	700	20.40	242
Tamis	1,050	846	20 April 2005	Jaša Tomić	340	600	706	-	-
Kolubara	870	827	15 May 2014	Beli Brod	250	430	-	-	-
Mlava	166	536	15 May 2014	Gornjak	-	-	-	-	-
Pek	368	425	16 May 2014	Kučevo	144	324	-	-	-

Let us remind that maximum discharges are mostly the main causes of high water levels, rivers flowing out of their beds and creating floods. The confirmation of this statement is in Table 1 where simultaneousness is noted of the dates of maximum discharges and maximum water levels in all cases. It shall be deemed that the water level increases by the increase of discharge which not only creates the conditions for the occurrence of floods, but they do really happen.

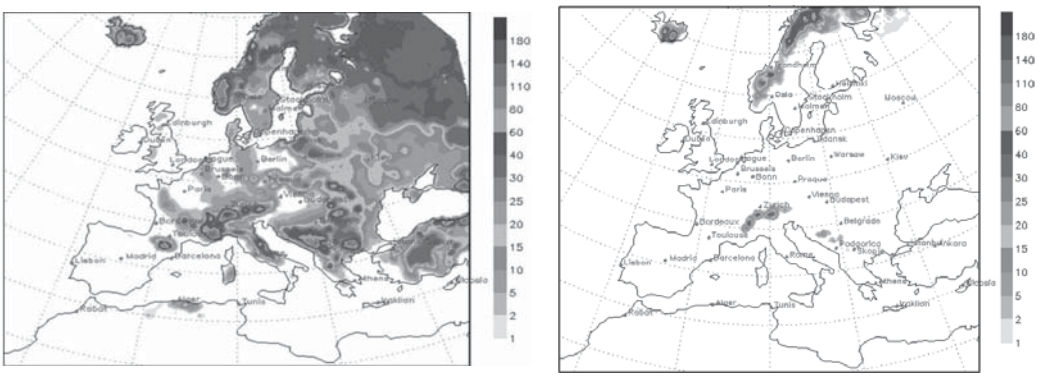
Figure 1- *Location of hydrological stations in Serbia*

SCENARIO OF HIGH DISCHARGES

Let us consider a simple scenario of high discharge on the Danube downstream of Smederevo as the sum of upstream discharges. Now, on the maximum discharge of the Danube at Bezdan (8,380 m^3/s), if maximum discharges of downstream tributaries are added: of the Tisa (3,720 m^3/s), the Sava (6,600 m^3/s), the Tamis (1,050 m^3/s), the Velika Morava (2,930 m^3/s) and the mean discharge of the Drava (620 m^3/s), downstream of Smederevo at the mouth of the Velika Morava, the total (hypothetical) discharge of the Danube would be 22,680 m^3/s. This value is 65 % higher than the maximum recorded discharge of 14,820 m^3/s at Smederevo, which would downstream be even higher by the contributions from the Mlava and the Pek rivers respectively. All this should be accepted under the presumption that there is no water loss, which can happen in conditions of long lasting precipitation/rains when the saturation of the soil is at its maximum and when the ground waters are high. This scenario would be feasible when the maximum discharges on the tributaries of the Danube would have synchronised occurrence. Let us note that the discharge of the Danube at Smederevo can also reach the values close or higher than the maximum in other cases.

Table 1 shows that maximum discharge of the Danube (14,820 m^3/s) at Smederevo creates maximum water level (845 cm) which is even higher than the critical flood defence stage (822 cm). It is quite certain that the hypothetical discharge of 22,680 m^3/s will cause even higher water level than the maximum one and even greater floods. Detailed analysis of the connection of high discharges with high water levels and occurrence of floods cannot be presented here because this is exactly what will be a part of the contents of the main research that is yet to be carried out.

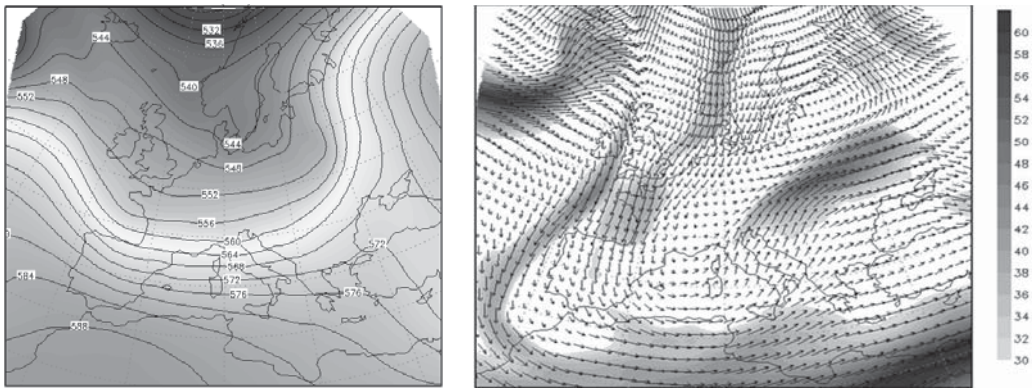
Geophysical conditions that would create such a scenario could happen in case of synchronized melting of great snow on the Alps, the Tatras, the Carpathians and the Dinarides that could lead to the extreme discharges on the international rivers and the Velika Morava. As an illustration of the said scenario, Figure 2 shows two maps of hypothetical distribution of snow in Europe ten days before melting and during or mostly after the melting of the snow.



(a) *(b)*

Figure 2 - *Hypothetical snow distribution in Europe (a) ten days before melting on 25 April 20XX and (b) during and/or after melting on 6 May 20XX.*

Hypothetical synoptic situation of sudden snow melting is shown in Figure 3. It shows that strong south-western upper air circulation above middle and south-eastern parts of Europe causes advection of warm air and creates sudden snow melting on the Alps, the Tatras, the Carpathians and the Dinarides. Run-off waters created by the melting of the snow flow down into the southern Pannonia, accumulate before the Djerdap Gorge and create high discharges and water levels on the Danube and its tributaries.



(a) (b)

Figure 3 - *Hypothetical synoptic situation in the period of sudden snow melting with (a) upper pressure at 500 hPa and (b) aloft wind.*

Besides the scenarios obtained by combining reached/recorded discharges/water levels, the main research would also take into account the scenarios where discharges are higher than all the past ones. Scenarios of high discharges which would create water levels above the critical flood defence stages would be particularly researched. Then, the assessments of the risks of the occurrence of critical water levels would help to elevate critical water stages or to undertake other protective measures against river flooding, like planned flooding of designated areas and/or directing of water surpluses to other water courses and similar.

HEAVY RAINS IN MAY 2014

Figure 4 shows extreme precipitation sums observed from 14 May 2014 to 16 May 2014 in Serbia. In some areas they reached the values of 225.1-375.0 mm (blue) which are approximately average six-month precipitation sums in those areas. These values have not been recorded in meteorological observations before. At the same time, greater part of Serbia was exposed to heavy precipitation of 25.0-225.0 mm (green). These three-day precipitations caused great influx of surface waters that caused floods, torrents, landslides, deaths and damages across Serbia (Marić et al., 2014).

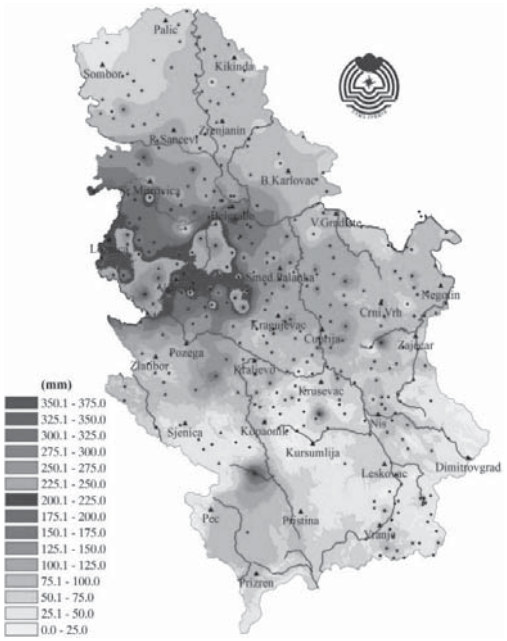


Figure 4 - *Distribution of total precipitation in Serbia in the period of 1 May to 16 May 2014 (Internet 1)*

Table 2 - *Precipitation in 15 regions, area of the region, total water quantities per region and whole Serbia*

i - region index	h_i - precipitation in the region (mm)	P_i -area of the region (km^2)	H_i -total water in the region (m^3)
1	0.0-25.0	1,391.9	34,797,500
2	25.1-50.0	9,986.6	499,330,000
3	50.1-75.0	25,289.0	1,896,675,000
4	75.1-100.0	24,136.0	2,413,600,000
5	100.1-125.0	1,907.1	238,387,500
6	125.1-150.0	8,489.8	1,273,470,000
7	150.1-175.0	4,050.2	708,785,000
8	175.1-200.0	5,641.2	1,128,240,000
9	200.1-225.0	1,985.5	446,737,500
10	225.1-250.0	875.3	218,825,000
11	250.1-275.0	268.7	73,892,500
12	275.1-300.0	399.4	119,820,000
13	300.1-325.0	3,372.5	1,096,062,500
14	325.1-350.0	376.8	131,880,000
15	350.1-375.0	191.1	71,662,500
Total		88,361.1	10,352,165,000

For this purpose, total quantity of water obtained from three-day precipitation for the whole territory of Serbia will be calculated. For that, Figure 4 and the formula will be used,

$$H_i = h_i \, x \, P_i \tag{1}$$

Here H_i is the total water quantity of three-day rain, h_i is the three-day precipitation sum and P_i the area, all according to the regions, i = 1, 2, 3,...,15, of the same sums/colours of the precipitation in Figure 4. By replacing in (1) the values from Table 2 with h_i (higher number from the second column) and P_i (the third column), and by reducing the units, the calculation is made as per all the regions and (the first column) total water quantity H_i in m^3 (the fourth column). For the total water quantity H_S from the rains observed from 14 May 2014 to 16 May 2014 on the whole territory of Serbia, the result is,

$$H_S = \sum_{i=1}^{15} H_i = 10{,}352{,}165{,}000 \text{ m}^3 \tag{2}$$

For the purpose of checking, the area of Serbia is calculated,

$$P_S = \sum_{i=1}^{15} P_i = 88{,}361.1 \text{ km}^2 \tag{3}$$

Finally by dividing (2) and (3) the result is,

$$h_S = \frac{H_s}{P_s} = \frac{10{,}352{,}165{,}000 \text{ m}^3}{88{,}361.1 \text{ km}^2} = 117.2 \text{ mm} \tag{4}$$

where h_S is average three-day precipitation sum for the whole Serbia. Calculated value is close to three-month average multi-year precipitation in Serbia (Sokolović et al., 1984).

In calculating the area of 15 regions from Figure 4, software package Q GIS 2.6 open source GIS (Internet 2) was used whose error is 0.2 %. Water quantity as per the regions and the whole Serbia will not be further analyzed here, but it could certainly be the topic for further research. More information on meteorological causes of precipitation from 14 May 2014 to 16 May 2014 can be found in the paper of Zarić (2014).

HEAVY RAINS AS PER SCENARIO

For the purpose of simplifying further presentation, three presumptions are introduced. The first will place heavy rains, similar to the above described, in the Pannonian part of Serbia (Vojvodina, the plains on the right bank of the Sava, the plains of Srem and Banat that belong to Belgrade and the plains on the right bank of the Danube from Belgrade to its exit from Serbia) (Ćalić et al., 2012). That part is shown in Figure 5 and its area is P_p=25,000 km^2. In the second presumption it is accepted that in three days the Pannonian part of Serbia received the total of h_p=250 mm = 250 l/m^2 = 0.25 m^3/m^2 of water. Finally, by the third presumption we neglect all surface losses of rain water, which means that the Pannonian part of Serbia could be covered by the water level of mean depth of 250 mm. Let us remind that in Pannonia the average sum of annual precipitation is around 600 mm (Tošić et al., 2014), thus, the three-day precipitation presumption can be regarded as high.

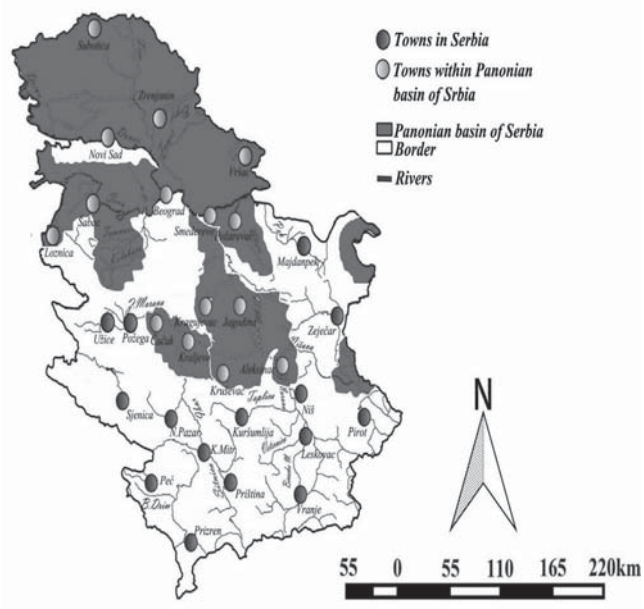
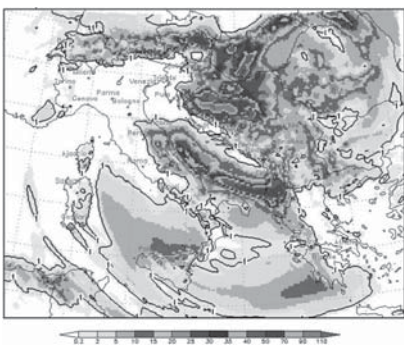
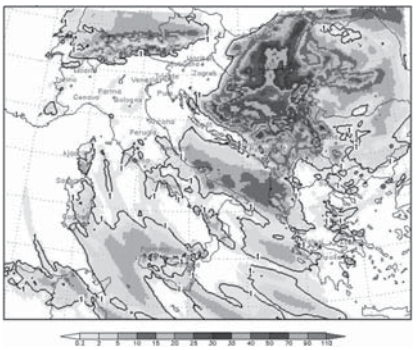


Figure 5 - *Pannonian basin of Serbia*

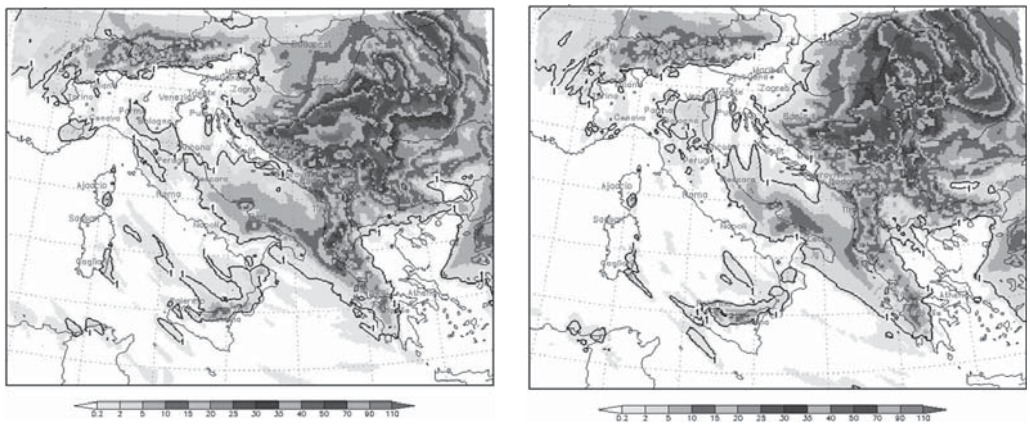
Table 2 shows that average three-day heavy precipitation sum of 202 l/m^2 was already observed in the area of 25,079,000 km^2 consisting of ten regions, i = 6, 7, 8,..., 15, . Hypothetical precipitation (250 l/m^2) introduced here can be considered as not having extremely unexpected value, since they are close to already observed heavy rains (202 l/m^2) on the territory of similar magnitude (25,079,000 km^2), but they are more extreme than former precipitation which will be the main rule in setting a scenario for the future researches. Also, in some regions of Serbia, precipitations up to 375 l/m^2 were observed, which can be repeated and include the whole Pannonian part of Serbia. As illustration of such an event, Figure 6 shows hypothetical heavy rains in four days.



(a)



(b)

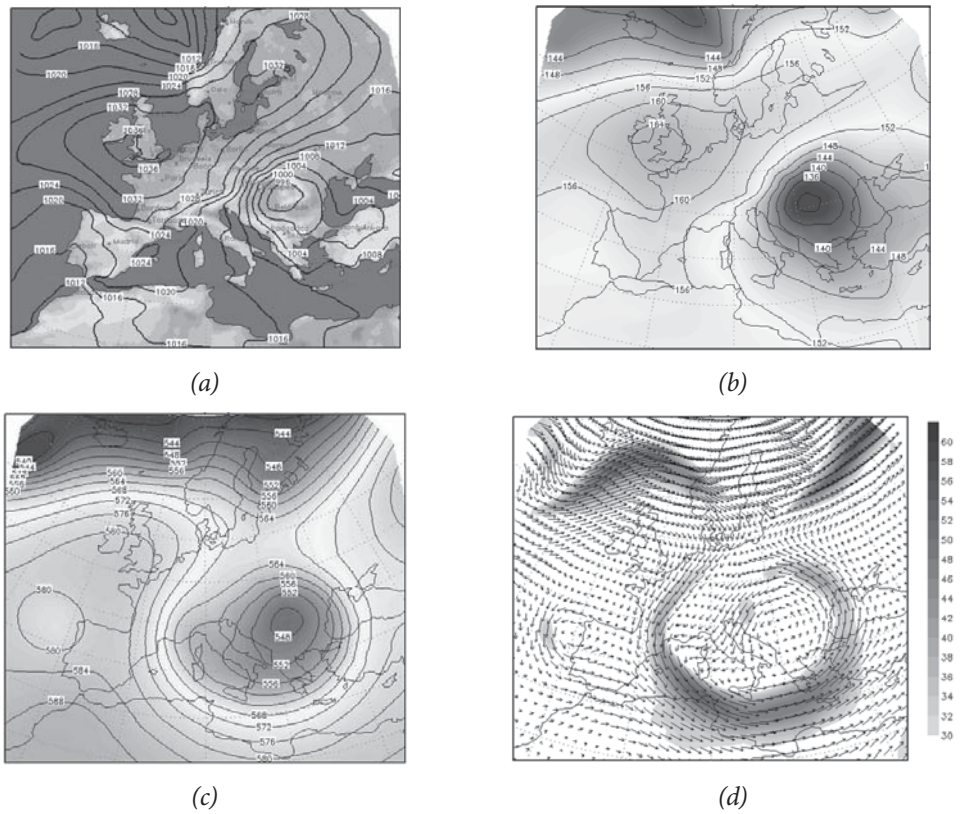


(c) *(d)*

Figure 6 - *Hypothetical spatial distribution of total precipitation per days (a), (b), (c), and (d) in the period from 5 May 20XX to 8 May 20XX, respectively*

Hypothetical synoptic situation of heavy rains is presented in Figure 7 where four maps show: (a) surface pressure, (b) and (c) upper pressure at 850 hPa and 500 hPa and (c) aloft wind circulation. Synoptic situation shows a strong cyclone stationing and renewing in several days over the Pannonian part of Serbia and producing heavy rains shown in Figure 6, similar to the rains in May 2014.

Future research will be also directed to other scenarios. There, the rains would be more intensive and with longer duration than in all the cases observed so far.



(a) *(b)*

(c) *(d)*

Figure 7 - *Hypothetical synoptic situation of heavy rains in Serbia with (a) surface pressure, (b) and (c)upper pressure 850 hPa and 500 hPa, and (b) aloft wind, all in the period of 5 May 20XX to 8 May 20XX*

HIGH WATER LEVEL

In order to compare previously stated water quantities that reach the Pannonian part of Serbia through rivers and precipitation in the same period, two simple calculations will be made first.

In the first calculation discharge water quantity should be obtained at a certain section and a certain period. By using the formula

$$Q_{\Delta t} = Q_{max} \text{ x } \Delta t \quad (5)$$

where $Q_{\Delta t}$ is (total quantity of) discharge waters in m^3 that flow through some river section in maximum discharge Q_{max} in m^3/s, in a certain time period $Q_{\Delta t}$ in s. By changing in (5) previously considered two values of maximum discharges at Smederevo, Q_{max} *(=14,820.0; 22,680.0 m^3/s)*, in the duration of three days, Δt *= (72h x 60 min x 60 s =) 259,200 s*, obtained values for $Q_{\Delta t}$ are shown in Table 3 (second column).

Table 3 - *Maximum discharges of the Danube at Smederevo and three-day water discharges calculated of them*

Q_{max}-maximum discharge (m^3/s)		$Q_{\Delta t}$-discharge waters (m^3)
Measured	Hypothetical	
14,820.0	-	3,841,344,000
-	22,680.0	5,878,656,000

We know from our past experience that maximum discharges last less than three days, so that the values used here should be taken as mean three-day discharges same/close to the values of maximum discharges. Such presumption is allowed in scenario approach. Speaking in statistical language, probability of this presumption coming true is small, but possible. Main research would also include cases where discharge waters would be higher than all the previously measured cases and of longer duration. Also, main research would deal with the calculation of recurring periods of such cases.

In the second calculation it is needed to obtain water quantities from precipitation or runoff water in a certain period. Now total quantity of heavy precipitation from the previous chapter we turn into the height/quantity of runoff water to the Danube and its tributaries. It will be done by using again the formula (1)

$$Q_p = P_p \, x \, h_p \quad (6)$$

where, let us remind, Q_p is total water quantity from hypothetical three-day rains in m^3, P_p is area of the Pannonian part of Serbia in km^2 and h_p is hypothetical three-day precipitation sum in m^3/m^2. After substituting in (6) values for P_p *= 25,000,000,000 m^2* and for h_p *= 0.25 m^3/m^2 = 250 l/m^2*, the obtained result is,

$$Q_p = 6{,}250{,}000{,}000 \; m^3 \quad (7)$$

As can be seen from (7), hypothetical discharge waters of three-day rain as per the scenario are of the same order of magnitude with the high discharge waters from Table 3 that flow through the Danube at Smederevo in three days.

INTERACTION OF HIGH WATERS

Let us remind that the main idea of this paper was to make a scenario of extreme floods in Serbia caused by simultaneous occurrence of high water levels/discharges on the rivers and heavy rains. Now, after obtaining the quantities of three day water discharges on the Danube, approximately at Smederevo, and runoff waters after three-day rains, the simplest interaction of these two disasters will be presented as total water quantity that could in three days be found in the Pannonian part of Serbia. Total water quantity is shown in Table 4.

Table 4 - *Maximum discharges on the Danube at Smederevo, calculated three-day discharge waters based on that, runoff waters calculated on the basis of three-day hypothetical precipitation and water sums*

Q_{max}-maximum discharge (m^3/s)		$Q_{\Delta t}$-discharge waters (m^3)	h_p -hypothetical precipitation sum (m^3/m^2)	Q_p -hypothetical runoff waters (m^3)	$Q_{\Delta t} + Q_p$ -water sums (m^3)
Measured	Hypothetical				
14,820.0	-	3,841,344,000	0.25	6,250,000,000	10,091,344,000
-	22,680.0	5,878,656,000			12,128,656,000

Table 4 shows that maximum discharges of the Danube at Smederevo (first column) during three days bring the quantity of water (second column) of the same order of magnitude (fourth column) as three-day heavy precipitation (third column) all in the Pannonian part of Serbia. In other words, it is possible that in three days in the Pannonian part of Serbia around 10,000,000,000 m^3 of water occur (the fifth column). If, in the most extreme probability, all the quantity of this water would flood, a lake would be made in the Pannonian part of Serbia of 25,000 km^2 with the depth of around 0.5 m. It is clear that this water would not be equally and simultaneously distributed everywhere, and the lowest parts of the Pannonian part of Serbia would be flooded first and the greatest damages would be in large coastal urban zones of Belgrade, Novi Sad, Smederevo and other coastal communities. Immense material damages would be also accompanied by numerous human deaths.

Detailed analysis, primarily quantification, of the floods created by the interaction of high water levels/discharges on the rivers and heavy rains as well as their influence on human communities and the country cannot be further presented here because it is the content of the main research yet to be carried out.

MANAGEMENT AND MITIGATION OF FLOOD RISKS

In this paper the notion of "management" will include all planned and appropriate actions that can, by removing the water from one place to another, not only mitigate the detrimental effects of flood, but also the opposite, to make some benefits out of floods. The ideas presented here are not new, so this is the place for some reminding. The foundations of today's civilizations are in the ancient civilizations from the valleys of the Nile, the Tigris and the Euphrates and the Yangtze and other rivers. People of that time understood that they can make living out of floods and, thus, they founded complex technical and organizational systems for their management, like building of channels and lakes, irrigation, drainage, river/channel traffic, etc. In time, the management of floods was sufficiently improved to secure progress to civilizations for many millennia. These civilizations, founded on a good flood control, survived longer than others. They are also mentioned as "hydraulic civilizations" (Gavrilov 2005). Many achievements of these civilizations are forgotten, but flood "management" is still relevant. Let us remind that thousand kilometres of channels were excavated all around the world and they are still being excavated in Russia, the USA, China, Germany, Great Britain, the Netherlands, Serbia and elsewhere for the purpose of managing waters on the land and on the sea.

This paper will further discuss some of the procedures for moving water, like methods for great flood management similar to the ones discussed above. Two possibilities will be discussed in this context.

The first possibility for moving water is realistic and relates to the existing waterway, known as the channel **D**unav-**T**isa-**D**unav (DTD). More information on the channel DTD can be found with Milovanov (1972). Strategically speaking, the channel DTD is designed and constructed as an alternative flow of the Danube through Serbia. As such, DTD could receive and change flow direction of high level waters of the Danube and its tributaries. First, this could decrease the discharges and water levels as well as flood risks. Second, the capacity of the Danube and the tributaries for receiving high level waters from elsewhere would be increased. Even if the channel DTD is used only as the reservoir for temporary storage of surplus water from the Danube and the tributaries until this surplus returns to the Danube, the conditions are created for better flood protection of the most sensitive parts of Serbia, and these are urban areas of Novi Sad, Belgrade and other places in parts of the alluvial plain of the Danube and the Sava. Channel DTD is connected with the Tisa, the Tamis and other waterways and in this way its use against great floods is increased. More details on the use of the channel DTD in the protection of life and property against great floods, potential benefits of such floods as well as other benefits will not be presented here, but that also could be the main research topic yet to be undertaken.

Other possibility of moving water is imaginary and deals with the planning and construction of man-made waterway from the Danube to the Aegean Sea which would connect the Serbian river Velika Morava with the Macedonian river Vardar and enable the Serbian river to flow into the Aegean Sea through Greece. This waterway we shall call the channel **D**anube-**M**orava-**V**ardar-A**E**gean Sea (DMVE). More information about the idea, plan, purpose and the like on the channel DMVE can be found with Veličković et al., (1995) and the following documents: CGGC (2013) and Design Institute "Ivan Milutinović" (1973).

The channel DMVE is so designed as to fulfil two strategic goals. The first goal of the channel is to directly connect the centre of Serbia with the Mediterranean Sea so that all geopolitical and economic benefits of that connection could be realized for Serbia, surrounding and other interested states. The details of this strategic goal will not be discussed here because they are out of the scope of this paper.

The second strategic goal of the channel DMVE is directly linked to the discussion raised here on great floods in Serbia. The Danube basin has the area of around 800,000 km^2 with very specific flow through the Pannonian plain from which it draws surface waters and collects greater part of the water from the sur-

rounding mountain massifs, the Alps, the Tatras, the Carpathians and the Dinarides, accumulating all that water in Serbia before passing through the Djerdap Gorge where, after fiercely surmounting it, it peacefully flows to the Black Sea. In other words, the Danube has a slowdown in its flow through Serbia. This slowdown is all the bigger if the discharge of the Danube downstream of Smederevo is higher. The concept of the scenario on great floods discussed here is based on the fact that in the southern part of the Pannonian plain (Pannonian part of Serbia) which, for the sake of clarity, should be considered as a type of a drain, the immense quantities of water arrive through the Danube and its tributaries which slow down, accumulate and flow out before reaching the Djerdap Gorge. If we also add the water from heavy rains to these hydrological processes as the scenario here forecasts, the Pannonian parts of Serbia will be exposed to great floods. In the most extreme situations of great floods, the help from the channel DTD would be limited. But, it is these most extreme situations, as others too, that can be mitigated by the channel DMVE. Then, the channel could accept all the surpluses of water from the Danube at the most critical place at the mouth of the Velika Morava (around Smederevo) and direct surpluses of water to the upstream flow of present Velika Morava towards the Vardar and further to the Aegean Sea or, otherwise, to keep these waters as a reservoir and later return them to the Danube or make other uses for them. This illustration of the use of the channel DMVE in the protection against great floods does not limit the significance of this channel. The point of the second strategic goal is also to indicate that by building the channel DMVE, Serbia would in a way control the major and more important part of the waters that belong to the Danube basin, with all else that stems from it. More details on the use of the channel DMVE will not be discussed here, but that could be a topic of the main research yet to be undertaken.

FLOOD PROTECTION

Protection against floods is an important measure in managing a river basin. In Serbia, "flood defence" is primarily applied which requires the construction of expensive objects (dams, accumulations, embankments, locks etc.,) in blue zones to increase the safety of people and property (Varga and Babić, 2005). In the development of flood protection, the introduction of the principle of "living with floods" (Varga and Babić, 2005) is expected. This principle fits into the concept of sustainable development because it aspires to harmonize "human" (protection of people and property) with "ecological" (saving and/or revitalization of natural processes) interests in flooded area. "Living with floods" requires an adequate coupling of: (1) non-investment and (2) investment (hydro-construction) measures. The first group of measures influences the reduction of damages by prevention; categorizing the endangered area, informing, educating and organizing of defence. The second group of measures influences the reduction of deaths and damages by building construction. Making and discussing scenarios as proposed here could significantly improve non-investment and investment protection measures against great floods.

CONCLUSION

Simple analysis shows that in the Pannonian part of Serbia where big rivers such as the Drava, the Sava, the Tisa, the Tamis, the Velika Morava and others, flow into the Danube, high water levels close or higher than maximum can occur almost simultaneously, which could lead to great floods. Also, it is shown that three-day heavy precipitation can leave in the same region immense quantity of water which could already by itself cause great floods which could be all the more greater if the runoff waters would be prevented from flowing into the rivers because of their high water levels. In future, it should be expected that flood parameters presented in scenario would be reached and become higher which means that they would also become more dangerous for people and property.

The consequences of disastrous floods discussed here can be best understood if the fact is taken into account that around 650,000 people live only in the area of Novi Sad and Belgrade in the parts of alluvial plain of the Danube and the Sava. Thus, densely populated parts of Novi Sad, Novi Beograd, Pančevo swamp and other areas located in the lowest geo-morphological zone would be directly exposed to the destructive action of water. In the discussed case, destructive flooding activity would be followed by disastrous floods in densely populated lowest parts of the valleys of the tributaries of bigger rivers as well as by the occurrence of spread landslides, great torrents, flowing out of ground water and sewerage water. High probability of the occurrence of this extraordinary situation should motivate us to urgently create unified strategy of defence against natural disasters with the participation of all relevant institutions and individuals.

Detailed analysis of floods caused by the interaction of high water levels/discharges on the rivers and heavy rains based on scenario and the influence of these floods on human communities and the country cannot be further presented here because it should be the main research topic yet to be carried out. One such research would yield plenty of data on the characteristics of simulated floods, above all, on their in-

fluence on human communities. Also, the simulations would make possible not only to reduce or remove potential detrimental effects, but to draw benefits, too, from the floods. Great quantity of flood water can be a resource which can bring benefit, but only if the water is managed well.

In writing such conceptual papers, and in this case even of the scenario type, speculative method is unavoidable. But, in the future researches, which were announced several times, speculative method will be minimized and give leading way to the modelling approach. Within the modelling approach to the research of great floods in Serbia, the statistical method will have significant place and it will, by using the most advanced statistical methods and stochastic models process hydrological and meteorological data. Also, it is planned that special place in modelling approach in the announced research will be devoted to explicit mathematical simulation of great floods. For that purpose, hydrodynamic equations will be used for the description of the condition and water flows (Gavrilov et al., 2014) and their solution could yield knowledge on the situation in the Pannonian parts of Serbia in the conditions of great floods. Carrying out of this research would create significant data on the characteristics of great floods which would enable direct implementation of these data in the plans for the protection of people, their property and creation of plans for flood management.

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THE TERM OF PROTECTED WITNESS IN CRIMINAL PROCEEDINGS BEFORE THE COURT OF BOSNIA AND HERZEGOVINA AND THE ROLE OF SPECIFIC AUTHORITIES IN WITNESS PROTECTION PROCESS

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Abstract: The provisions relating to the protection of witnesses were incorporated into the criminal procedure legislation of Bosnia and Herzegovina in 2003. Their incorporation was justified by the fact that witnesses were frequently exposed to insults, threats and attacks, including even physical attacks. On the other hand, Bosnia and Herzegovina ratified several UN Conventions relating to the protection of the rights of citizens, witnesses and victims in criminal proceedings. In addition, Bosnia and Herzegovina adopted a significant number of recommendations issued by the Council of Europe, dealing with the issue of witness and victim protection and the protection of other persons in criminal proceedings.

The protection of this category of witnesses, as well as the protection of victims of crime is carried out based on a threat and risk assessment undertaken by police authorities in collaboration with the prosecutor's office. A witness who has been granted the status of protected witness will be interviewed in accordance with the provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses and, at the same time, appropriate protection measures provided by the said Law will be applied. Those measures include procedural measures for witness protection in criminal proceedings before the Court of BH. In case that a witness requires permanent physical protection, the provisions of the BH Witness Protection Program Law, which encompass procedural and non-procedural witness protection measures, as well as the basic measures, actions and procedures relating to the protection of witnesses testifying in criminal proceedings, will apply. The Witness Protection Department of the State Investigation and Protection Agency of BH is involved in the witness protection process and effectuates the measures and actions relating to the procedural protection of witnesses in proceedings before the Court of BH and the Prosecutor's Office of BH, and it has the responsibility for establishment and operation of a witness protection program.

Keywords: criminal proceedings, witness protection, witness support, Court of BH, Prosecutor's Office of BH.

INTRODUCTION

According to the definitions in different legal systems, a witness is a person in respect of whom there is probable cause to believe to be able to provide information about a crime, perpetrators and other relevant circumstances necessary in clarifying the crime.

The role of a witness is incompatible with other functions in criminal proceedings (that of a prosecutor or defence counsel[1]) and has priority because of its irreplaceability.

Summoning a witness to testify about a specific criminal case creates an obligation for the witness to comply with the summons and to provide information based on his/her knowledge about the crime, perpetrators and other relevant circumstances of the case. Thus, in a way, the witness fulfils his/her civic duty, whereas the testimony itself includes certain obligations and exceptions relating to oath-taking, inability to testify, refusal to testify, and alike.

1 In criminal proceedings in Bosnia and Herzegovina, a person accused of a crime may appear as a witness in his or her own case.

Prescribing the obligation to give testimony resulting in a witness statement places a State under an obligation to undertake to ensure the fulfilment of that obligation without endangering one's own assets, life, physical integrity, family or property. The right of a State to require a witness to give a statement and the right of a witness to require the State to provide him/her protection, although naturally interconnected, are not equally protected. A State has the necessary coercive instruments at its disposal aimed at providing a witness statement: in case that a witness declines to give testimony, he/she may be imposed a fine or may be detained. However, a witness cannot refuse to testify if he/she assesses that the State has failed to take sufficient protection measures.

A witness is a strong means of evidence for both prosecutor and suspect, *i.e.* accused person and his/her defence counsel. Although it represents subjective evidence, it is of great importance and it is often the only piece of evidence available to prosecutors in the cases relating to war crimes. For this reason, witnesses play an important role in the criminal justice system and, accordingly, particular attention is paid to their preparation, the assessment of their character and evaluation of their ability to give testimony in an often hostile environment for witnesses to war events. The Law on Protection of Witnesses under Threat and Vulnerable Witnesses[2] and BH Witness Protection Program Law[3] were enacted to ensure the protection of particular categories of witnesses and their free and open testimony in criminal proceedings before the Court of BH. According to the ratified international regulations and the provisions of the mentioned Laws,[4] there are two areas in which special witness protection is indispensable – organized crime and special category of sensitive witnesses (who need to be protected from the risk of danger and threats), in different cases and, in particular, in processing the cases of war crimes.[5]

THE TERM "WITNESS" AND CERTAIN CATEGORIES OF WITNESSES

According to an ordinary definition, a witness is someone who is familiar with the information that is the subject-matter of criminal proceedings and that relates to a crime, perpetrator or other significant circumstances or facts. A witness statement is recorded in the minutes or made orally. Thus, all parties to the proceedings and a defence counsel are aware of those assertions, so that they are able to discuss or challenge them.

There are different ways in which witnesses may obtain information essential for proceedings – directly or through other persons. The first group of witnesses is called "eyewitnesses", whereas the second group includes witnesses who give information amounting to hearsay and, in principle, those witnesses are less reliable.

The procedure of interviewing a witness is complex and it implies knowledge of both criminal provisions regulating the matter in question and criminal tactics and psychology. As a rule, a witness makes an oral statement before a court or prosecutor and only then may the witness in formal legal terms be considered to be a witness and to give a testimony that may be used at different stages of the proceedings. This is different from providing information to other authorities, where such a witness cannot be considered to be a witness within the meaning of criminal proceedings. Summoning a person to appear as a witness requires

2 "Official Gazette of Bosnia and Herzegovina" Nos. 3/03, 21/03, 61/04 and 55/05.

3 "Official Gazette of Bosnia and Herzegovina" No. 3/14.

4 For example, the United Nations Convention against Transnational Organized Crime (BH has ratified this Convention and published it in the Official Gazette of BH – International Treaties, No. 3/02), in Article 26 obligates signatory states to take the appropriate measures to encourage persons who participate or who have participated in organized criminal groups: (a) to supply information useful to competent authorities for investigative and evidentiary purposes on such matters as: the identity, nature, composition, structure, location or activities of organized criminal groups; links, including international links, with other organized criminal groups; offences that organized criminal groups have committed or may commit; (b) to provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

The Convention recommends two forms of "evaluation" of cooperation of such persons: the possibility of mitigating punishment or the possibility of granting immunity from prosecution to a person who provides substantial cooperation, including the obligation of a State to harmonize its domestic laws with its obligations, good practices and the fundamental principles of domestic law.

5 See the Council of Europe Committee of Ministers Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure; the Council of Europe Committee of Ministers Recommendation No. R (97)13 concerning intimidation of witnesses and the rights of the defense; and Council of Europe Committee of Ministers Recommendation Rec (2005) 9 on the protection of witnesses and collaborators of justice. According to the Recommendation Rec (2005) 9, a collaborator of justice means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organization of any kind, or in offences of organized crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organization, or about any offence connected with organized crime or other serious crimes. The Recommendation relates to the fundamental principles of the protection of witnesses and collaborators of justice, and encourages a Member State in implementing and finding new forms of protection programs and cooperation, points to the previous Recommendations to be taken into account, encourages the appropriate modification of domestic rules of criminal procedure and points to the general principles of a fair trial, recalling that where anonymity has been granted, the conviction should not be based solely, or to a decisive extent, on the evidence provided by "anonymous" witnesses.

that there is the probability that he or she will be able to give information about the facts relevant for the proceedings, given his or her relationship with the facts and his or her ability to observe the facts and to state the observations.[6]

The procedure of interviewing a witness is regulated by legal provisions and the witness is advised about his/her rights and obligations, including, *inter alia*, the obligation to tell the truth to his/her best knowledge and conscience and the witness is warned about the offense of making a false statement. In his/her statement, the witness should give all relevant information known to him/her with reference to the case concerned. After that, the witness is asked questions so as to supplement and clarify the allegations in the witness statement. The witness is always asked about the sources of his/her testimony and, if needed, he/she may be confronted with other witnesses in case that his/her statement has a discrepancy relating to decisive facts. As a rule, before he/she appears as a witness and gives a witness statement, in criminal proceedings the witness appears as a citizen who should give information to the police in clarifying the crime and in finding the perpetrator of that crime.

Taking into account certain circumstances (age, illness, etc.), a witness may give his/her statement via a video link, so that the witness is not in the room where the proceedings are conducted and there is the possibility that the parties and defence counsel put questions to the witness. This requires the existence of certain specific technologies and professionals qualified to use video link facilities, given the increasing use of video link for hearings in recent years. Any witness statement may be recorded by audio or audio-visual means and in case that there is a risk that the witness will not be able to testify at the main trial or that the witness is a child, the recording is mandatory.

The proven value of a testimony by a witness is treated differently, ranging from absolute scepticism (that is justified by the imperfection of the witness's senses or his/her wish to help to a party to the proceedings, which may lead to the criminal offence of making false statements) to the interpretation that witnesses in criminal proceedings nevertheless give valuable and vital information. Despite different appraisals, in practice, witness testimony is the most frequently used evidence in criminal proceedings, but the appraisal of its proven value is the most difficult one in appraising all evidence. The main challenge in appraising a witness testimony is to establish to what extent the witness statement relating to the facts coincides with the actual situation. The courts, in each specific case, have to conscientiously appraise the actual credibility of evidence given in a witness testimony. In addition, on the one hand, a court has to take into account all factors affecting the possible unreliability of the witness testimony used as evidence but, on the other hand, the court has to make the best use of all available evidence and, in accordance with the principle of free evaluation of evidence and their personal conviction whether the evidence is correct or not, the court has to offer the reasons for its position taken in respect of the reliability of the specific witness testimony used as evidence.[7]

Legal regulations distinguish certain categories of witnesses, so that there are intimidated (vulnerable) witnesses, threatened witnesses, protected witnesses and repenters. Particular categories of witnesses, including witnesses under threat and witnesses at risk (vulnerable witnesses), require a special approach before, during and after giving testimony in a specific case.

A physical and psychological trauma of witnesses caused by the circumstances surrounding the commission of a criminal offence, i.e. a child or an underage person as witness, requires, first and foremost, psychological and social assistance and support, as well as an adequate approach by police and judicial authorities. Although the physical protection of those witnesses is not the primary task, the interconnection between the assistance and support and the protection of those witnesses, as well as the cooperation with police and judicial authorities considerably contribute to diminution, or even to the elimination of the causes of vulnerability of specific witnesses.

Article 3, paragraphs 1 and 3 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses determines that a witness under threat is a witness whose personal security or the security of his family is endangered through his/her participation in criminal proceedings, as a result of threats, intimidation or similar actions pertaining to his/her testimony and that a vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile. Contemporary forms of crimes, in their nature, often include, *inter alia*, the use of force or intimidation or readiness to use force or intimidation, which indicates that special protective measures should apply to all injured parties and witnesses.

Witnesses under threat or intimidated witnesses whose personal security or the security of their family are endangered[8] should be afforded the protection required to ensure their personal safety, and the causes of

6 Vasiljević, Grubač, 393
7 Jekić, Škulić, 251.
8 Witnesses can receive direct threats only from the perpetrator or someone close to him/her, and they can be intimidated by a specific relationship with the perpetrator.

threat or intimidation should be eliminated, in particular, during and after giving testimony in a trial. The goal is that giving testimony remains uninfluenced.

Persons whose personal or property rights are violated or threatened by the commission of a crime are considered to be victims, who, on the one hand, have certain rights in respect of harm they have suffered as a result of the commission of the crime and, on the other hand, they appear as witnesses who have certain rights and obligations. A serious physical and mental injury and serious mental disorder are the characteristics on the basis of which they are considered vulnerable.[9]

The notion "children and juveniles", as defined under law, means any person who has attained the age of 14 years, i.e. of 16 years (minor) and any person aged between 16 and 18 (juvenile) and their age affects their responsibility for violations of law. The law recognizes as vulnerable the persons under the age of 18, who have been a witness or an injured party – victim or have been present at the commission of crime the victim of which is someone else. In addition, it is necessary to take into account the age and the basic psychosocial features of children and juveniles and, in particular, in determining their legal position in criminal proceedings, which means when they are acting as a witness, as well as interviewing strategies and in apprising the credibility of testimonies.

The category of vulnerable witnesses includes also those persons who, by reason of their illness or age or other justified reasons, have the possibility to be interviewed in a special way. As to this category of vulnerable witnesses, there is no actual risk of danger but only some subjective feeling of danger. There are not many cases that such a witness experiences direct intimidation and it occurs mostly in case of a counterplot (specific details are revealed) by the witness.[10]

ASSISTANCE AND SUPPORT FOR VULNERABLE WITNESSES

The fact is that the commission of crime has different consequences on witnesses, in particular, on the victims of crime who also become witnesses, which particularly depends on the type and severity of an offence. The graveness of the consequences suffered by witnesses depends on the sensitivity of witnesses, their age and social status or, in some cases, of other characteristics. In addition, a witness may be put under pressure or intimidated or threatened by a perpetrator of crime or a person who has a close relationship with the perpetrator.

Some witnesses unconditionally accept cooperation with the authorities in criminal proceedings, whereas some expect and demand certain support and protection measures as a precondition for their cooperation and, as a last resort, they may affect the outcome of criminal proceedings. The members of the police and prosecutor's offices, then the members of the judiciary, are the first to encounter such a position taken by witnesses, so that those authorities provide assistance and support for witnesses before, during and after the completion of proceedings.

Assistance and protection measures include all those measures taken by the police, prosecutor's offices and courts to diminish or to remove emotions such as fear or anger caused by a crime. These measures, by their nature, are part of regular measures and generally accepted standards for acting towards all crime witnesses and victims, but they also include specific measures applied to an individual witness or victim.

What does "assistance and support" mean?

Since the role of a witness in court is of great importance, it is essential to have a well-designed witness protection system, which also makes a considerable contribution to a fair trial. With reference to posttraumatic stress disorder (PTSD), which was recognized for the first time after the Vietnam War, experiences show that there is a need for providing psychological assistance to victims and traumatized witnesses.[11] Psychological disorders may develop following a traumatic event that threatens psychological safety and creates feelings of helplessness. That is a normal reaction by normal people to an abnormal situation and it does not always emerge immediately after a traumatic event.

Reactions may emerge also in people who have not been exposed directly to violence and who are just witnesses, as well as in those who are concerned for their safety or for the safety of persons important to them. It is necessary to be familiar with those aspects in cases where an individual is in the situation to go

9 A considerable number of witnesses within this category have been the subject-matter of certain procedural protection measures in proceedings relating to the cases of war crimes before the Prosecutor's Office of BH and the Court of BiH.

10 See Simović, M., Simović-Nišević, M. (2009). *Institut zaštićenog svjedoka u krivičnopravnom sistemu Bosne i Hercegovine* (Witness Protection Mechanism in Criminal Legal System of Bosnia and Herzegovina). Niš: Themes, (3), 881 – 903.

11 The most characteristic symptoms of PTSD include efforts to avoid activities, places, thoughts, or feelings that arouse recollections of the trauma, as well as inability to recall the important aspects of the trauma.

through his/her traumatic experience.[12] Therefore, we can say that giving testimony is a kind of re-traumatisation, as a witness goes through the situation that he/she has experienced, heard or seen.[13]

In conducting operations to detect offenders, the police can learn and become aware if there is a need to take the measures of assistance and support or even protection measures, and this entails, *inter alia*, identifying and interviewing witnesses. It is possible, even at that stage, to make an initial appraisal of possible needs for providing assistance and support measures, which does not exclude possible mistakes in identifying vulnerable witnesses or underestimating their ability to give credible evidence. At further stages of proceedings, possibly vulnerable witnesses may be contacted by special witness assistance and support services within the police, prosecutor's offices and courts. In fact, in accordance with laws and by-laws, these services conduct the standard procedure and assess witnesses and propose the measures of assistance, support and protection. Pursuant to Article 4 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Court may order such witness protection measures provided for by this Law (psychological, social and professional aid) as it considers necessary, including the application of more than one measure at the same time.

Appraisal of Needs

The basic precondition for providing assistance, support and protection entails voluntary consent by a witness. This means that the witness must be informed about the measures to be taken regarding him/her and, in particular, in cases in which the court, along with the assistance and support measures, approves witness protection measures in respect of an intimidated or threatened witness. These measures as a whole should be taken so that they do not affect free testimony of the witness, which also entails the principle of voluntariness and the principle of unconditionality. Providing assistance, support or protection must not create a feeling of obligation on the part of the witness to give testimony that, in his/her view, suits the police, prosecutor's office or court.

It is also essential to fully inform witnesses and victims about the manner in which proceedings are to be conducted before the court, about the parties to the proceedings and their role.[14] This is part of the obligations of special witness assistance and support services.[15] These special witness assistance and support services ensure that victims of crime are treated with courtesy, respect and dignity and that they receive different types of assistance and support: emotional, financial, medical, legal and psychological, as well as that they are kept well informed.[16]

Organizing the appearance of witnesses or victims in a courtroom is a part of basic witness protection measures, which also include assistance and support to persons who have physical problems with their ability to walk or stand, or communication difficulties. A level of support measures will depend on the specific circumstances of each case. Particularly vulnerable persons might need assistance or support from a specialist; this has to be identified in preparing them to give their testimony in court. Possibly vulnerable witnesses and victims must be identified as soon as possible.[17]

Witness assistance and support services ensure that witnesses, before giving testimony, are informed about their rights and that those rights are respected. Some of the most important rights of witnesses include: (1) the right to be informed about court proceedings and about what will be happening in a courtroom, possible protection measures, the types of the service available to witnesses for assistance, and alike, (2) right to emotional and psychological support, (3) right to protection and safety, (4) right to the protection of privacy and right to compensation for damages. Studies have shown that, according to the views of witnesses who testify, the most important factors include: a) a reliable person, b) a witness room where they can prepare for giving testimony or where they can have a break, c) basic information about the court proceedings, d) courteous treatment, e) escort by a professional – if required due to witness's psychological condition, f) a person whom the witness can talk to about his/her expectations relating to his/her testimony, g) arrangements preventing contact with the defendant or his/her family, h) protection of privacy against the media or photographers and

12 See Brkić, S. (2007). *Mjere za zaštitu žrtava krivičnih djela od sekundarne viktimizacije u savremenim krivičnim postupcima*(Measures against secondary victimization in contemporary criminal proceedingsrelating to the protection of victims of crime). Belgrade: Private Life, 56, Vol. 509, (9), 791–802.

13 Appraisal of needs and capacities for providing better support for victims (witnesses) during the preliminary investigations in criminal proceedings in BH, 23.

14 Thus, a witness should be given all details relating to his/her reception and appearance in court and should be provided witness reception in a court (waiting and reception areas for witnesses), information about his/her entering the courtroom, witness box, etc.

15 These services first appeared in the sixties and early seventies of the twentieth century and their rapid expansion occurred in the two last decades of the twentieth century all over the world.

16 See Brkić, 130.

17 International Criminal Law and Practice: Training Materials 13.

the possibility of giving testimony so that the identity of witnesses is not revealed. Owing to witness assistance and support services, witnesses can exercise their rights.[18]

Cooperation between the Police, Prosecutor's Office and Court

Organization of an adequate procedure of assistance and support to the witness is of great importance, as it includes the cooperation of all the bodies participating in criminal proceedings as well. It is the most challenging in the practical application. Providing of an individual form of assistance and support is divided between the police, the Prosecutor's Office and the Court and also to the time the assistance is given (before, during the course and after the trial). Individual actions of the assistance and support must be carried out continuously.[19]

Assistance and Support of the Non-Governmental Sector

In addition to the above subjects, the assistance and support to the witnesses is also supplied by others, such as social services, associations of citizens, etc., which has shown to be useful in practice, especially when the witnesses-victims are concerned. However, the Social Welfare Centres do not have enough employees and necessary financial means; thus, they are not capable to offer an adequate support to the witnesses in criminal cases. In addition, the majority of these Centres do not have qualified staff which would give a psychological support or any kind of advising to the witnesses (especially in the war crime cases), nor they are connected by the system with the Mental Health Centres.

An accessibility and quality of psychosocial support given by NGO's varies substantially. Some of the NGO's have the qualified staff and their resources permit them to offer an adequate support,[20] while others only organize the means of transportation for witnesses, secure their accommodation and meals, and only if needed, in the Safe Houses,[21] in possession of those organizations offer a temporary accommodation to certain categories of witnesses in the process of assistance and support, and also for a short period during the measure of their protection.

There are also groups that offer advice in the process of giving testimonies and on legal rights and obligations of witnesses. Although they also help in many cases, they are deficient as they lack precise standards, transparency and responsibility. The support to the witnesses in the war crime trials in Bosnia and Herzegovina is also given by the Victims of War Associations that appear as "free agents", in that they are finding and animating witnesses to testify and they register themselves before the judicial bodies as their protectors (patrons).

ROLE OF INDIVIDUAL BODIES IN THE VICTIMS' PROTECTION PROCESS

Conceptual Definition of the Police and Their Role

The police were created as a result of strivings of the society to secure both personal and collective order, peace and full security. In that sense, since the beginning of their existence and operating, the police have been a very important instance for the security of the state and its citizens in which manner they realize one of the most important functions of the society. In the performance of their tasks that are of vital interest for any society, the police have at their disposal the considerable authorizations entrusted to them by the state. In that, their task has been to protect the public order through the maintenance of public order and peace, the prevention and repression of crime and performance of other tasks from their competencies.

Actions of detection and proving of criminal offences done by the police are characterized in different manners, given their legal effect. However, in the sense of the content, those actions are practically universal and directed towards the acquisition of information, items, documents, recordings, etc.

18 Appraisal of needs and capacities for providing better support for victims (witnesses) during the preliminary investigations in criminal proceedings in BH, 24.

19 The Prosecutor's Office of BH does not have a specialized service for the assistance and support to the witnesses as of yet and the Support Department of the Court of BH does not have the capacities to offer a long term or more extensive assistance. On the other hand, there are no (except in some of the cantonal and regional courts, for e.g. in the Regional court in Banja Luka) structures giving psychosocial assistance to the witnesses financed by the authorities of the Entities.

20 They have psychologists, psychotherapists and social workers.

21 See, *de.wikipedia.org/wiki/Safe_House*.

The act of collecting information is not only taken in accordance with provisions of the Civil Procedure Code of BH,[22] but also of the rules of criminology and psychology. That action represents a separate unit within the scope of the entire activity of the police in the collection of information and follows after finding the persons that are in possession of relevant knowledge and their definition of the criminal offence and its perpetrator. Timely identification of such witnesses by the police is the first presumption of the successful collection of information.

The rights and obligations of the police officers in BH are regulated by the corresponding legislation on the police officers and internal affairs on the cantonal, Entity and state level. The Law on Police Officers of BH[23]contains the provisions on the police tasks which primarily concern the protection of life, rights, security and inviolability of persons, the protection of property, prevention and detection of criminal acts and offences. In addition to the responsibilities and authorities prescribed by the Criminal Procedure Code of BH, this law has given to the police officers other competencies with the aim of crime prevention as follows: verification and determination of the identity of persons and items, interviewing, apprehension, search for persons and items, temporary restriction of the freedom of movement, issuance of warnings and orders, temporary confiscation of items, use of someone else's vehicles and communication equipment, inspection of persons, items and means of transportation, recording on public places, use of force, processing of personal data and record keeping and filing charges.

A police officer is obliged to abide by the general interest and especially to serve and assist the public while performing his duty. The police officer must be impartial and must avoid the activities and oversights that are incompatible with his duties. In and outside of the course of his working hours, he should always act in a manner that corresponds to the interest and reputation of police authority, complying with all his duties stipulated by law.

Investigation and Protection Agency of BH

State Investigation and Protection Agency (SIPA) was founded in 2002 by adoption of the Law on Investigation and Protection Agency by which this Agency has been defined as an independent institution of Bosnia and Herzegovina responsible for collection and processing of data of interest for the implementation of international and criminal legislation of BH as well as the protection of very important persons, diplomatic and consular offices and facilities of the institutions of BH, and diplomatic missions. By the adoption of the Law on the State Investigation and Protection Agency,[24] in June 2004, the Investigation and Protection Agency has been transformed into the State Investigation and Protection Agency and obtained the police authorizations and became the first police agency which realizes its competencies on the entire territory of BH. Under this Law, SIPA is defined as an administrative organization of the Ministry of Security of BH with operative independence, its responsibilities being the prevention, detection and investigation of criminal offences under the jurisdiction of the Court of BH, physical and technical protection of the protected persons and facilities, protection of endangered witnesses and witnesses under threat and other tasks from its competence prescribed by this Law.

The competencies of the State Investigation and Protection Agency have been stipulated by Article 3 of the Law on the State Investigation and Protection Agency: prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of BH, especially: organized crime, terrorism, war crimes, trafficking in persons and other criminal offences against humanity and values protected by international law, as well as serious financial crime; collection of information and data on relevant criminal offences, as well as observance and analysis of security situation and phenomena conducive to the emergence and development of crime; assistance to the Court and the Prosecutor's Office of BH in securing information, and execution of the orders of the Court of BH; physical and technical protection of persons, facilities and other property protected under this Law; witness protection; implementation of international agreements on police co-operation and of other international instruments that fall within the scope of its competence; criminal expertise; and other tasks as prescribed by law or other regulations. Given that the crime, especially the organized crime, assumed the international character, the State Investigation and Protection Agency has been conducting a coordinated cooperation with national and international bodies for law implementation, to make the combat against all forms of crime as efficient as possible and in that way increase global security to the higher level.

The State Investigation and Protection Agency has its seat in Istočno Sarajevo and it performs the tasks from its competence in the Regional offices; Banja Luka, Mostar, Tuzla and Sarajevo, and within the internal organizational units: Director's Office, Criminal Investigation Department, Financial-Intelligence Department, Witness Protection Department, War Crimes Investigation Centre, Special Support Unit, Internal

22 *Official Gazette of Bosnia and Herzegovina* nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09 and 72/13.
23 *Official Gazette of Bosnia and Herzegovina* nos.27/04, 63/04, 5/06, 58/06, 15/08, 63/08, 35/09 and 7/12.
24 *Official Gazette of Bosnia and Herzegovina* nos. 27/04, 35/05 and 49/09.

Control Department, Operative Support Unit, Service for Administration and Internal Support and Service for Material and Financial Matters. The Agency is managed by the Director who has two Deputies and two Assistants (for criminal investigation and internal control).

The Witness Protection Department performs duties and tasks in line with Law on Witness Protection Program of BH and other BH regulations related to witness protection whose purpose is to provide the protection of a witness before, during and after criminal proceedings in order to enable the witness to testify freely and openly in criminal proceedings before the Court of BH. The Witness Protection Department also decides on and implements any measure to be taken in relation to a foreign witness present in BH under an agreement or arrangement between Bosnia and Herzegovina and a foreign State relating to witness protection, promotes cooperation and exchanges information with relevant non-governmental organizations, government bodies as well as other foreign state authorities and international organizations responsible for witness protection.

Internal organizational units of the Witness Protection Department are: (1) Section for Protection, (2) Section for Operational Support, and (3) Section for Department Administration and Management.

Section for Protection is responsible for witness protection pursuant to the Law on the Witness Protection Program, the Law on SIPA, and other laws regulating witness protection, as well as the treatment of witnesses in accordance with the prescribed procedures of the Witness Protection Department and for maintenance of the highest level of security at every moment, as well as protection of witnesses' identity and integrity. The Section is responsible for contacts with the Prosecutor's Office of BH in relation to the implementation of witness protection measures, preparation and management of documentation, continuous monitoring of security situation and a degree of witness vulnerability, preparation of plans and implementation of protection measures, assessment and revision of current measures and needs of witnesses included into the Witness Protection Program and making proposals in relation to amendments of the Protection Program measures and elements.

Section for Operational Support is responsible for operational preparation related to the implementation of the Witness Protection Program in accordance with the Law on the Witness Protection Program, the Law on State Investigation and Protection Agency and other laws and rules regulating witness protection, and for the treatment of witnesses in accordance with prescribed procedures of the Witness Protection Department. This Section is responsible for contacts with the Prosecutor's Office of BH in relation to the implementation of the Witness Protection Program, preparation and management of documentation on witness protection, development and update of databases on witnesses, protected witnesses and witnesses included into the Protection Program, continuous monitoring of security situation and a degree of witness vulnerability, screening of received and collected information, and preparation of plans and programs of witness protection implementation.

Section for Department Administration and Management is responsible for drafting of general and individual secondary legislation and implementation of prescribed procedures in relation to the witness protection, initial witness assessment in relation to the entrance into the witness protection program, and for providing psychological, social, economic and medical support. The Section is also responsible for cooperation with institutions of BH, foreign states, and international institutions competent for witness protection, receiving and sending, maintenance, security, and archiving of official documentation, keeping official records and performing other tasks from its competence.

Since its founding, the Witness Protection Department has given an appropriate form of protection for a substantial number of witnesses, including initiation of the witness protection program, where especially important is the fact that all witnesses who abided by the instructions and advices have never been placed in any danger while their lives and lives of their family members have never been brought into question. Of no lesser importance is the fact that all the officials in this department have been subjected to rigorous security checks and that they passed specific specialist trainings. The reason for all of this is that all protected witnesses as well as other witnesses are offered a sense of security by this department, without any danger that certain information may leak into public as well as to give the witnesses the largest possible degree of security in order to be able to testify before the judicial bodies with no fear for their lives or the lives of their family members.[25]

Prosecutor's Office of Bosnia and Herzegovina

The Prosecutor's Office of BH is established subsequently as an institution with a special competence for proceedings before the Court of BH in criminal offences prescribed by the Criminal Code of BH,[26]

25 Information guide for witness as a candidate for the witness protection program in BH, 3 (*www.sipa.gov.ba /bs/Vodiczapristupbo.pdf).*

26 *Official Gazette of Bosnia and Herzegovina* nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10 and 47/14.

in accordance with the Law on the Court of BH,[27] the Law on the Prosecutor's Office of BH,[28] the Criminal Procedure Code of BH and the Law on Referral of Cases by the International Criminal Tribunal for the Former SFRY to the Prosecutor's Offices in BH.[29] The Prosecutor's Office is organized in three Departments which are Department I (Special Department for War Crimes), Department II (Special Department for Organized Crime, Economic Crime and Corruption) and Department III, and the administration and library.

Department for War Crimes is responsible for prosecution of cases of war crimes committed in the territory of Bosnia and Herzegovina during the 1992-1995 war conflicts. The Department II has jurisdiction over the prosecution of perpetrators of organized crime, economic crimes and corruption. Those crimes include corruption involving employees of the BH institutions, economic and financial crimes including tax evasion, smuggling, customs fraud and money laundering, as well as organized crime including, but not limited to, international trafficking in drugs and people and similar offences under the Criminal Code of BH.

Department III is responsible for the cases of criminal offences of corruption committed by officials and responsible persons but who are not the high ranking officials or responsible persons with the highest functions in the business organizations or other legal entities. The cases relating to the requests for extradition, requests for legal aid and issues relating to the international legal aid and cooperation, as well as the cases relating to the conflict of competencies and cooperation with other courts, Prosecutor's Offices, bodies and organizations – are also within the scope of tasks of this Department.

The Administration of the Prosecutor's Office performs legal, administrative and technical, general and material and financial operations, as well as IT and public relations activities and other activities required for a lawful, timely and efficient functioning of the Prosecutor's Office. These tasks are performed by the internal organizational units and it is managed by the Secretary of the Prosecutor's Office who is under the direct supervision Chief Prosecutor.

Court of Bosnia and Herzegovina

Jurisdiction, organization and structure of the Court of Bosnia and Herzegovina are regulated by the Law on Court of BH. The President of the Court of BH is appointed by the High Judicial and Prosecutorial Council of BH for a term of six (6) years with the possibility of reappointment. The President of the Court organizes the work of the Court and provides for the establishment of cooperation with other institutions, and the Court of BH has 53 judges, in accordance with the decision of the High Judicial and Prosecutorial Council of BH.

The Court of BH has three divisions - criminal, administrative and appellate**.** The Criminal Division consists of three Sections: Section I for War Crimes, Section II for Organized Crime, Economic Crime and Corruption and Section III for all other criminal offenses falling under the Court's jurisdiction.

The Appellate Division consists of three Sections which rule on appeals/legal remedies from decisions of the three Sections of the Criminal Division, as well as the decisions of the Administrative Division, and deals with complaints regarding election issues. The Court has a Common Secretariat and a Registry for Section I and Section II of Criminal and Appellate Divisions.

The Registry of the Court of BH is an internal organizational unit of the Court taken over from the Registry that was established previously and existed as an international organization. The Registry consists of the following departments/sections integrated into it: the Legal Department, the Court Management Section, the Witness Support Section, the Public Information and Outreach Section and the Administrative Section.

The Witness Support Section is neutral body responsible for providing support to witnesses in proceedings both of the Prosecutor's Office of BH and defence in all the cases conducted before the Court, particularly to witnesses in cases before Section I and Section II of the Court of BH. The Section consists of a team of professional psychologists and assistants[30] and coordinates its activities with the Witness Support Unit of the State Investigation and Protection Agency When it comes to vulnerable (protected) witnesses.

27 Consolidated text (*Official Gazette of Bosnia and Herzegovina* no.49/09).
28 Consolidated text (*Official Gazette of Bosnia and Herzegovina* no.49/09).
29 *Official Gazette of Bosnia and Herzegovina* nos. 61/04, 46/06, 53/06 and 76/06.
30 In 2008, the Victim and Witness Protection Service secured the protection of total number of 1,118 witnesses in the cases processed before Sections I, II and III of the Court of BH. As of 2008, depending on the needs of a trial, this Section has also given support to the witnesses who testify in the cases of the Section I that are in the appellate phase of proceedings. Of the above total number of 1,118 witnesses, the support has been given to: 1,029 witnesses testifying in the cases before the Section I; 143 witnesses testifying in the cases before the Section II and Section III and 6 witnesses testifying in the cases before the Appellate Division of the Section I. For the purpose of the precise comparison, it is necessary to point out the evident increase in the monthly average number of witnesses supported by the Victim and Witness Protection Service. In particular, in 2005, 32 witnesses had been given aid on monthly average; in 2006, 61 witnesses; in 2007, 73 witnesses; while in 2008, the Victim and Witness Protection Service had been giving support in the monthly average number of 98 witnesses.

Article 31 of the Rules of Procedure of the Court of BH[31]provides that the Witness Support Section (Office) shall provide practical and, when necessary, psychological support to witnesses during testimony before the Court of BH. Witness support functions for Section I and Section II shall be performed in accordance with the internal rules issued by the Head of the Witness Support Office upon approval by the President (after consulting with the Registrar for Section I and Section II).[32]

The basic goal of this Section is to provide the appropriate psychological support and help to witnesses prior to, during and after the trial so as to prevent their testimony from further affecting any additional damage, suffering or trauma to any witness, which is regulated by the Rules of Procedure of the Protection of Witnesses of the Court of BH. Upon the receipt of the request from the competent body, the professional psychologists of the Section contact, mostly by phone, the witnesses and prepare the first evaluation of the witness's needs (psychological, social, etc.). On the date of testimony or previously, upon the arrival of witness, the direct contact with him is realized and he is placed in the separate premises. After the testimony is finalized, the staff of the Section is preparing the new evaluation through the conversation with him on the consequences that the testimony has caused. Even after leaving the Court, the witness has a possibility to contact the staff of the Section and to have certain measures of support secured not only within 24 hours after the testimony but also several days thereafter – if the evaluation indicates such necessity.

The witnesses under the special measures of protection are given the same services but, in addition to the officials of the Victim and Witness Protection Service, the police officers of the Witness Protection Department of the State Investigation and Protection Agency. It is necessary that the Witness Support Section staff perform their activities with the highest level of moral integrity, impartiality and confidentiality. All information provided to the Section by a witness is treated in a professional manner, and is presented to the party to the proceedings who summoned the witness.

The Rules and Procedures of the Victim and Witness Protection Service are authorized by the President of the Court of BH. The Brochure which describes the court's procedures for witness conduct and services that this Section provides is distributed in public.[33]

CONCLUSION

The protection of witnesses is of the vital interest for the realization of one of the main goal of the criminal proceedings – efficiency of the criminal prosecution of the criminal offence perpetrators. Therefore, although the states do not ultimately recognize the right of witness to withhold the testimony, if considered endangered they develop and implement in more detail the measures of the procedural and non-procedural witness protection. For any state to be an efficient participant in the fight against modern forms of criminal offences, it has to secure the best possible protection to the witnesses and all other participants in the criminal proceedings, as it will allow to those persons to freely present their testimonies. If the witnesses and other participants in the proceedings have already given their testimony, then the state must be guarantor that, in the case of subsequent exposure to any danger for such person or any person closely related to him because of the given testimony, it shall protect the persons in question.

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31 Adopted on the General session of the Court of BH held on 14 October 2005. Published in the *Official Gazette of BH* no. 82/05.
32 The most common forms of protection of the vulnerable witnesses in the proceedings before the Prosecutor's Office of BH and the Court of BH are: legal aid in accordance with law; securing psychological, social and other aid; hearing by the video conferencing means; and hearing on the main hearing in the different order than usual. Special rules on the hearing of the vulnerable witnesses are motivated, first of all, by the need of additional protection of such persons with the aim of preventing their secondary victimization (Brkić, 13).
33 *www. registarbih.gov.ba*.

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THE PRACTICE ORIENTED TRAINING AND EDUCATION SYSTEM AT THE NATIONAL UNIVERSITY OF PUBLIC SERVICE – THE COMMON PUBLIC SERVICE PRACTICE

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Abstract: The training and education system must be rational, effective, and cost-effective and practice oriented. In Hungary during peace time, war time and throughout the different types of disasters the public service administration, the military organizations, and the law enforcement organizations work together in order to reduce the various hazards and dangers.

From the above mentioned approach the leaders of the university and the heads of the aforementioned organizations agree on that experts must be trained at one university, they must learn the same basic knowledge in order to carry out the joint activities in an easier way.

The National University of Public Service (NUPS) is one of the special institutions in the European Higher Education Area. At the end of each academic year, the NUPS organises *The Common Public Service Practice* – involving the graduating students, the Hungarian military-, law enforcement- and public service organizations. This two days' practice oriented activity is unique in the Hungarian higher education.

The practice of the past two years – according to the highest decision makers – was very successful. The reader will have a full insight into the preparation work and the flow of the practice the experience of which can be successfully adapted to his own work.

Keywords: The Practice Oriented Training, Law Enforcement Training and Education. Leadership methods, Structure, Policing, Military Education, Public Service Education, The Common Public Service Practice, Best practice of Hungary, National University of Public Service.

SHORT INTRODUCTION OF THE NATIONAL UNIVERSITY OF PUBLIC SERVICE BUDAPEST, HUNGARY

The training and education system must be rational, effective, and cost-effective and practice oriented. In Hungary during peace time, war time and throughout the different types of disasters the public service administration, the military organizations, and the law enforcement organizations work together in order to reduce the various hazards and dangers.

On 1st January 2012 the National University of Public Service was established and is governed by different ministers: the Minister of Justice, the Office of the Prime Minister, the Minister of Defence, the Minister of the Interior and the Ministry of Foreign Affairs and Trade. [2] The representatives of the aforementioned institutions – the joint Governing Board – supervise and guide the activities of the University.[3]

From the above mentioned approach the leaders of the university and the heads of the aforementioned organizations agree on that experts must be trained at one university, they must learn the same basic knowledge in order to carry out the joint activities in an easier way.

In Hungary the National University of Public Service (NUPS) belongs to the middle-sized universities. Approximately, we have roughly 6500 students and 300 lecturers. The aim of the integration was to set up a university that strengthens national loyalty and professionalism within the Hungarian public service. This effort requires strong cooperation among the civil public administration, military and law enforcement. The every year performed common public practice helps to reach these goals.

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THE FACULTIES – FACULTY OF MILITARY SCIENCES AND OFFICER TRAINING

The Faculty of Military Sciences and Officer Training is the only one high level military institution (Bachelor, Master, PhD training) in Hungary. This faculty is responsible for providing staff (officers, senior officers, and experts in the security sector) for the Ministry of Defence. The Faculty aims at training professional military officers in the fields of artillery, infantry, reconnaissance, air defence, military engineering and logistics in general. The heritage of the Faculty is very important for the leaders of the Faculty. They are following the training tradition of the more than two hundred years old 'Ludovika Academy'. The training and education system of the Faculty is fully complying the challenges of the present time.

FACULTY OF PUBLIC ADMINISTRATION

The Hungarian public administration system reflects the good governance model[4]. According to this model the state administration needs highly qualified experts who are able to manage the changes and development procedure at the Public Service Administration. The legal predecessor of the Faculty of Public Administration's history is more than 40 years old. During these years, the predecessor institution provided the heads of state administration. The Faculty of Public Administration at the National University of Public Service has got an important role in the training of state public administrators in Bachelor, Master and PhD training.

FACULTY OF LAW ENFORCEMENT

The Faculty of Law Enforcement – as well as the Military Faculty – is the only one law enforcement institution in the Hungarian Higher Education Area. The Faculty is to provide a professional staff for the different law enforcement agencies for example the Ministry of the Interior (Police, the Prison Service, the National Directorate-General for Disaster Management), the Ministry of Finance, (National Tax and Customs Office) and the private security sector, like the Chamber of Bodyguards, Property Guards and Private Detectives.

Within the two main programmes that provide qualifications for criminal administration managers and law enforcement administration managers the Faculty offers a wide range of specialized BA programmes such as Criminal Investigation, Economic Crime Investigation, Financial Investigation, Corrections, Border Policing, Administrative Policing, Disaster Management, Public Order Policing, Traffic Policing, Customs and Excise Administration, Migration and Private Security.

The Law Enforcement Management Master full time and part time programmes last for 4 semesters. The Faculty also has accredited special training programmes for forensic experts and crime prevention managers. The Faculty would like to establish the Law Enforcement PhD School in the near future.

FACULTY OF INTERNATIONAL AND EUROPEAN STUDIES

This Faculty is the youngest one at the University, has been established on 1st February 2015.[5] The predecessor institution was the Institution of International Studies. The Faculty provides the students international and European studies, which prepare the public service related experts for international career after graduation. The Faculty provides knowledge on a wide spectrum of public service. Some of the students belong to the military, the law enforcement, and the public service organizations. The Faculty provides BA, MA and LLL levels in education for the applicants for courses held in Hungarian and in English languages.

THE EDUCATION SYSTEM OF THE UNIVERSITY

The NUPS is a special institution in Hungary. The education system is well organised, the university is tailored according to the Bologna Process, it provides undergraduate (Bachelor, BA, BSc), graduate (Master, MA, MSc) and PhD levels as well as special training programmers, further training and re-training ones.

4 Magyary Zoltán Public Administration Development Programme, for the salvation for the nation and in the service of the public, Ministry of Public Administration and Justice, 31.August 2012. http://magyaryprogram.kormany.hu/, 02.14.2015.

5 Founding of the Faculty of International and European Studies, http://en.uni-nke.hu/no-menu/hirek/2015/01/23/founding-of-the-faculty-of-international-and-european-studies, 02.14. 2015

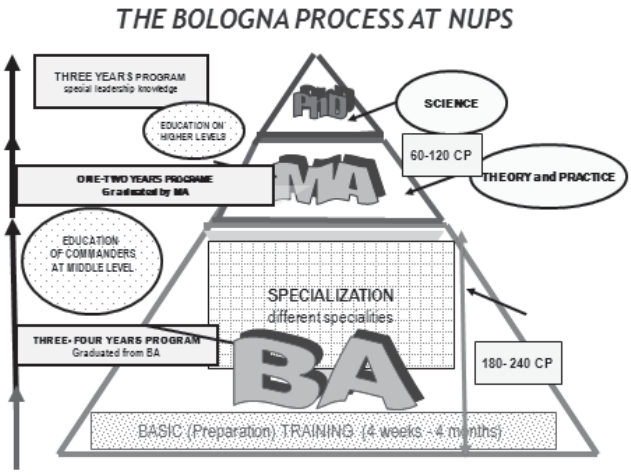

Figure 1. *The Bologna Process at NUPS*

Most of the subjects are practice orientated. According to the Bologna Process in the Bachelor level education the ratio of practice and theory is 60% to 40%. At the master education this ratio is changed, the ratio of practice is 40% the theory is 60%.

The international relations are very important and new element in the life of the NUPS. The European Police College (CEPOL) and the European Union member states prepared the European Joint Master Programme "Policing in Europe"[6] – consisting of seven modules to be introduced in September 2015 – is related to the Master level of law enforcement training. One participant can join the programme from each EU member state and it offers an MA in European law enforcement. NUPS is not only involved in this programme through the Faculty of Law Enforcement but would also rely on the contribution of lecturers from the Faculty of Public Administration and the Faculty of Military Science and Officer Training and the Faculty of International and European Studies.[7]

All of the training and education programmes pay attention to the practice oriented methods. Most of the subjects consist of some practical parts, in order that the students can practice the acquired knowledge.

Conclusion: The NUPS was established on 1st January 2012. The predecessors' institutions realised they need to work together in the future. After the establishment the leaders of the university immediately started the development of the training and education. This process highlighted the university students' need of a Common Public Service Module and a Common Public Service Practice.

THE COMMON PUBLIC SERVICE MODULE

The basic tasks of the University are to change the training and education structure in order to provide interoperability among the different professions. The Senate of the University in the year 2013 accepted the Common Public Service Module included in the Curricula.

The main principles of the process of establishing the new subjects were: the skills and knowledge of them must establish the basic public service career; they should contain basic knowledge the different professionals could build their special knowledge on; the structure of the knowledge system consists of the public service basic exam materials; the curricula of the subjects provide both theoretical and practical knowledge.

The 15 subjects are different and cover the whole public administration basic knowledge materials. (Constitutional Law, General Political Science, General Sociology, The State's Structure, Security Sciences, Military Theory and Military Operation, Disaster Management, Public Service Function, Common Public Service Practice, Public Financial Affairs, Public Service Careers, Public Service Logistics, National Security Sciences, Theory of Law Enforcement, Management and Organisation Theory)[8]

6 Article 11.f Council Decision 2005/681/JHA of 20 September 2005, Decision as amended by Regulation (EU) No 543/2014 (OJ L 163, 29.5.2014, p. 5).
7 CEPOL - Framework Partnership Agreement 20th November 2014. Budapest
8 The value of the subjects is altogether 30 credits - 465 contact hours. – remark of the Author

According to the accepted curricula students prove the level of their knowledge having acquired during the first four semesters summarized in the common module: in the joint public service practice.

During this practice the students carry out tasks related to a specific and complex problem. All of the students work as if they were in their own future profession, in order to be able to solve different situations. Choosing the topic of the practice was very difficult, because the main point of view was that all the profession had to apply their special knowledge in special circumstances.

In the past two years the leadership of the university organised the Common Public Service Practice. The results of these practices are valuable; the activity was fruitful and meant a great success to the participating students. The topic of this practice was different in both years.

DURING 2013 YEAR'S PRACTICE "VADVÍZ 2013 – WHITE-WATER 2013" – THE MAIN TASKS WERE THE FOLLOWING

The topic of the 2013 year's practice was the task required from the public service organizations during the flood emergency situation in the homeland *(to maintain the public order, to handle the illegal immigration, the relocation of citizens and the relocation of a prison).* The military students in the frame of the practice focused to another topic. It was the preparation of the peace keeping mission of the special units of the Hungarian Army and the preparation during the emergency situation caused by the flood.

Throughout the practice – simulating the real life – the Disaster Management Organizations began the process as if it had been a normal situation. They started the preparation process in order to avoid the flood at the area by the river Tisza. The local governments and the Disaster Management Organizations started their joint activity. Through the emergency situation the National Emergency Management Centre directed and organised the activity of different organizations involved in the activity.

During the emergency situation the law enforcement students practiced the lightened control of rescue forces at the border check points, and the collection process of illegal immigrants at the borders. The organizations practised the management tasks according to the competences of different levels: they planned, organised and implemented and controlled joint activities, developed cooperation among the following units, the European and another national and international organizations, the authorities of neighbouring countries, the homeland law enforcement, the public service and military organizations, the non-state and charitable organizations which took part at the clearing process of the emergency situation.

All of the students practised the duties of Hungary related to the UN, NATO, EU and Schengen membership.

Some parts of the Hungarian Army provided some sub tasks in peace keeping mission. The staff prepared the relocation of different subunits to the crisis zone, the coordination and managing the peace keeping mission, the activity at the weapon free zone, and the cooperation with the governmental and non-governmental organizations.

The brigade according to the tasks and together with the international liaison officers carried out the peace keeping mission.

This practice was the very first at the NUPS. The management of University evaluated the experiences of the practice. It was very useful for all participants.

THE IMPLEMENTATION OF THE "VÉGVÁR 2014" "LAST FORT 2014" ANNUAL COMMON PUBLIC SERVICE PRACTICE

The preparation process of the practice started in November 2013. The vice rector for education lead drafting group prepared a very detailed basic mission for all participants. The number of participants in this year increased, it was more than 1100 students and approximately 100 teachers and other personnel. One university campus couldn't provide enough working place for the participants, so the leaders decided to use parallel working method during the implementation of the practice. The same practice was to be run at two different campuses so the umpires can handle coordination and monitor the students.

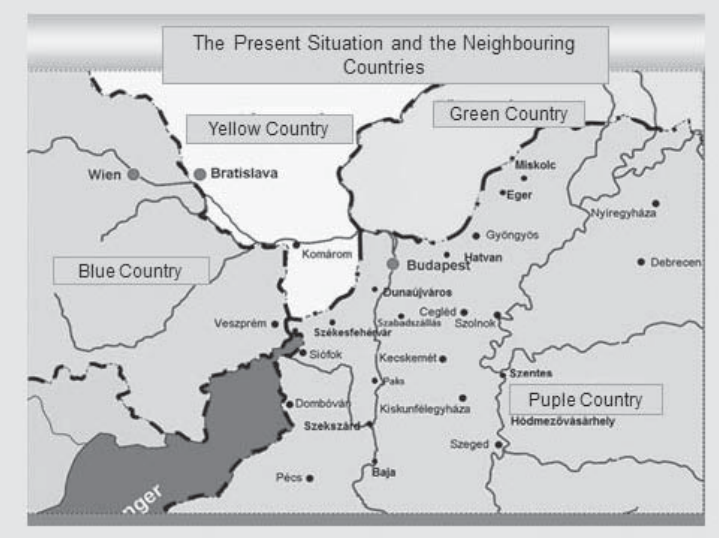

Figure 2. *"Last Fort 2014" - The present situation and the Neighbouring Countries*

In order to make the practice successful the staff prepared a special mission for each profession and it was tailor made for the police (the following specializations: border guard, criminal investigation, public order), the military (artillery, tank unit, etc.) and the public administration students.

During the preparation phase, the teachers held a lecture to the students on how to solve different problems in the frame of the decision making process, how can they work together in order to solve different problems. During the planning process the students acquired the different conventional sings, signals, the basics of the staff work and staff work methods. After the theoretical and practical lessons the students studied the whole process.

The topic of the Common Public Service Practice in 2014 was different.[9] During the preparation period the staff prepared a detailed fictional basic situation. This situation provides all the possibilities in order to practise all the professions of the participating university students.

The virtual scene of the practice was the designated areas of Hungary. The real scene was the assembly room of the Law Enforcement Campus and the Military and Officer Training Campus. During the practice the students used the computer labs and the different special operation rooms.

In order to make the practice lifelike the different movements were carried out in real time at the training field. The continuous connection with the participants at the training field was provided by a video conference system and a satellite link.

Different organizations were created by the students on local, county and national level. The graduating students acted as the organization leaders and the staff as well. Each participant carried out his task according to the competences of his respective organization. They used the forces and the cooperative organizations in order to solve the different situations.

The contents of the detailed plan were the following:

1) Pre conception of the Common Public Service Practice
   – basic data of practice
   – the concept of the practice
      • the law enforcement part of the practice
      • the military part of the practice
      • the public service part of the practice
2) The starting tasks
   – the main parts of the practice
   – the main task of the different organizations

9 State Reform Operative Program - 2.2.21, Knowledge-based Public Service Careers. The Civil Service Practice Concept and Development of the Task - Launcher, NUPS, Vice Rector for Education's Office, Budapest, Ludovika tér 2. 2013

3) The country descriptions (Hungary and the fictive neighbouring countries)
   - general military geographic position
   - general natural conditions
   - socio-political relations
   - economic conditions

4) The position of public service organizations
5) The position of law enforcement organizations
6) The position of military organizations[10]

The main goals achieved by the Common Public Service Practices:

– Strengthening links between the different faculties and professions for the university students, the common work and cooperation. Application of new theoretical and practical methods in different situations.
– Contribution to the harmonization of the different subsystems, the unified view of the common public service sector.
– The application of theoretical and practical knowledge of the management and organization science in practice. The development of the leadership competence of the different university students.
– The joint application of military, law enforcement and civilian supporting management and information systems.
– During the cooperation process, the common utilization of the new experience. The application of approved plans, improving the operating systems and procedures in the theory and in the practice.
– Common Public Service Practice is a kind of commitment on the harmony and interdependence of university training system.

SOME EXPERIENCE RELATED TO THE PREPARATION WORK OF THE COMMON PUBLIC SERVICE PRACTICE

Some experience in the preparation part:

– The preparation of the practice should start before November. It is necessary to launch a conference on the Practice at the end of September.
– At the beginning a basic mission is needed to be prepared, and then it is necessary to prepare the detailed missions for each profession.
– During the practice there's no need to demonstrate the organizations on national level because the students are not able to handle the decision making process on national level. County level and below is enough for the students in order to practise the professions.
– The preparation lessons are very useful for the participants however not only the students but all the teachers involved in the practice should take part in these lessons.
– The students have to go to the scene of the activity, in order to study the present situation (landscape, forests, rivers, mountains etc.) and the effects of different decisions.
– The two days' practice is necessary, the first day serves as the day of the preparation – the technical connection (internet, radio, telephone) is vital between the different workplaces.

The conduct of the practice:

– Not too many different situations are needed, it is necessary to finalise the leading process, very often jumps in time is advisable. All of the main activities must be divided – the students must know the main steps of the practice.
– One part of the practice must be the press conference. The leaders prepare the press conference in Hungarian and in English languages.
– Some positions were not necessary – for example a 'veterinarian' – the umpires can play this role.

10 State Reform Operative Program - 2.2.21, Knowledge-based Public Service Careers. The Civil Service Practice Concept and Development of the Task – 2013. "Advanced Task" and „Additional Task", NUPS, Vice Rector for Education's Office, Budapest, Ludovika tér 2. 2013

The activity of the students:

– 8-10 students in one working group is too many, in the future one working group must comprise of maximum 4-5 students.

– All of the information must be got in the same way as it happens in real situations (telefax, e-mail, telephone, letter etc).

The activity of the teachers:

– The preparation group must pay attention to the information flow between the groups. The basic scenario and the additional scenario must build up on each other.

– The teachers must take part in the whole preparation event, the accurate and profound preparation is necessary in order that the practice could be successful.

The logistic support:

– Someone must be appointed to be responsible for the whole logistic support of the practice

– The budget is approximately 1000 €. The staff need the following items:

– T-shirts in different colours (the students who have a uniform for being a career officer wear their uniform however it is necessary to recognize the different civilian groups.)

– Lunch for the staff and the students, cold beverages, buffet

– Someone must be appointed to be responsible for the technical equipment

– A special email inbox must be created for the practice. The special knowledge basis and all the training material must be made available digitally

– Digital event log is necessary for the students and teachers

– The video conference system worked effective during the past practices, the satellite system was useful

The communication:

– It is necessary to appoint a person who is responsible for the communication. The local media must be invited.

– In the light of the past practices the information book was useful, it served effectively the flow of information

– The "White Water 2013", and "Last Fort 2014" films was useful

– The reports must provide a scenario; all the important events of the practices must be included.

Others:

– Students except for the military ones had problems with working with paper based maps. Applying foil is effective

– The application the Ministry of Interior's digital program Robot Cop ("Robotzsaru") is not enough effective.

CONCLUSIONS

The activity of the NUPS is unique at the Higher Education Area of Europe. The structure of the University is special, to train the future military, law enforcement and public service experts in basic, master and PhD level in one organization. During the last three years the NUPS model has been working effectively. The public service organizations are satisfied with the graduated university students.

The special module – Common Public Service Module provides common knowledge for all the university students during the bachelor education. This knowledge is necessary to the well-organized work for the future experts. The Common Public Service Practice is a vital part of the education. It helps the teachers to provide the practice oriented education. They have a direct impression from the student's works. During the practice the teachers realize the strength and the weakness of the education process; they can effectively improve the curriculum and the training methods.

It helps the students, because they use their theoretical knowledge in order to solve the different practical problems. During the practice in the different positions, the students' work together - in team work, they realize the different problems and they find the common solutions. The ability of the communication, the cooperation and coordination of the students are evolving.

After the practices, the supervisors identified that the practices were very useful for all participants. The planning, organizing and leading of the practices were smooth; the experiences were useful and acceptable for the public service organizations. The heads of the fellow organizations were satisfied, the reputation of the NUPS became stronger.

According to the best Hungarian practice, the staff of the NUPS is ready to invite some foreign university teachers and students, in order to collect deep impression for the Common Public Practice.

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CRIME SCENE RESEARCH

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Abstract: Authors present some outputs and results of the research project "Methods for CSI" especially in the area of organisational, managers and fundamental criminalistics activities. Some outputs oriented for the use in education and training proceses are presented as revised educational system for Slovakia, as well as the research on system of methods, identification processes and protection against distortion trace and resources for work at the crime scene. The paper presents basic knowledge for the education, training and work at the crime scene, involving some outputs from international researches.

Keywords: Crime scene, investigation at the Crime scene, organisation of work, management on the Crime scene, traces.

CRIME SCENE AS THE OBJECT OF RESEARCH - INTRODUCTION TO THE PROBLEM

Forensic examination of practical and theoretical cognitive activity begins at the moment you find forensic traces. The arguments for extending the definition of forensic investigation have been emerging in forensic theory only in the last 30 years [3]. It is a major problem for the perception of changes in forensic practice, which even today significantly differs a step search and seizure of forensic traces from their expert Expertise examination. It is just a stage area or "pre-scientific" or even "beyond science", which attaches much less theoretical and practical significance. This gives rise to the differences in attention, financial, material and staffing of work at the scene to examine the forensic laboratory facilities.

Criminalistic examination of the narrower and broader sense is part of criminalistics cognition in its entirety learning Criminalistic features, especially forensic traces. In the past, the house-matching criminalistics disclosed and documented and is subject to both the rules and principles applicable to the methods of criminalistics, but also a significant influence on the form and content of which other areas also have an impact, such as criminal procedural principles, regulations, laws and rules technical, criminalistic, and more. It also includes principles related to technology acquisition – i.e. location, seizure and examination in the strict sense (expertise, expert, professional, etc.). Due to the practical application of the most common forensic examination, it is obvious that it should be as a principle of its own theory and practice of criminalistics, but also of its appearing in the theory and practice of investigation, theory of evidence and criminal procedure [4].

THE METHODS AND PROCEDURES FOR WORK AT THE CRIME SCENE - INITIAL ANALYSIS

The current status of personnel and organizational work at the crime scene of the Slovak Republic responds according to the research carried out before the analysis, to the state of knowledge of criminalistics from the 50's of the last century. The current technical condition and amenities for the work and activities at the crime scene of the Slovak Republic responds to the state of knowledge of criminalistics and sciences from the 80s to 90s of the last decade. These findings are not only an estimate. They are supported by real

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3 KRAJNÍK, V., Kriminalistické skúmanie, Bratislava, Akadémia PZ, 2000. 99 s., ISBN 80-8054-138-8
4 BLATNICKÝ, J., , Dizertačná práca, Katedra vyšetrovania, Akadémie Policajného zboru v Bratislave, Bratislava 2009, 136 s.

researches carried out before and already completed research projects within the integrated research project Methods and procedures for work at the crime scene 4/2008 [5], which have been implemented since 2006.

One of the stages already completed the analysis and typology of forensic documentation is very much tied to the work at the scene. Its condition and the original and new concepts, as well as possible solutions offered by the present or near future, are currently compiled and defended in two qualifying works in a rigorous procedure for the Police Academy in Bratislava. The basic theme was the analysis of the current situation and scenarios for forensic documentation, as well as its near perspective. Some of the results were presented at the conference "Advances in criminalistics 2009" [6]. Systematically, the results of this research were published in two textbooks on forensic tactics of 2012 and 2013. [7]

Another important product of the research project, which is included in the context of the research project No. 4/2008 - Methods and procedures for work at the crime scene, has already fulfilled the research project "Photographic Equipment in criminalistic practice" [8]. The research was based on the project: "Trends in photographic techniques criminalistic practice".[9]

Some of the results of this research has been carried out in the measures at forensic and technical activities of the Police Force. Their real effective application is complex with the introduction of an electronic file and a complex mix of work at the crime scene and forensic education system of technical activities. Currently, the long-term perspective addresses the full acceptance and implementation of digital photography, at least at the level of administrative arrangements. Appropriate conditions are practical, with the exception of some work in practice that have been created thanks to this task.

PHOTOGRAPHIC TECNIQUE IN CRIMINALISTIC PRACTICE

A relatively small three-member research team conducted a research on the status of photographic techniques in the police activities from 2006 to 2009. A qalitative and quantitative analysis of statistical and analytical research results concluded on reasonable objectivity and relative longevity observed data should be used in criminalistic and police practice. The analysis showed preliminary results which were published in articles and presented in separate appearances at international conferences. The results were distributed to police work directly in the form of a final report at the same time as outputs on the internet Now: www.kriminalistika.estranky.sk and upcoming www.miestocinu.sk.

For the application of the research findings, the authors recommend changes in various areas formulated as a subject of research:

– state using photographic techniques to police stations

– state using photographic techniques forensic technicians at middle management level

– state using photographic techniques operatives central police.

Limiting factors for improving the state of the use of photographic technology at all considered types and levels of police structure, staffing and the substrate. Both problems, researchers pay. Assess in particular the fact that it is relatively best state in forensic/criminalistic technical activities at the middle management level (OR PZ), thanks to Criminalistics technicians, ensuring a minimum level of quality and quantity of services. Balance at the other levels of police officers is alarming and most workplaces cannot be guaranteed and perform the appropriate quality even basic tasks. At the level of basic services it is necessary to establish the position of Criminalistics junior technician - especially as a service for an accelerated / "short" investigation. It is also important for the other simple activities and quantitative support for criminalistics technician and supply of talent for the performance standards of criminalistic techniques in the territory. At the level of operational / intelligence activities and investigation, it is possible for simple documentation service retrain staff specific part for easy documentation activities. For more serious and complex cases, it is necessary to guarantee service to the same extent.

On the basis of these analyses designed systems for the training and education of forensic technicians were conceived.

5 METEŇKO, J.: Metódy a postupy práce na mieste činu - slovenská časť projektu : Projekt výskumnej úlohy. / Rieš. výsk. úl. Jozef Meteňko. - 1. vyd. - Bratislava: Akadémia PZ, 2008 Výsk 139

6 METEŇKO, J., HEJDA, J., Sytémové zmeny vo formách kriminalistickej dokumentácie. In.: Krajníková, M., Masnicová, S., Gýmerská, J., Ed., „Pokroky v kriminalistike 2009" Zborník z medzinárodnej konferencie konanej v dňoch 9.-10.11.2009, Katedra kriminalistiky a forenzných disciplín, Akadémia PZ v Bratislave, Bratislava 2009

7 METEŇKO, J., BAČÍKOVÁ, I., SAMEK. M., Kriminalistická taktika, Brno: Václav Klemm – vydavatelství a nakladatelství 2013, 1. vydanie, 307 s., ISBN 978-80-87713-08-2. METEŇKO, J., *Kriminalistická taktika*, Akadémia PZ v Bratislave, Bratislava 2012, 1. vydanie, 267 s., ISBN 978-80-8054-553-6

8 VAŠKO, M., METEŇKO, J., KRAJNÍKOVÁ, M., Fototechnika v kriminalistickej praxi. Výskumná správa. Akadémia PZ v Bratislave – Katedra kriminalistiky a forenzných disciplín, Bratislava 2009. 118 s. Výsk. 115

9 VAŠKO, M., METEŇKO, J., KRAJNÍKOVÁ, M., Trendy vo fotografickej technike kriminalistickej praxe. Projekt výskumnej úlohy. 1. vyd. Akadémia PZ v Bratislave – Katedra kriminalistiky a forenzných disciplín, Bratislava 2006. 18 s. Výsk. 115

The problem level (level of education) and the quality of the solutions in this area is of a marginal issue. At the same time a technician and a documentarist at the crime scene, but also other methods of criminalistics, the basis for any success and the result of the work at the crime scene, as well as other investigative activities particularly in the field. The current system of training - First course for Police secondary vocational school Košice, while addressing the current total lack of qualifications, but systemic solution can only be the introduction of adequate preparation specialists. Due to the test and the estimated position, the only rational solution appears to be preparing to introduce the first (Bc) degree in higher education for a narrow group of specialists. The estimate is about 15-20 students in class. Further and innovative education then was established via the cyclic forms over a period of 3-5 years.

In our opinion, the problem is primarily due to incompetence and residual principle, which applies to the organizational structures of the Police Force in relation to criminalistic technology globally. The master of this service Police failed to manage, and avoiding the problems usually does not interest them or deal with due to their complexity. Conceptual design can only be organisationally separate structure criminalistic techniques, and not only methodologically, but also lineage. These consequences are also compounded by the lack of legal and internal regulatory regime.

The procurement of criminalistic photographic techniques

There are conflicting views on the long-term centralization and decentralization of procurement criminalistic / photographic techniques in the police force. In Slovakia, the relative distribution of powers concept right at the regional level - middle level of management, has led in recent years, the 10-marginalizing certain police activities sidelined. This was mainly in the area of funding and support, as well as management and organization number weaker occupied police activities. Unfortunately, between such activities there are forensic/criminalistic technical activities. They were preferred for a long time - almost 50 years in the last century. In particular, the method of evaluation units and individuals, based on simplified qualitative parameters and the redistribution of the importance of individual police activities by professional and vocational orientation superiors prevented adequate development of scientific, technical, personnel, legal and status of quality criminalistic techniques. Thus formed residual concept at the regional and district defended and improving the quality of criminalistic techniques - it is clear and confirmed the result of research. However, it remains questionable, and this has been the subject of research by way of distribution logistics forensic/criminalistic technical as well as other specific police activities on the territory of the Slovak Republic and the police appropriate. The partial results of the research show preference for central system obsatarávania.

The use of analogue and digital photography

Negative status inconsistency use the basic generic use of criminalistic photo was necessary at the time when the research addressed urgently demands unification and the decisions on the form and content of criminalistic photo at all decision-making levels. It is not enough just to prepare internal implementation standards within the Police and other security forces - which is repeatedly varied, but it is also necessary to ensure understanding and cooperating activities of the prosecution and the judiciary. There is also a need to influence the unification of fragmented ideas and concepts. It is also necessary to prepare an amendment to the legal provisions of the Criminal Procedure and thus ensure a reduction in criminalistic photo lagging behind its development in Europe.

Part of the research was to evaluate a large amount of current problems, which are analyzed in detail, including proposals on the final report of the research. In criminal proceedings, but also directly in investigative activities, in some cases raise the question whether it is possible to use digital photo as evidence, but without adequate professional skills and knowledge bottlenecks. A good solution is a proposal to amend sections of the Act Code of Criminal Procedure in the relevant provisions of the documentation.

New tools and technologies enable a step change in the philosophy of criminalistic documentation, and the further development of criminalistic practice, images are transmitted at distance. But we have a number of problems with the implementation, compatibility and ability to make use of the technology. The concept solutions electronic documentation supported the introduction of new digital photographic technology as a result of this research, which was conducted in the late 2008 and subsequent years.

WORK AT THE SCENE, METHODS AND ORGANIZATION OF WORK

a) Analysis of the state

The current state of the work at the crime scene is insurmountable barrier to fulfilling its responsibilities for satisfying the needs of the customer - a Slovak citizen, in precision and quality of law enforcement, in particular the timing and success. The effectiveness of work at the crime scene in leadership work at the crime scene, reinsurance feet, their verification and credibility is estimated using valuation techniques

examination at about 40% real capacity in the Police. The work organization and use communication and documentation technologies lag behind developments in the company for about 10 years. Potential staff substrate is also at a very low level - we have already found. The current distribution of the position and responsibilities will not rise in knowledge and opportunities which the Police Force is available. Solving the problem has not yet implemented a comprehensive and covered various investigators only possibility of partial solutions. It is necessary to choose a more complex project, which was preceded by thorough research and mapping problems with the transition to the interim reanalysis and changing concepts of work at the scene.

b) Basic objectives

The project implementation will allow increasing expertise and skills of the target group (forensic technicians and other team members at the crime scene) necessary for their application in practice (documentation of the crime scene, finding feet and visibility of latent tracks and reinsurance).

A parallel objective is to verify the possibility of creating and testing the parameters of management communication and documentation while working at the scene. Ultimately, this will have a positive impact on police performance of public interest, which means the quality inspection of the crime scene, including documentation and a qualified hedging process traces and evidence for criminal and other proceedings. Confirmed interest of the target group (especially forensic technicians) in further education in this area, while ensuring the smooth implementation of the project and the effectiveness of the use of allocated funds, is established.

The realized results of the research project will also avoid widening a gap for the latest scientific knowledge in the art as well as the risk of non-compliance best practices for the lack of a training team to work at the scene, communication and documentation, in particular the activities of forensic technicians.

c) Description of the task

The implementation of the research was carried out in the following activities:

1.1 Preparation of research techniques and materials

1.2 Distribution of 3 conducting research techniques

1.3 Evaluation of the research and the final report of the research

1.4 Creating a new design concept of internal standards for the work at the crime scene

1.5 Creating a draft internal communication and documentation network for the work at the crime scene

1.7 Creating and continuous testing of internal communication and documentation network for the work at the crime scene, including variations of nodal elements

1.8 Acquisition of equipment research project (consumables, technician, time for carrying out the research)

d) Expected results

– Increase the efficiency of the methods currently used in identifying and securing the traces at the crime scene,
– Improving reinsurance feet on the scene in terms of their applicability,
– Speeding up and simplifying work criminalistics technician at the crime scene,
– Precise definition of responsibilities and accountability for the work at the crime scene,
– Verification of the effectiveness and modifications staffing work at the crime scene,
– Verification of a design project of an electronic processing of the results on the spot criminalistic relevant event.

Preparation of a training program

The preparation for the training program involves the following activities:

2.1 Preparation study materials - textbooks

2.2 Creating instructional video films

2.3 Creating instructional CD-ROM

2.4 Creating a Web form study materials to the needs of e-learning

2.5 Procurement of equipment training project (consumables, technician, facilities for the implementation of training)

The training program should consist of three years of full-block structure which is mainly based on the last published domestic results [10] and is aimed at target areas:

Documentation of the crime scene

A training block is aimed to document the crime scene inspections in all forms of written and photographic graphics in general. Participants gain skills in the documentation of the crime scene to be further developed. They will learn the basic principles and requirements of ISO 17020 in relation to the accredited examination of the crime scene. In terms of photo documentation, the block is focused on the needs of photographic equipment and accessories that can be used when documenting the crime scene and forensic relevant tracks including cameras, lenses needed, flash technology, monochromatic lighting and filters. Furthermore, it includes the trainees familiar with digital photographic techniques, the range of applications for procedural purposes and methods of processing digital photography and its archiving. An important part of using the documentation at the crime scene and its measurement using modern means of spatial photogrammetry is also a must.

Search and seizure of latent tracks

The block is focused on the search and seizure techniques latent fingerprint traces in particular, shoeprint, biological and chemical. The participants acquire basic skills in applying different methodologies. The strategy approach to the choice of methods is mainly focused in terms of surfaces on which relevant criminalistic tracks may be located. Additionally, a special attention is paid to selected chemical methods of searching for relevant criminalistic feet (method iodine vapor, amino acid reagents, physical developer, silver nitrate etc.) The training focuses on some effective methods visibility adhesive feet. An important part of the chapter is devoted to the coloring of blood traces and luminol. Another topic using greasy, wet and sticky adhesive tracks is also important. Part of the block is given to the use of monochromatic light of different wavelengths when searching for tracks as well as its combined use with other methods (physical, physico-chemical and chemical).

Ensuring circuit technology and plastic feet, casting feet

This block is oriented primarily to acquire skills in casting tracks. This is especially the plastic track as track tools shoeprint traces (shoes, track animals, body parts, fingerprint traces etc.). Methodology block is oriented according to the types of materials which may be made of plastic track (loose, dry, moist, shape). The activity is also focused on the situation of casting tracks in the snow, ice and under water. The participants will learn to use various casting materials, their preparation and the preparation before casting. Significant factors in the process of reinsurance circuit traces, the use of different types of films, casting feet in cases where tracks are formed on the linear / planar plastic shaped surfaces or areas in relief, where ensuring the normal film is ineffective.

Given the level of financial coverage, an education project will be implemented only from the European Union.

Subject respectively, the scope of cooperation in the project:

Institute of Criminalistic expertise:

Verification and design of typical and standard procedures for the various methods and procedures

Recommendations for verified hardware,

Verification of certain specific activities,

Share in the preparation and implementation of education of the target group.

Departments Police Force:

Support for the testing of typical and standard procedures for different methods and procedures,

The testing verified the technical equipment,

Share in the organization of training for the

The expected outcomes of implementing solutions tasks:

Group system for processing electronic documents from the scene

Design of cyclic training positions / functions to work at the crime scene

Editorial outputs for training under the project content

Proposal of position / functions and powers and scope to the scene

Hardware and software set-up for work in the act

Proposal for a cyclic education and professional graphic position to work at the crime scene

10 SCHMIDT, J., FEDOROVIČOVÁ, I., METEŇKO J., Vybrané aspekty ovplyvňujúce kvalitu práce na mieste činu z pohľadu kriminalistických technikov v SR. In. Masnicová, S., Krajníková, M., Gýmerská, J., *Pokroky v kriminalistike 2009*. Zborník z medzinárodnej vedeckej konferencie konanej dňa 9. a 10. novembra 2009 na Akadémii Policajného zboru v Bratislave. Akadémia PZ v Bratislave. Bratislava 2010. 209 s.ISBN ISBN 978-80-8054-490-4. pp. 62-70

Intangible outputs - textbooks and educational information outputs:

Changing the internal standards of the Ministry of Interior

The publication of the project cost and subsequently to the needs of educational organizations Ministry of the Interior

The proposed new internal standards of the Ministry of Interior

The implementation of the project is currently underway at the final stage. Were field tested transfers and collect actual data volumes of electronic documents. Defected testing local area network and its verification in simulated conditions, unfortunately not all of the available capacity in the Ministry of Interior networks are adequate. Due to a delay in delivery of the revised thin client system KEU NEO is slightly delayed by the introduction of testing.

At the time of the field research carried out by a researcher - of Criminalistics techniques available -Siemens notebook Esprimo Mobile V 6535. In parallel tests were carried out by means of 3 notebooks for 1 month. For the verification at the end of the research, the period was gradually shortened, according to the intermediate results. The sales of laptops and therefore selection of respondents was limited according to the statisk distribution due to the objectivity of the results. This task was ended in April 2012. The test included a GPS locator, wireless internet connection with a transfer capacity of 10 GB, and covering virtually the entire territory of the Slovak Republic - to transfer to the KEU NEO, through a thin client KEU NEO Light.

The project was interpreted in some European research activities. For example, in addressing the priorities of the crime scene in 2009 a survey was carried out and then it continued the EFSF SOC WG (Working Group on the scene) aimed at the area of research necessary at the crime scene, which resulted in starting points within a given issue[11]. The survey focused on priority areas, which mainly characterize the work of criminalistics technician and affect the quality of work at the scene. We can say that a common feature in most countries is that they are created by specialized institutions which deal with the research and development in the area of the crime scene examination. On average, the situation in the area addressed by said partial tasks are transferred to several institutions. As a common feature, we may also indicate the research addressing national forensic institutes in cooperation with police academies and universities. Some countries do not research and apply the research results, which are provided at the international level (e.g. EFSF) in their practice.

Naturally, every country has its own specificities. It also appears that the effective interconnected research activities at the crime scene with forensic experience are on one hand as operational as possible applied research results while on the other hand they are effectively functional.

Identification of priority areas of research related to the examination of the crime scene by the members of reviews SOC WG identified the order of the different research areas that should be addressed:

1) Staff competence
2) Methods and techniques of the crime scene examination
3) Training
4) Education
5) Means for work at the crime scene
6) Procedures
7) Requirements forensic technicians
8) A visual inspection of the crime scene
9) The evaluation process
10) Manuals

The survey also showed that the top ranking is the staff that followed the methods and techniques of the crime scene examination, education and means of the work at the scene. The reasons for determining the order may be different. This may also mean that in the areas that are in the foreground, some steps are missing as to be perfect. This means that it is necessary to address the implementation of scientific and technological development in real time in order to improve the efficiency and maximum value, the traces of the crime scene. However, it may also signify that the following areas are considered the most important, and need to be constantly addressed to the examination of the crime scene in order to make progress. In contrast, the attributes contained in the low range indicate two things: either it is not necessary to pay particular attention to them, or their quality is sufficient and does not need to address the acute. At the same time, however, it may also mean different opinions about the attributes of the view in different countries, different interpretations of the content and meaning of the areas.

11 Proposal of research and development activities in CSI: ENFSI SOC WG report 2009

A quality inspection of the crime scene is a variable that generates a positive or negative image of police work, because there is evidence obtained for the use in criminological examination - forensic process. Based on the views of respondents, for improving the quality of inspections the crime scene is crucial for these purposes, the choice of suitable staff. Personnel must be provided with adequate education and training, as well as sufficient time for quality work at the scene. These are the basic assumptions. It is vital, therefore, to apply harmonization, standardization and accreditation in examining the crime scene from a European perspective. Activities in this area were summarized in the instructions for the implementation of ISO 17020 [12],[13], the area of the crime scene.

At present, the coordination in this area is very necessary because the joint efforts and coordinated action could lead to more effective results. Such a situation requires acceptable international projects such as the particular solution of issues on a national basis. Based on the reviews provided in the survey, it is appropriate to focus joint efforts on the processing project, which could begin by the issue the crime scene in different areas. The common feature would be to search for universal solutions acceptable to all participating countries. In particular, the identified activities should be discussed:

Staff competence

Field staff competence is defined in the project ENFSI Committee for quality and competence (QCC)[14]. This applies to all disciplines, including the crime scene. The area includes the examination of the crime scene before entering the laboratory. This work is done by criminological technicians whose function is different in different countries. It is therefore necessary to establish harmonized requirements for the competence of forensic technicians. If it is necessary to make corrections in the competence of personnel, it is necessary to identify those parts which should be revised, respectively. There are certain gaps in the present state. They should summarize the findings from different countries in the application of standards for the competence of personnel with a focus on the specifics the crime scene inspections.

Methods and techniques of the crime scene examination

It should be based on the basic premiums resulting from the European manual of good practices of management at the crime scene.[15] It is to decide what areas to concentrate forces on, respectively and what needs should be addressed as a priority. And concentrate on general techniques that are common to the various methods, or orientation of the focus on the selected types of traces. This could be particularly latent tracks in which they are most relevant skills and experience. The goal could be the research that mapped the available techniques of search and visibility of latent tracks. Under the conditions and possibilities that these techniques include, they should carry out various optimization techniques of the search of latent tracks. The most appropriate subject for the research could be established as fingerprint traces and body fluids in relation to the tracks that have multiple information value (fingerprint identification / DNA).

Training

Design and implementation of international acceptable modular training system for forensic technicians focus on different areas of the crime scene examination. The orientation training focuses mainly on working with tracks for different scenarios and different models of the crime scene. These scenarios are adapted to practical competency tests to implement the principles of training under the instruction manual of best practices making the ENSFI.[16]

Education

Education is a matter which depends on the specifics of each country. But it is worth considering whether sufficient levels of training for forensic technicians at different stages involve a higher degree (Bachelor's degree) with respect to the demands of work and the use of more sophisticated techniques of offenders on the one hand and adequate methods used to convict them on the other. The outcome could be a proposal for an international training program for forensic technicians which would involve several countries.

Means for the work at the crime scene

Means for the work at the crime scene are an essential part, without which technicians cannot work efficientlyat the crime scene. The basic requirements for funds to be used at the crime scene should be an easy portability, shelf life, the smallest size, maximum versatility, easy handling and resistance to difficult conditions. It is, therefore, to be understood that a forensic science technician should know a lot of practice with different accessories. Therefore, it is crucial that these funds could be physically handled. Conceivably, this should not be a cause of discouraging their use. In this perspective, the attempt to optimize resources for criminalistics work, technicians so as to include all the necessary activities and tasks to be carried out at the crime scene should help their work to be able to secure the maximum number of tracks. It would,

12 Guidance for the implementation of ISO/IEC 17020 in the field of crime scene investigation, EA-5/03, 2008, p. 22
13 STN EN ISO/IEC 17020 Všeobecné kritériá činnosti orgánov rozličných typov vykonávajúcich inšpekciu, Slovenský ústav technickej normalizácie,2005, p. 24
14 Performance based standards for forensic science practicioners: QCC-CAP-003,2004, p. 45
15 European crime scene management good practice manual
16 Guidannce on the production of best practice manual within ENFSI, QCC-BPM-001, 2003, p. 28

therefore, be appropriate to try to propose an optimized model with a means to work instead act in case of a serious crime scene in cases of ordinary crime, including modular special vehicle.

There is another problem that could be solved in terms of the project design and implementation of uniform evaluation criteria for the area the crime scene and forensic relevant traces. In this area, it is necessary to identify which countries under various criteria are to find a consensus opinion and mechanisms of how these criteria are to be implemented in different countries. The most preferred criteria for the evaluation were identified for fitness, quality traces and weaknesses. It is essential whether the criteria are applied across the board from the crime scene to examination in the laboratory. It is necessary to answer a number of questions. Who will determine whether the criteria are met, or there is an anomaly? At what stage is the evaluation conducted? The criteria should be clearly set out so as not to be different interpretations, so they should not be general.

Fitness checks can be characterized as a measure of the life traces in forensic process. This means the possibility to obtain the information from a trace with which it is possible to continue working. It can also express a percentage in relation to the proceedings or to trace the number of transmitted feet.

The quality of feet can mean quality track itself by itself, which was left behind in quality condition or quality affected Criminalistics techniques, methods and skills.

Deficiencies may be the nature of wrong decisions arising from the organization reconnaissance the crime scene and forensic technicians' deficiencies resulting from the search, visibility, documenting and ensuring feet.

For each of these attributes it is necessary to establish standards to set responsibilities, thus who, when and under what clear criteria will be evaluated.

CONCEPT OF DIGITAL RECORDS / DOCUMENTATION[17]

The basic requirements for such a complex form - digitized documentation resulting from our research conducted so far in the project 9/2008 - Methods and procedures for work at the scene – the role of the Police Academy in Bratislava.[18]

Applying the observed data, we can express the group requirement to criminological digital documentation evaluated through the research. (Meteňko, J., Research and development of methods for working at the scene[19])

The basic result is in addition to the above characteristics, testing the possibility of introducing electronic processing of documents of all kinds at the scene. Furthermore, the immediacy and the resulting accuracy and processing speed significantly affect the integration processing forensic data from the beginning and their formation and they may prevent loss or improper or undue handling. It is necessary to pay attention to all users created or revised documents. In many cases, they provide information about authorship and time data (i.e. time stamp), carrying out specific actions. [20] Such data can be found in the form of "metadata" in a wide variety of digital formats communicates.[21]

SOME INTERPRETATIONS OF THE RESULTS OF RESEARCHES

The view of forensic technicians' conceptual decisions at the crime scene is usually taken into account only rarely, and may indeed provide a realistic view of things that need to be addressed in the area. The summary of reviews by forensic technicians is based directly on a concrete experience and it makes sense to take into account the proposals for solving the problem of the crime scene of the above information. Therefore, the research can provide valuable information necessary for further decisions.

Activities on arrival at the scene affect the way the surveys are forwarded, and thus its quality. The most important in terms of criminalistics technicians is to provide a track for which there is a risk of default 79%. Criminological engineers considered in the light of their own experience, length of residence at the crime scene influenced mainly by objective reasons, which seems realistic view. The remains at the crime

17 METEŇKO, J., Trendy v kriminalistickej dokumentácií. In.Viktoryová, J., Blatnický, J.,: Rozvoj metodík vyšetrovania jednotlivých druhov trestných činov. Zborník vedeckých a odborných prác z medzinárodného seminára zo dňa 25. 02 2007. s. 227. ISBN 978-80-8054-408-9 EAN 9788080544089 pp.78-92. p. 78

18 METEŇKO, J.: Metódy a postupy práce na mieste činu - slovenská časť projektu : Projekt výskumnej úlohy. / Rieš. výsk. úl. Jozef Meteňko. - 1. vyd. - Bratislava: Akadémia PZ, 2008 Výsk 139

19 METEŇKO, J., Výskum a vývoj metód pre prácu na miesto činu, In. Masnicová, S., Krajníková, M., Gýmerská, J., Pokroky v kriminalistike 2009. Zborník z medzinárodnej vedeckej konferencie konanej dňa 9. a 10. novembra 2009 na Akadémii Policajného zboru v Bratislave. Akadémia PZ v Bratislave. Bratislava 2010. 209 s.ISBN ISBN 978-80-8054-490-4. pp. 156-165

20 Meteňko, J., a kol.. *Kriminalistické metódy a možnosti kontroly sofistikovanej kriminality*. Bratislava 2004. Akadémia PZ SR v Bratislave. ISBN 80-8054-336-4, EAN 9788080543365 p. 356, p. 173.

21 Same on p. 142.

scene mainly depend on their complexity and severity of 95% 57% and 29% of cases identified as the cause of the number of events to be processed, and 28% to the discretion of the criminalistics technician. The biggest obstacles that have a negative impact on the full concentration on the work of the scene are not the movements of persons at the scene, the number of pending cases, 40%, and the incidence of bystanders 37%. Criminological engineers also consider the most important material and technical equipment mostly contributing to the quantity and quality of the hit and secured feet. In this case it is mainly a completely equipped police car lighting the crime scene, the means to search and seizure feet and photographic technician. [22]

The use of monochromatic colored lights at work at the crime scene is sporadic, maximum use is declared at wavelengths of UV band and 450-470 NM- blue light, which predetermines the purposes of title biological traces. In the opinion of forensic techniques, the use of forensic lighting is beneficial to practice, although most of them have no practical experience with its use. Perceptible is particular its applicability to finding body fluids. Criminological technicians prefer high light output, intuitive, uniform beam, the possibility of battery power and narrow bandwidth light. The most common types of lighting at the crime scene belong to halogen 93%, LED white 61% and 41% of UV.

Forensic engineers prefer to use at the scene mainly physical methods that are relatively easier to apply, and prefer solid powders. The most popular means is expected argentor and magnetic powder.

Searching for clues at the crime scene within the meaning of the survey data is still treated conservatively to use reagents raise the profile of latent tracks. They use a narrow range of resources, which depend on the availability under the contract, provided by the relevant Regional Police. The biggest is the use of reagents wet (SPR - small particle reagent) and adhesive (Sticky Side) area. The most used are Hungarian blood pigment Red 31% and 23% Amido Black. From the amino acid reagents, Ninhydrin is used in 77%. Criminalistics technicians consider it most important when searching for traces of type-places where they could find traces, then identify the surface on which should be kept track visually browse the surroundings and selected by a reference method for the conditions. In terms of documentation, criminological technicians use polodetailné and detailed images, tripod, Macro Lenses and external flash units. The search percentage of latent tracks depends on the control variable methods. Self-assessment of the activity forensic technicians is not in consistency with certain statements, suggesting that it is probably overstated. To identify possible amount of latent tracks in the venues is virtually impossible. It will always ensure only a fraction of these traces. It is important according to the results of the survey to maintain the correct sequence when searching for tracks. Brushes with a combined value of identification are much more meaningful and of informative value as a single track. Professional experience with these traces showed 84% of forensic technicians. Criminological technicians reported that they have the greatest practical experience with the following combinations playlist: dactyloscopy-DNA / documents Trasology-blood-mechanoskopie dactyloscopy / biology ballistics and DNA. [23]

In terms of transport and container traces which were identified as problematic lack of internal rules and forms governing this type of activity, it is necessary to offer relevant training in case of the lack of packaging materials as well as its misuse. In implementing the training in-house technicians criminologists learn especially from their experienced colleagues, which coordinate the process and create their own scenarios. The opinion on the procurement of material and technical resources is that, in general, they are mainly bought with respect to the cost and without consultation with stakeholders, to the detriment of the case. The most important activities that have an impact on the quality of forensic technicians are training, education, technology, methods used and manuals. Interesting is that the least efficient activities affecting criminological technicians are the summary results of the patrol, which is in contrast with the above assessment that considered effectiveness of the work of 85% of forensic technicians.

CONCLUSION

This study described the state of research-oriented working methods at the crime scene, characterized in survey plane and the current status of the finalization of scientific research project procedures and methods of work at the crime scene. This study is a partial output of scientific research project: Methods and procedures for the work at the crime scene 4/2008 and was created as a partial result of the final analysis for the project.

22 SCHMIDT, J., FEDOROVIČOVÁ, I., METEŇKO J., Vybrané aspekty ovplyvňujúce kvalitu práce na mieste činu z pohľadu kriminalistických technikov v SR. In. Masnicová, S., Krajníková, M., Gýmerská, J., *Pokroky v kriminalistike 2009*. Zborník z medzinárodnej vedeckej konferencie konanej dňa 9. a 10. novembra 2009 na Akadémii Policajného zboru v Bratislave. Akadémia PZ v Bratislave. Bratislava 2010. 209 s.ISBN ISBN 978-80-8054-490-4. pp. 62-70

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INFORMATION SECURITY AS A PREREQUISITE FOR GETTING A JOB IN THE NATO AND EU

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Abstract: By joining NATO and the EU, new economic potential on NATO and the EU market has opened to Croatian economic entities, of course, under additional conditions which must be met, primarily form the point of information security. Specialization and referentiality of Croatian economic entities for production, development and security projects in the field of defense and national security is necessary but not sufficient condition for conclusion of commercial contractual arrangement in NATO and the EU. Only by obtaining business security certificates issued by the Office of the National Security Council with the previously obtained certificate of suitability issued by the Ministry of Economy which was issued on the basis of an expert opinion of the Croatian Chamber of Commerce, the conditions are fulfilled for candidacy in the affairs of NATO and the EU. This procedure is legally prescribed and systematically contributes to the establishment of professionalism and transparency of the Croatian economy being at the same time prevention against organized and economic crime and corruption, which are the major problems in the countries of Southeast Europe.

Keywords: economic entities, information security, transparency, corruption, crime.

INTRODUCTION

The impact of legally defined requirements for obtaining Certificate of Clearance is of high importance for Croatia's economy as well as for the economy of all other states wishing to join NATO. It should be stressed that NATO is not only a political and military but also an economic alliance of the member states which cooperate by exchanging knowledge and technologies opening new business opportunities for companies and military industry of the member states. Also, participation of professionals and experts in the NATO projects develops competence and knowledge of the latest technologies and solutions.

The goal of standardization is to achieve the NATO interoperability in accordance with partnership objectives in the operative, material and administrative field.[1]

Operative standards have as the goal the development and implementation of the same concepts, doctrines, military procedures and processes as observed in NATO, which can influence the future and/or current military practice, procedure and formats. It means they can be implemented in concepts, doctrines, tactics, techniques, logistics, training, organizations, reports, forms, files and maps.

Administrative standards have as the goal the use of the same terminology in communication with partners and allies as a precondition to evaluate and implement standardization. NATO terminology is based on (APP-6) the NATO Glossary of Terms and Definitions – English and French and is regularly updated. They primarily deal with terminology but also include standards applied to managing administrative operations in the fields that are not directly related to military (reports on economic statistics).

Material standards have as the goal to recognize and define common requirements when identifying characteristics, defining and naming assets, systems and terms and setting their standards and technical regulations. Those are the standards which apply to characteristics of the future or currently used materials. They include telecommunications and data processing and data distributing. Material items include: command, control and communication systems, armed systems, sub-systems, sets, components, spare parts, materials and consumables.[2]

Formally, NATO standards are documented by STANAG (STANAG – Standardization Agreement) an agreement on standardization between the NATO member states that can be accepted by all or some member states. Apart from STANAG, the documents on standardization include STANREC – Standardization

1 Mišević, P., Lazibast, T., Jurčević J.:Utjecaj primjene NATO standarda na razvoj Hrvatskog gospodarstva, UDK/ UDC:658.62.018.2(1-622 NATO):338(497.5), 29.05.2012.
2 NATO Logistic Handbook, International Staff , Defence Policy nad Planning Division, Logistics, NATO HQ, pg. 55., Brussels, 2007.

Recommendation and AP – Allied Publications. The states wishing to join NATO are obliged to carry out reforms necessary for establishing the required level of compatibility with NATO alliance, which will result in building a better working environment for domestic and foreign business partners. All this is aimed at reducing the interest rate and increasing domestic and foreign investments as well as boosting development and growth of overall national economy.

SECURITY CLEARANCE – LEGISLATIVE FRAMEWORK

Following the preparations for legislation that will enable Croatia's economic entities to take business opportunities with NATO and pursuant to Article II and IV of Croatian Government's decision on the establishment of the Commission for Coordination and Support of the NATO Export Opportunities and Infrastructure Projects of 22 September 2009, the Minister of Economy of the Republic of Croatia defined GUIDELINE ON THE IMPLEMENTATION OF "CROATIAN ECONOMY AND NATO" PROJECT 3 (released in Official Gazette, No.138/13).

The Guideline defines the manner of the Project implementation, i.e. the process of gathering information and informing Croatian economic entities on the open NATO tenders, keeping the Register of Croatian economic entities that are interested in participating in NATO tenders, procedure and conditions for issuance of the Certificate of Security Clearance to Croatian economic entities, the procedure, terms and conditions for the issuance of the Declaration of Eligibility to Croatian economic entities and other procedures aimed at ensuring equal access to NATO tenders for all Croatian economic entities.

The mentioned guideline is an operational Act stipulating procedures and processes which required previous systematic and extensive legislation included in the following laws, regulations and ordinances:

Information Security Act (Official Gazette 79/07),

Data Secrecy Act (OG 79/07),

Law on Amendments to the Law on Classified Information (Official Gazette 86/12),

LAW ON SECURITY CLEARANCE (NN 85/08),

AMENDMENTS TO THE LAW ON SECURITY CLEARANCE (OG 86/12),

Regulation on marking the classified information, the content and appearance of the Certificate of Security Clearance and declaration on dealing with classified information (OG 102/07),

Regulation on information security measures (OG 46/08),

Ordinance on security clearance standards (March 2011, UVNS, Unclassified),

Ordinance on physical security standards (March 2011, UVNS, Unclassified),

Ordinance on data security standards (May 2011, UVNS, Unclassified),

Ordinance on industrial security standards (May 2008, UVNS, Unclassified),

Ordinance on standards of organization and management in the area of information systems security (May 2008, UVNS, Unclassified),

Ordinance on criteria for establishing job advisors for information security (OG 30/2011),

Regulation on the content, appearance, completing and dealing with security clearance questionnaire (OG 114/08),

Questionnaire for security vetting of I degree,

Questionnaire for security vetting of II degree,

Questionnaire for security vetting of III degree,

Questionnaire for security vetting of legal entities,

Regulation on security education on measures and standards of information security (December 2008, UVNS, Unclassified),

Regulation on the implementation of security accreditation of the Register systems (February 2009, UVNS, Unclassified),

Regulation on the content and appearance of NATO and the EU Certificates (April 2009, UVNS, Unclassified) No.138/13,

Guideline on the implementation of The Croatian Economy and NATO Project (OG, No.138/13).

The above mentioned legislative framework determines security of business cooperation as one of five information security fields in which the proposed information security measures and standards are applied to NATO tenders or agreements with classified documentation which refer to physical persons and legal

3 http://www.propisi.hr/print.php?id=12696, accessed on December 29, 2014.

entities under the Law on Information Security. Physical persons and legal entities who/which apply to and participate in the mentioned tenders or agreements have to obtain the certificate of security clearance of legal entity – Certificate of Clearance. Physical persons and legal entities applying for the staff, objects and facilities are obliged to implement the defined measures and standards of information security for a certain level of confidentiality of the classified information. State bodies and the local and regional self-government units and legal entities with public authorities, who within their scope of work use classified and unclassified information, are authorized for submitting requirement for issuing Certificate of Clearance to physical and legal entities who are provided with classified information of different classification levels as "Confidential", "Secret", "Top Secret". Physical persons and legal entities taking part in the international businesses for which a Certificate of Clearance is required, are authorized for submitting requirement for the certificate issuance.

CERTIFICATE OF SECURITY CLEARANCE – PROCEDURAL FRAMEWORK

The Certificate of Security Clearance is issued by the central state body for information security i.e. the Office of National Security Council[4], which is authorized to carry out the procedure of the issuance of the Certificate of Clearance to Croatian economic entities at the request of The Ministry of Economy, a NATO member state or its particular body. Based on this procedure, the Office issues Certificate of Clearance.

At the request of the Croatian Chamber of Commerce, the Office of National Security Council organizes security information for the interested Croatian economic entities. The Croatian Chamber of Commerce collects information on business opportunities and informs Croatian economic entities via the website www.natonatjecaji.hr and/or by established direct communication depending on the confidentiality level. The Croatian Chamber of Commerce maintains the page www.natonatjecaji.hr and keep the Register of companies. The Croatian Chamber of Commerce issues Expert opinion and submits it to the Ministry of Economy.[5]

The Croatian Chamber of Commerce has the central role in informing on current tenders via the Internet. Tenders marked as "Unclassified" are announced on the webpage, accessible exclusively to those physical persons and legal entities who have entered the Register. Tenders marked as "Restricted" are not announced on the webpages. The Croatian Chamber of Commerce sends information in a prescribed manner on the tenders marked "Restricted" to the economic entities recorded in the Register which by its activities and business can meet the requirements of the tender and have access to the information of the required confidentiality level. Tenders labeled "Confidential" and "Secret" are not announced on the web pages. The Croatian Chamber of Commerce informs Croatian economic entities recorded in the Register which by its activities and business meet the requirements of the tender and have obtained the Certificate of Clearance.[6]

All physical persons and legal entities in Croatia can enter the Register of companies which by its business characteristics can meet the requirements of the NATO tenders. Before entering the Register, companies sign the Declaration of the rights and responsibilities with the Croatian Chamber of Commerce, qualifying themselves for the access to tenders labeled "Unclassified".

If the companies, after entering the Register, want to have access to the tenders marked "Restricted" they are obliged, according to the instructions of The Croatian Chamber of Commerce, to undergo the procedure of information security in the Office of National Security Council to be recorded as authorized persons who signed the Declaration of Non-disclosure. The data are recorded in the Register. If the companies, after the entry in the Register, want to have access to the tenders marked "Confidential" and "Secret" they are obliged to obtain Certificate of Clearance. The data on the obtained Certificate of Clearance is recorded in the Register and issued by the Office of National Security Council on the requirement of the Ministry of Economy. In the procedure of obtaining the Certificate, economy entities are obliged to complete the Security Clearance Questionnaire for legal entities available on the webpage www.uvns.hr and submit it to the Ministry of Economy. The Office of National Security Council as Croatian NSA/NDA competent body submits the issued Certificate of Clearance to the economic entity, SPRH and the NATO bodies if they require it. The Office of National Security Council submits a notice on issuance of Certificate to the Ministry of Economy and to the Croatian Chamber of Commerce.

4 http://www.uvns.hr/UserDocsImages/Inf_Sig/ZAKON%20O%20INFORMACIJSKOJ%20SIGURNOSTI%20NN%2079%20 2007.pdfaccessed on December 21, 2014.
5 http://narodne-novine.nn.hr/clanci/sluzbeni/2013_11_138_2958.htmlaccessed on December 2, 2014.
6 Ibid

DECLARATION OF ELIGIBILITY – PROCEDURE

The Declaration of Eligibility for a particular economic entity in the Republic of Croatia is issued by the Ministry of Economy at the request of the economy entity under the terms and conditions of a particular tender or at the request of NATO institutions.

The Ministry of Economy in cooperation with the Croatian Chamber of Commerce is due to issue Declaration of Eligibility within seven days from the day the application was submitted. Declaration of Eligibility contains full name of business entity, address and activity for which the Ministry of Economy confirms that the business entity is financially, technically and professionally capable of. The request for issuance of the Declaration of Eligibility is available on the website of the Project www.natonatjecaji.hr.

In addition to the request for issuance of the Declaration of Eligibility, economic entities are required to submit the following documents:

– Copy of the ruling of the Commercial Court with a list of registered activities (not older than 3 months)
– Declaration of the technical ability to perform activities,
– BON 1, (last quarter),
– BON 2 (not older than 30 days)
– Declaration of previously executed jobs and contracts (list of references)
– Confirmation of the Tax Administration on tax payment proving that the taxpayer has no debt on the basis of public benefits that include taxes and contributions (not older than 30days).

In the course of the procedure of issuance of the Declaration of Eligibility, the Ministry of Economy seeks expert opinion on the requirement from the Croatian Chamber of Commerce. Based on the positive Expert opinion of the Croatian Chamber of Commerce, The Ministry of Economy issues a Declaration of Eligibility. For NATO tenders for which the Declaration of Eligibility was requested by a NATO body or a NATO agency, the Declaration is submitted to SPRH, no later than three days before the deadline for submission of tender documents. For tenders in which a NATO member state as the host country is a client, Eligibility Declaration is submitted to the competent diplomatic representative. Submitted Eligibility Declaration is sent by SPRH, that is, by the competent diplomatic representative to the body that is the client in the present procurement procedure within the NATO tender.[7]

The key issue for initiating activities regarding the preconditions to apply for the job is the Declaration of Eligibility proving professional qualifications of the economic entity which is necessary but insufficient to apply for the job. The requirement that should be met is the Declaration of Eligibility issued on request.

CERTIFICATE OF CLEARANCE - PROCEDURE

Requirement for issuance of Certificate of Clearance for legal entities in order to participate in classified tenders, confidentiality level "Top Secret", "Secret" and "Confidential", for state bodies, bodies of local (regional) self-government units, for legal entities with public authority who in their scope of work use classified and unclassified information is submitted to the Office of National Security Council.

Legal entities when participating in the international classified tenders, submit the requirement for Certificate of Clearance to the Office of National Security Council after the Certificate was required by competent security body of a foreign state or by an international organization.

Requirement for the issuance of Certificate of Clearance should provide as follows:

– Name, address and personal register number of the legal entity who requires certificate;
– Reason for issuing certificate;
– Confidentiality level of the classified information for which certificate is required;
– Completed and validated Questionnaire for security vetting of legal entity.

1) Procedure of issuing Certificate of Clearance starts by signing a contract between the Office for National Security Council and a legal entity
2) The Contract will define, among others, giving consent for security clearance of the legal entity, providing Questionnaire for security vetting of legal entity who will have the access to the classified information and providing all other required documentation or executing all other activities from the tender

7 http://www.propisi.hr/print.php?id=12696accessed on November 23, 2014.

3) Instruction for implementing measures and standard of information security to protect classified information of a legal entity is included in the tender.

Legal entity vetting includes the following:

– vetting the property, the property structure, information on companies included in property, vetting overall business and financial obligations with regard to likely security risks;

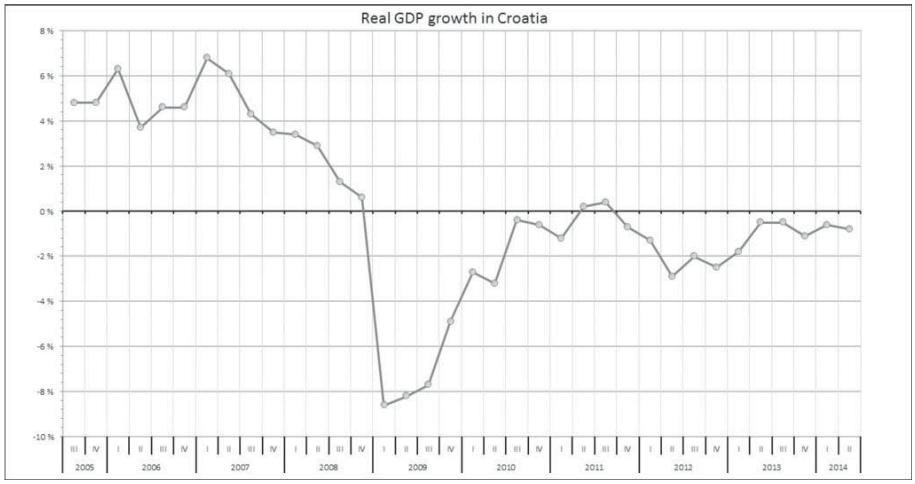
– vetting the owners, directors, members of administration and supervisory board, shareholders who with regard to their function can acquire the access to classified information;

– vetting a person proposed as information security counselor as a legal entity and his/her deputy and employees who have access to the classified information.

The Office of National Security Council issues a Certificate of Clearance to a legal entity when, based on report of the competent security and intelligence agency, it finds out that there are no security barriers and that the measures and standards of information security are applied. The Office of National Security Council issues the Certificate of Clearance within no longer than 6 months on concluding the contract. The Certificate of Clearance is issued for the period of 5 years. In the course of the Certificate validity, the office of the National Security Council can carry out the procedure of suspension or abolition of the certificate when terms and conditions defined by contract are changed.[8]

CONCLUSION

From the above mentioned it is clear that the legislative and formal procedure, which was defined and introduced prior to submitting application for NATO and EU tenders, enables establishing a transparent economy, which, to a great extent, prevents all economic entities with 'suspicious' property structures, incompetent and low quality offers, from entering the application procedure for jobs in NATO or the EU. Of course, establishing such a legislative framework helped Croatian economy to gradually recover, which came along with Croatia's joining NATO in 2009. Establishing such a manner of doing business helped a great deal, which can be illustrated by concrete financial indicators shown in the diagram of GDP real growth in the last period.



GDP real growth in Croatia[9]

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UDC: 658.71(497.11)
658.71(497.7)

ANALYSES OF PUBLIC PROCUREMENT IN MACEDONIA AND SERBIA: BEST PRACTICES, CHALLENGES AND FRAUDS

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Abstract: Public procurement is the procurement of goods and services on behalf of a public authority, such as a government agency. A report for public procurement implies the way in which the Government spends public money, corruption-free, and for better economy. The government through public procurement influences the market economy thus making living environment for the citizens better. Public Procurement in the EU comprises 16.3 percent of the gross domestic product, in Serbia it is about 7 %, while in Macedonia it is 11 percent. The paper deals with the development and the further needs of improvement of the process of public procurement in Macedonia and Serbia. According to comparative data of the public procurement in Macedonia and Serbia, as the countries in transition having similar difficulties with a little experience of procurement officers it must be taken into account that the markets in these two countries are not developed enough to be competitive. Therefore, this paper gives directions and advice for improvement of both systems.

Keywords: public procurement, law of public procurement, crime in public procurement, Macedonia.

INTRODUCTION

Public procurement implies spending public money for the functioning of the institutions. The application for membership in the European Union requires harmonization of the legislation in the area of public procurement. Inevitably, governments are the biggest "spenders" worldwide. The figures, of course, vary from country to country, but according to various sources[2] government spending on public services accounts somewhere between 15-45% of GDP1. The biggest part of this amount is "internal" spending (of salaries and alike), but some 25% to 50% is spent "externally" (on sourcing goods and services) and mainly through public procurement. The sheer amount of this spending has a huge impact on economy. It is no wonder that the area gained increasing attention during the last decade not only at the national level[3].

The paper focuses on a comparative analysis of public procurement of the Republic of Macedonia and Serbia. We will also show the ways of making fraud in public procurement in both countries respectively. Perpetrators use the same techniques and methods in the crime within public procurement. At the end we will offer directions for improvement of the public procurements in both countries.

DEFINING PUBLIC PROCUREMENT

According to Macedonian law, public procurement involves purchasing, leasing or renting goods and services by state institutions[4]. Public procurement is the act of purchase of goods and services by a public sector entity for achieving certain specified and identified objectives. According to Wikipedia, procurement is the acquisition of appropriate goods and / or services at the best possible 'total cost of ownership' to meet the needs of purchaser in terms of quality and quantity, time and location. When goods or services are purchased by a public sector, it is called public procurement. As has been stated, "it is the process by which governments and public sector institutions buy inputs for vital public sector investments in physical infrastructure and for strengthening institutional human capacities which lay the foundation for national

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2 Knight, L., Caldwell, N. D., Harland, C., & Telgen, J. (2003a): Government Reform and Public Procurement –Report from the first International Research Study on Public Procurement. Bath, U.K.: Centre for Research in Strategic Purchasing and Supply, University of Bath
3 Csaki Csaba, Investigating the decision making practice of public procurement procedures, International public procurement conference proceedings, 21-23 September 2006
4 Law of public procurement, "Official Gazette of Republic of Macedonia " no./98 from12 June 1998

development[5]. Procurement means acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or any type of works, services or supplies or any combination" up to the time a user consumes or utilizes a service as per his requirement and in line with the procurement act and regulations of the country by The Public Procurement and Disposal of Public Assets Act 1 of 2003. Furthermore, according to the UK Office of Government Commerce public procurement is the process whereby public sector organizations acquire goods, services and works from third parties. It includes much that supports the work of government and ranges from routine items (e.g. stationery, temporary office staff, furniture or printed forms) to complex spend areas (e.g. construction, private finance initiative projects, aircraft carriers or support to major change initiatives)[6]. All definitions worldwide have in common that public procurement includes purchasing, leasing, or any other different kind of spending public money. Every public institution must plan costs for their normal functioning.

HISTORY

Public procurement has a long history. The earliest procurement written on a red clay tablet found in Syria dates from between 2400 and 2800 B.C. The order was for "50 jars of fragrant smooth oil for 600 small weights in grain" (Coe, 1989, p. 87). Other evidence of historical procurement includes the development of the silk trade between China and a Greek colony in 800 B.C. [7] Just as the Romans established trade relations with private suppliers, the monarchs of Europe also needed such undertakings. For example, after his conquest of Anglo-Saxons in 1066, William the Conqueror ordered the creation of the Doomsday Book to provide a systematized record of land ownership. This complex task enabled the wealth of the nobility to be measured and for a tax system to be created. This form of supplier measurement was undoubtedly resented at the time but it established a basis for orderly procurement of funds and services by the Crown[8]. Public procurement in France was settled in 1833 just for procurement of central authorities, while in Belgium it was set up in 1963 with law for public procurement for the government needs. In Italy, public procurement was founded in October 1923, when the new law was established. From the aspect of legal protection, both Italy and France have misunderstandings in the phase before the conclusion of the agreement subject to legal remedies, initiated by those whose interests are threatened, and after the conclusion the judicial jurisdiction is determined. In Germany there is no unique legislation to regulate certain topics, but public enterprises have an obligation to conduct procurements that will assure competitiveness (with collecting bids). From time to time there is a theory (acts detachable) on the responsibility in the administrative courts (for bringing declaratory judgment). In Germany, in 1922, with the Law on National Budget, the role was established for conducting procedures with collecting bids, with allowed tolerances whenever it is necessary. Without the adoption of a specific regulation, the National Council for Agreements was established and it was responsible to prepare the procedures (Verdingungsordnung für Leistungen – VOL), and later the department of construction works also prepared the procedures (Verdingungsordnung für Bauleistungen – VOB), all published in 1926. (8) Those regulations are not legal but administrative regulations. The practice shows that certain regulations are not obligatory, but they were established as a part of pre-conditions that should be met by all competitors. It is also the fact that violation of these regulations means the opportunity and the right to remedy, based on VOL and VOB (they were established by the Ministerial Protocol), and they also become obligatory if are included in the Agreement.

In the countries of the region, with a background of a social period and existence of a planned economy, public procurement was established in the middle of 20th century, and mostly after 1990. For example, in Poland the first Law on Public Procurement was brought in 1933, and was in force until 1939. In Estonia, the first law was established in 1934. (9) In the USA there is an extensive legislation including laws, sublaws, principles, regulations, roles, principles and procedures that should be respected during the procurements. It shows a unique system of public procurements recognized as one of the most successful in the world. Later, regulations on procurements are under the strong influence of newly established national and international regulations, primarily focused on overcoming boundaries and problems for competition in procurements, regardless of the country.

Crucial for this subject is an agreement for public procurement concluded on 12 April 1979. The aim of the General Agreement for Tax and Trade (GATT) is the reduction and elimination of discriminatory measures and encouraging competitiveness, with the intention to support and open the trade, through planning and posting of procurement (need of procurement), posting roles of posting of the rules for par-

5 Research paper on bid ringing in public procurement, under the guides of: Dr.K.D. Singh, Deputy director (LAW) competition commission of India, submitted by: Shivangi Vaid, B.B.A LL.B (H) 8TH Semestar, Amity Law School, Noida

6 UK Office of Government Commerce , Introduction of public procurement, http://webarchive.nationalarchives.gov.uk/20110601212617/http:/www.ogc.gov.uk/documents/Introduction_to_Public_Procurement.pdf (accessed on 12.12.2014)

7 Khi V. Thai,Public procurement Re-examined, Journal of public procurement 1, ISSUE 1, 9-50 2001

8 Guy Callender , A Short History of Procurement, 2007 - edited and printed with permission by CIPS Australia Pty Ltd

ticipation in the procurement and giving equal treatment to all interested potential bidders, supporting competitiveness at the same time.

All the more, in international framework, public procurement is posted in the frame of Commission of UN for International Commercial Law (UNCITRAL). In 1994, General Assembly of the UN adopted a model-law on UNCITRAL Model Law on procurement of goods, construction and services with Guide to Enactment. UNCITRAL settles down the roles for procurement which are not obligatory, but UN gives support to all countries to adopt them in the domestic law. The goal is development of competiveness, equal treatment and publicity in the procurement procedure.

THE SYSTEM OF PUBLIC PROCUREMENT IN THE REPUBLIC OF MACEDONIA

With the entry into force of the Regulation[9] on Public Procurement in 1996, a new system of public procurement in the Republic of Macedonia was launched. The Regulation governed the procedure and manner of contracts between the government, the central administrative bodies, administrative organizations and other beneficiaries of the budget of the Republic of Macedonia, public enterprises established by the parliament or the government with legal and individual (entities) for the procurement of goods, providing services, material rights and construction works. It was into force until 1998, i.e. until bringing the first Law on Public Procurement in 1998. By signing the Agreement of Stabilization and Association between the Republic of Macedonia and the European Communities (ASA)[10] on 9 April 2001, according to Article 6817 of the Agreement, Macedonia took responsibility to harmonize the domestic laws with the EU acquis. This was also necessary for Public Procurement Law as well. According to the ASA, Public Procurement will be conducted with non-discrimination and reciprocity, especially in the frame of World Trade Organization (WTO)[11] Obligations that were set by the Agreement (ASA) and other regulations of the European Union in the field of public procurement, contributed in 2004 to establish a new law on public procurement[12]. The enactment of this new Law means stable ground for faster integration of Republic of Macedonia towards EU. The Law introduces the basic principles for fair competition, equal and non-discriminatory position of bidders, transparency and publicity of the procurements, as well as prohibition of discrimination with regard to the origin of the bidder or the country of origin of goods. This created fair and equal position of enterprises in the country with the rules that were laid down in EU directives.[13] Public procurement was introduced as a short term priority for harmonization with the acquis communautaire according to ASA. With the Law from 2004, new and strict measures were introduced which allowed lower prices and more effectiveness. However, having in mind that in that period a new system was being introduced in Macedonia the need to create more flexible rules in order to establish a balance between objectivity and transparency was imposed on the one hand and efficiency and economy of the system were imposed on the other hand. The need for following European trends in the implementation of public procurement procedures imposed the need for further development of the system for public procurement especially in the using of e-auctions and elimination of all subjectivity in the procurement. However, on 6 November 2007 the law of public procurement was conducted which initiated the process of unification of public procurement of the national law with the European law. The law from 2007 had the European directive basis no.2321.

The existing public procurement law was amended for the first time in October 2008, then a few changes followed in July 2010 and two changes in 2011. But amendments of the Criminal Code imposed compliance with various laws including the Law on Public Procurement which was changed in 2010. Additional amendments of the Law came into force in April, and the last amendment of 2011 published in the Official Gazette in December 2011 was changed by about 1 / 3 of the legal provisions. This change was not aimed at harmonizing the law with the EU directives, but was geared towards technical improvement of the Law on Public Procurement by applying the international practice in the provisions of the Law on Public Procurement. Law on Public Procurement in the country from 2011 until 2014 sustained many amendments to facilitate the implementation of the principles governing the procurement and compliance with the European directives. The value of public procurement in the country for 2013 is 11% of the GDP of the country. According to the data available from the State Statistical Office, the value of contracts signed in 2013, compared with the previous year were about 7%. A decrease in the number of signed contracts (23,732 contracts last year) was also noted. According to the national statistic, we can notice that in the last three years, the value of signed contracts for public procurement in the country has been in constant decrease.

9 Article 1, paragraph 1, Regulation for Public orders, Official Gazette of Republic of Macedonia nr 18/96
10 Agreement for Stabilization and Association
11 Article 72 paragraph 1, Official Gazette of Republic of Macedonia nr 28/01
12 Law on Public Procurement, Official Gazette of Republic of Macedonia nr.19/04, 109/05
13 Article 6, Law on Public Procurement, Official Gazette of Republic of Macedonia 19/04, 109/05

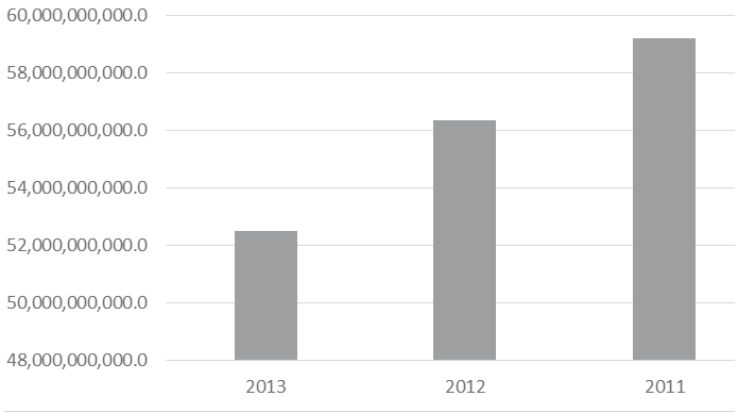

Figure 1. *Comparative data on the volume of public procurement in denars for 2011- 2013*

Source: Report from Bureau of Public Procurement for 2013, Skopje, May 2014

According to the report from the national bureau for public procurement in Macedonia, real value of public procurement was 52.5 billion denars or 31% as share from national budget and 11% as part of GDP for 2013.[14]

THE PUBLIC PROCUREMENT SYSTEM IN THE REPUBLIC OF SERBIA

The Public Procurement Law in Serbia was conducted for the first time in 2002 and was the first systematic law in line anti-corruption measurements. With the implementation of this Law the development process of the public procurement system in the Republic of Serbia has begun. In this context, the development of the procurement system in the Republic of Serbia took place in two phases. The first phase of implementation of the Law on Public Procurement lasted from 2002 to 2004 and it was characterized by improving of transparency and competition of public procurement contracts compared with the period before the Law. In just three years of competitive procedures involving publication of public notices and open competition among bidders, their share in the total number of procedures performed increased from 0% in 2001 to 36% in 2002, and in 2004 this percentage reached 76%. In other words, three of four contracts were awarded on competitive basis.

This indicates a significant level of competition compared to the period before the Law. The second phase of the development of the procurement system in the Republic of Serbia for the period from 2005 to 2006 and is characterized by stagnation in terms of representation of competitive procedures whose participation unlike the first stage falls to 73%. On the five-year implementation of the Law Public procurement is identified a number of shortcomings in the functioning of the public procurement who imposed the need to introduce innovations and reforms. This process of reform and improvement of public procurement system in the Republic of Serbia began in 2007 and lasted until today. The most important step towards the implementation of reforms in the area of public procurement in the Republic of Serbia was made with the adoption of the Law on Public Procurement in December 2008. The law was designed to work in three ways: 1) accurately determine the responsibility of those who carry out the procurement procedures and those who control public procurement 2) strengthening the implementation of control procedures by increasing the transparency of public procurement and 3) systematic improvement of the capacity of all stakeholders in the implementation of public procurements.

In terms of the institutional framework of the public procurement system in the Republic of Serbia, with the Public Procurement Act of 2002 was created the Public Procurement Agency as an independent organization of the Government of the Republic of Serbia. This body according to law was obliged to provide economical, efficient and transparent procurement system and to care for the strengthening of competition, to provide equal treatment of all bidders and to take measures to prevent corruption in public procurement. Protecting the rights of bidders and the public interest over the entire public procurement procedure provides the Commission for Protection of Rights, which is an independent body of the Republic of Serbia.

14 Public Procurement Bureau, Annual Report from Bureau of Public Procurement for 2013, Skopje, May 2014, http://bjn.gov.mk/bjn-portal/wordpress/wp-content/uploads/Izvestaj_na_BJN_za_2013.pdf(accessed 12.12.2014)

This body was established by the Law on Public Procurement. The report of the European Commission on the results achieved by Serbia in the process of accession to the European Union is estimated that the Republic of Serbia shows progress in public procurement, the Public Procurement Act (Official Gazette of RS br.116 / 08) is largely compliance with EU Directives. For Serbia, negotiations began in November 2005. Stabilization and Association Agreement between the EC and its member states on the one hand and Serbia on the other hand came into force in February 2010. The obligation to harmonize legislation in the area of public procurement is regulated under Article 76 of the SAA.

COMPARASION OF PUBLIC PROCUREMENT BETWEEN MACEDONIA AND SERBIA

Macedonia and Serbia are facing similar problems in public procurement processes. Although the Republic of Macedonia is a country which is first in the changes and adjustments to European directives with public procurement, both countries have similar problems. In terms of defining contracting authorities Macedonia and Serbia are in line with the directives although Macedonia has fully copied European regulations. Both countries have the same model of the audit of public procurement. The structure and responsibilities of the institutions is also the two-sided centralized system. The biggest weakness in the Macedonian system is planning and public announcement of the plans for public procurement, although it is obligatory by the law. A small part of the institutions publicly announce the procurement plans. Serbia has no legal framework for public announcement of the plan yet but in 2013 most of the institutions implemented it. From 1 January 2014 preparation and initiation of public procurement in the Republic of Macedonia started by electronic auction.

In Serbia, there is a frequent change of plans and the value of the contracts at the initiation of the public procurement procedure. Both countries are facing the same problems in terms of commissions without training, without competence according to the reports. In terms of the types of public procurement in Serbia, there is no technical dialogue.

If we compare Serbia's and Macedonia's annual reports of public procurement for 2013, published by the Public Procurement Office, we may notice that Serbia spent about 10% of GDP. (Figure 2) The largest share value of public procurement in the state budget was achieved in 2013 in Macedonia (31%) while in Serbia it reached almost 27% (figure2).

Figure 2. *The total annual value of public procurement by country (in euros)*

Source: Author's figure according to "Public procurement system in Bosnia and Herzegovina, Montenegro, Macedonia and Serbia, Comparative analyses of legislative and institutional framework and comparative analyses of case studies of public procurement, November 2014.

Annual share of public procurement after changes in law regulations decreased in both countries. Moreover, a share of the value of public procurement in budget expenditures in all three analyzed periods also decreased. As we can see Macedonian expenditures are bigger that Serbian expenditures with public procurement. (figures 3 and 4)

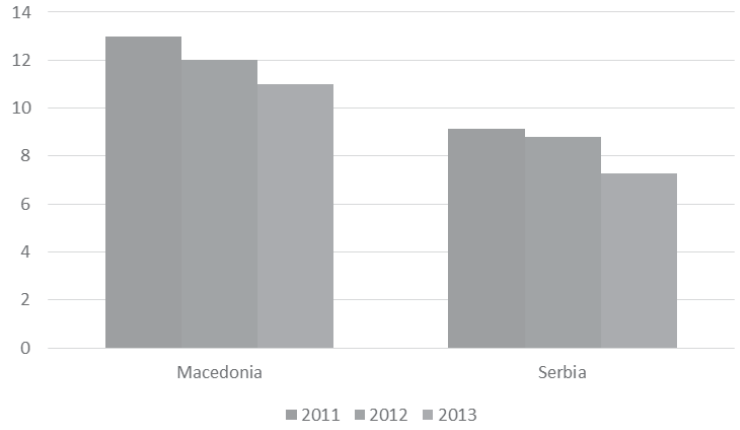

Figure 3. *Annual share of the value of public procurement in GDP (in%)*

Source: Author's figure according to "Public procurement system in Bosnia and Herzegovina, Montenegro, Macedonia and Serbia, Comparative analyses of legislative and institutional framework and comparative analyses of case studies of public procurement, November 2014

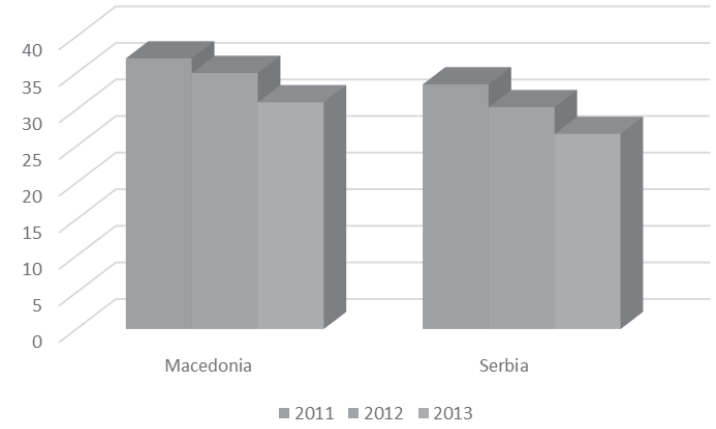

Figure 4. *Annual share of the value of public procurement in budget expenditures (in%)*

Source: Author's figure according to "Public procurement system in Bosnia and Herzegovina, Montenegro, Macedonia and Serbia, Comparative analyses of legislative and institutional framework and comparative analyses of case studies of public procurement, November 2014

CRIME IN PUBLIC PROCUREMENT

Most of procurement frauds were disclosed by occurrences, accusations and complaints. According to statistics, only 18% of all frauds in Macedonia are detected through the audit of public procurement. The most used terms for fraudulent acts in public procurement are cheating, bribery, forgery, extortion, corruption, theft, conspiracy, misappropriation, misrepresentation, concealment of important facts. Procurement fraud can be described as:

– Intentional misstatement or concealment of facts in connection with the purchase of goods, and services in which the result is financial harm to others. Actually, public procurement includes false proposals, concealing the truth, cheating, concealment or breach of trust or found craftiness.

Elements in procurement fraud can be:

1) Misstatement of fact

2) Lie with knowledge or intent

3) Misstatement benefit for those involved in fraud

Generally, there are three common types of fraud in procurement:

1) theft
2) inaccurate accounting
3) corruption

Typically, there must be four conditions for the existence of fraud in public procurement.

1) Someone who is willing to commit fraud. The person may be the organization itself, outside or group of people made up of people from the organization and outside it (official responsible for procurement, economic operators, and representatives of the economic operator).
2) Tool is subject to fraud (money, property, privilege or position).
3) Intent to commit fraud in public procurement (it is no coincidence but work is performed intentionally).
4) People able to commit fraud (people to be in a position that allows them to commit fraud or to have access to the resources needed to commit fraud).

The most common types of techniques of fraud are:

1) bargaining bids
2) fraud by changing the order for procurement
3) modification of the offer
4) failure to comply with the specification of the contract (replacement products)
5) manipulation of the application process and evaluation of tenders
6) fraud in billing (undelivered goods or goods modified invoice, incomplete delivery, duplicate invoices).

In both countries the way of fraud commission in the course of public procurement is the same, types or the conditions are similar as well.

In Macedonia, the total number of cases of complaints decreased from 585 in 2012 to 553 in 2013; the rate of solved cases remained stable at 95%. Contracting authorities made about 40 economic operators on the list of negative references, of which 11 appealed. The use the list of negative references has not yet been complied with the case C-465/11 the Court of Justice of the EU. Additionally, there have been 25 prison sentences of one to five years for illegal profits and malfeasance. The identified violations of public procurement procedures were not systematically tracked and ended, with the exception of only one conviction for the abuse of public procurement or PPP. National legislation is still not fully aligned with the EU Directive on remedies.[15] While in Serbia as regards the award of public contracts, the value of negotiated procedures conducted without prior notice decreased to 4 % of the total value of public tenders in the first half of 2014, from 24% in 2012. The average number of bids per tender remained stable, at 2.7 in 2013 and in the first half of 2014 compared to 2.6 in 2012. In the field of remedies, the number of requests for protection of rights received by the Republic Commission for the Protection of Bidders' Rights (Republic Commission) increased by 39% from the entry into force of the new legal framework in April 2013 until the end of 2013 compared to the same period in 2012. The Republic Commission reached a total of 1966 decisions in 2013 compared to 1700 in 2012. In 909 cases, public procurement decisions were partially or fully annulled. In 2013, the Republic Commission built up its enforcement record by reviewing the implementation of 635 of its decisions and concluded that in 24 cases they were not been properly enforced by the contracting authorities. It continued to build up its administrative and enforcement capacity to a total of 54 employees.[16]

CONCLUSION AND RECOMMENDATION

Public procurement is the act of purchasing goods and services by a public sector entity for achieving certain specified and identified objectives. All government institutions make expenditures trough public procurement. Macedonia and Serbia, as neighboring and transitional countries have similar regulative and problems in realizing public procurement. Even public procurement crimes are committed in the same way. There is a need for additional compliance with European directives for improvement of public procurement. Frequent changes in regulative implies no skilled and uncompetitive commissions for public procurements in the institutions, making mistakes in procedures. Additionally, there is a need for more transparency as one of the main principles in public procurements, public announcements, and public

15 European Commission, Commission staff working document, Progress Report on Republic of Macedonia, Brussels, 2014
16 European Commission, Commission staff working document, Progress Report on Serbia, Brussels, 2014

announcements of finished procedures as well as for continuous trainings. There are no unified technical specifications. There are frequent changes of the deadlines especially for small purchases up to 5000 Euros. Furthermore, there is a need for continues trainings, increasing control mechanisms, as well as for the exemption of some types of procurement of goods and services which include copyrights or goods which need to be purchased with high quality. Unfortunately, the Law on Public Procurement still gives opportunity for fraud, so further improvements are necessary.

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UDC: 341.231.14-056.24

THE ROLE OF THE COMMITTEE ON THE PROMOTION OF RIGHTS OF PEOPLE WITH DISABILITES[1]

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Abstract: The Convention on the Rights of Persons with Disabilities is the universal international treaty in the field of International Human Rights Law. It is still marked as a young legal act, since it came into force in 2008. As all other International Human Rights treaties of universal character, this one also created an independent body – a committee, with supervision competences. The Committee on the Rights of Persons with Disabilities is similar to all other committees. This means that it suffers from the same shortcomings although it uses previous experience to improve its performance. Competence of the Committee, according to the Convention, rest solely on the report submission procedure by a State Party. The Optional Protocol, adopted at the same time as the Convention, offers possibility to the States Parties to allow an individual to open a procedure against a state on the allegations of norms violations. Within the present paper, the competences of the Committee have been elaborated, as well as procedures that are to be undertaken. Finally, the conclusion presents the final statements on the success or failure of the whole concept.

Keywords: Convention on the Rights of Persons with Disabilities, the Optional Protocol, report submission, findings, suggestions, recommendations, communication, general recommendation.

INTRODUCTION

The Convention on the Rights of Persons with Disabilities is the first UN's convention in the 21st century in the field of the International Human Rights and one of the youngest. It is marked with the fastest negotiations ever.[3] There is a symbolism connected to the day of the adoption of the convention before the UN. As the Secretary General pointed out, it was the day of St. Lucy, the patron of blindness and light.[4] There is a phrase connected to that holiday – *out of darkness into the light*, so that the phrase became a slogan for persons with disabilities which participated in the process of negotiations.[5]

Yet, the Disabilities Convention is nothing but another human rights convention, built on the growing trend of pluralisation of human rights – as one of the main characteristics of the contemporary development of international human rights.[6] Within the Convention two bodies have been created – the Conference of States Parties and the Committee on the Rights of Persons with Disabilities. While the Conference of the State Parties has duty to maintain the Convention and unity of its members, the Committee presents yet another treaty body obliged to monitor the application of the Convention. The Committee is mostly built on the experience of other UN treaty bodies in the field of International Human Rights (nine of them). There are no specific solutions or new methods of its work whatsoever. Again, as much as the Convention is specific *rationae materiae,* that much the approach of the Committee will be specific and new. The Convention marks a completely new approach towards the persons with disabilities. Thus, it is on the Committee to promote and apply the new approach, help member states to incorporate norms and protect individuals when their rights are violated. The main aim of this paper is to analyze the role of the Committee in the promotion of rights of people with disabilities, main obstacles that are identified in the process of the Convention application and achievements that have been accomplished.

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3 Anna Bruce, Negotiating the Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities: Two Steps Forward, One Step Back, u: Gudmundur Alfredsson, Jonas Grimheden, Bertrand G. Ramcharan, Alfred Zajas (eds.), International Human Rights Monitoring Mechanisms – Essays in Honour of Jakob Th. Molller, Martinus Nijhoff Publishers, 2009, pp. 133.
4 UN Secretary General Kofi Annan Statement, Secretary General Hails Adoption of the Landmark Convention on Rights of Persons with Disabilities, 13 December 2006, UN Doc./SG/SM/10797-HR/4911-L/T/4400, available at: http://www.un.org/press/en/2006/sgsm10797.doc.htm
5 Rossemary Kayess, Phillip French, Out of Darkness Into Light? Introducing the Convention on the Rights of Persons with Disabilities, Human Rights Law Review, Vol. 8, No. 1, 2008, pp. 1–34.
6 Tijana Šurlan, Univerzalna medjunarodna ljudska prava – mehanizmi zastite, Beograd, 2014, pp.7-10.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13th December 2006 and it entered into force on 3rd May 2008. It has 151 States Parties.[7] The Optional Protocol, additional to the Convention, has gone through the same negotiating procedure, at the same time, but with somewhat poorer results.[8] It came into force at the same time as the Convention, but at the moment it has 83 states parties. Thus it can be stated that the Convention is universal international treaty, while the Protocol is not. With the knowledge of its content it does not come as a surprise. All international legal instruments allowing an individual to open a procedure against a state are less supported then substantive conventions itself.

Yet again, it is intriguing why the Convention has been so quickly negotiated and empowered? The international community, once with the main human rights issues resolved (such as basic political, civil, economic, social and cultural rights), could have continued regulating status and rights of vulnerable groups of individuals. When the status of racial groups, women and children was stipulated, focus could have been transferred to persons with disabilities. This group happens to be quite numerous. Approximately 10% of the world's population are persons with disabilities (over 650 million persons).[9] It is the world's largest minority. Yet again, persons with disabilities are mostly on the margins of society in all parts of the world. They are usually denied their human rights, or even when the rights are proclaimed, societies are not equipped for allowing persons with disabilities to use their rights.

At the very beginning of the negotiations an essential issue emerged - a theoretical and ethical dilemma – how to treat persons with disabilities? Is it correct to treat them as all other human beings? Can we treat ill persons as if they are healthy and apply to them all rights and duties? Are they ill at all? Are the deaf or the blind in the same position as persons with psychosocial issues?[10]

From the medical point of view, these issues can be discussed as theoretical issues. From the point of law there are no more debates – persons with disabilities should not be treated as incapable or ill; they are human beings just the same as all the others.[11] Thus the convention that is the main normative framework of today's legal status of disabled persons is built on such *ratio*.

"Functional" explanation for such an approach is that there is no fundamental, principled reason why specific treatment should be needed, only circumstantial, built largely on political and pragmatic reasons.[12] Since certain groups have traditionally been ignored by the mainstream of human rights, a stage was reached when something more was needed to be done - in the nature of a strong political gesture - to simply bring attention to the issue. The problem of pluralization of human rights, i.e. functionally specialized conventions (civil and political rights versus economic and social; torture; disappearances) could be managed fundamentally, with no need for group-specific conventions. The only rationale for having group-specific conventions is as a purely corrective, stop-gap measure if these groups, despite the undeniable applicability of human rights to them, have for some reason been left aside. If such a concept is achievable, then all that is needed is an anti-discrimination treaty to make the point as clear as possible. Indeed, the prevailing model behind a treaty like the Convention on the Elimination of Racial Discrimination is, as its title indicates, that of "anti-discrimination." It does not aim to grant members of racial group rights that they would not already have. Rather, such treaties have the ambition of making good on the promise of human rights, by making it clear that discrimination on the grounds of race is particularly abhorrent.

The vision of human rights as being the same for all is both unrealistic and non-applicable.[13] Even though the unity of rights captures a fundamental intuition, certain groups do need separate restatements of how rights apply to them, either because they have specific needs to enjoy their rights, different versions of the same rights, or possibly even slightly different rights. Indeed, one might claim that

7 Figures downloaded from the internet site on 29 February 2015 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en

8 Anna Bruce, Negotiating the Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities: Two Steps Forward, One Step Back, u: Gudmundur Alfredsson, Jonas Grimheden, Bertrand G. Ramcharan, Alfred Zajas (eds.), International Human Rights Monitoring Mechanisms – Essays in Honour of Jakob Th. Molller, Martinus Nijhoff Publishers, 2009, pp. 133.

9 Don MacKay, The United Nations Convention on the Rights of Persons with Disabilities, Syracuse Journal of International Law and Commerce, Vol.34, no. 323, Spring 2007, pp. 323-332.

10 Rossemary Kayess, Phillip French, Out of Darkness Into Light? Introducing the Convention on the Rights of Persons with Disabilities, Human Rights Law Review, Vol. 8, No. 1, 2008, pp. 1–34.

11 Oddny Mjoll Arnardottir, Future of a Multidimensional Disadvantage Equality?, in: Oddny Mjoll Anardottir, Gerard Quin (eds.), The UN Convention on the Rights of Persons with Disabilities – European and Scandinavian Perspectives, Martinus Nijhoff Publishers, 2009, pp. 41-65.

12 Frederic Megret, The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?, Human Rights Quarterly, Volume 30, Number 2, May 2008, pp. 494–516.

13 Elleonor Flynn, From Rethoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities, Cambridge University Press, 2011, pp. 18

the mere existence of group-specific international rights instruments suggests that there is something specific about these groups, which is not, but perhaps most importantly, cannot be taken adequately into account by human rights instruments that have the ambition of covering the whole human kind.

Framing Conventions *ratio* we can underline that disabled persons are treated as all the others, with all rights and duties, shaped in the anti-discrimination manner.[14] Thus the Convention does not set new corpus of substantive human rights or duties. All rights and duties are well known civil, political, economic, cultural and social rights stipulated from the point of specific needs of persons with disabilities. The main goal of the Convention, set through imposing legal obligations on States, is to promote and protect all human rights of persons with disabilities (Article 1). And yet again theory did discover new dilemmas – are we dealing with the specific rights or specific application of well-known rights?

Convention does not offer one and only definition of disabilities, a definition as a legal norm.[15] The Convention though suggests what should be understood under the term persons with disabilities. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Article 1). This is not a strict definition, since it is placed in the article on "purpose" rather than under article 2 on "definitions". It is non-exhaustive – therefore persons with disabilities "include" – it is a bare minimum. This means that national legislation could include a wider definition such as short-term conditions or specific reference to psychosocial disabilities etc.[16]

The focus of the Convention on "discrimination" is wide. There is a theoretical example – "therefore a mother without disabilities that suffers discrimination on the basis of her child with disabilities (for example dismissal from work because the employer assumes the mother will take time off to care for her child) will be protected under the Convention".[17]

Shaping the meaning of disabilities and legal status of persons with disabilities, correct terminology emerged. It is correct to say persons with disabilities, whereas handicapped or physically or mentally challenged or ill are expressions regarded as incorrect.

Since there is a merge of a specific group and human rights *ratio,* specific general principles were adopted. First of them is participation - opportunity for persons with disabilities to raise issues and hold decision-makers accountable, as well as the participation of the NGO organisations. Although participation, is a general principle for implementation and interpretation of the Convention, participation is the Committee`s working method as well.

Specific form of participation is inclusion. Inclusion has the role of making persons with disabilities equal with all other persons and it begins since the early childhood. Persons with disabilities become more visible and persons without disabilities have the opportunity to learn and change from the experience of persons with disabilities – and vice-versa.

As the anti-discrimination convention in its roots, the Convention holds non-discrimination as the twofold general principle.[18] One kind of discrimination - direct discrimination – discrimination in law (for example, in legislation) or in fact (for example, refusal to admit a child with disability into a school on the basis of the disability); the other kind is indirect discrimination – measures that appear not to make any distinctions but in reality, discrimination occurs when applied to two people in different circumstances (a person with disabilities and a person without disabilities). Besides, it specifically accentuates discrimination against women with disabilities and children with disabilities.[19]

Accessibility emerged within the Convention as the general principle and as a right. The function of accessibility as a general principle is to enable persons with disabilities to live independently and participate fully in life. Thus it is described as an end in itself as well as a means to enjoy other rights.[20] Accessibility is relevant to a wide range of issues such as physical accessibility – buildings, transport, access to schools, access to courts, access to hospitals, access to the workplace etc.; information and communication accessibility (e-accessibility, importance of the internet access to information, accessibility to documentation (Braille) or to aural information (sign language) (Article 9).

14 Tijana Šurlan, Zastita pravila o zabrani diskriminacije – međunarodnopravni aspekt, u: Položaj i uloga policije u demokratskoj državi II – tematski zbornik radova, Beograd, 2014, pp. 9-26

15 Frederic Megret, The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?, Human Rights Quarterly, Volume 30, Number 2, May 2008, pp. 494–516.

16 Oddny Mjoll Arnardottir, Future of a Multidimensional Disadvantage Equality?, in: Oddny Mjoll Anardottir, Gerard Quin (eds.), The UN Convention on the Rights of Persons with Disabilities – European and Scandinavian Perspectives, Martinus Nijhoff Publishers, 2009, pp. 41-65.

17 Victor Santiago Pineda, Valerie Karr, Chavia Ali, Stephen Meyers, Ensuring Rights in Development – Implementing the UN Convention on the Rights of Persons with Disabilities, with selected case studies in the MENA region, Open Hands Initiative, 2011, pp. 14.

18 Curtis F. J. Doebbler, The Principle of Non-Discrimination in International Law, CD Publishing, 2007, pp. 6-7.

19 Rossemary Kayess, Phillip French, Out of Darkness Into Light? Introducing the Convention on the Rights of Persons with Disabilities, Human Rights Law Review, Vol. 8, No. 1, 2008, pp. 1–34.

20 Frederic Megret, The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?, Human Rights Quarterly, Volume 30, Number 2, May 2008, pp. 494–516.

Accessibility as a right is designed towards concrete rights. It must be ensured in relation to justice (article 13), to independent life and inclusion in community (article 19), in information and communication services (article 21), education (article 24), health (article 25), habilitation and rehabilitation (article 26), work and employment (article 26), adequate standard of living and social protection (article 28), participation in political and social life (article 29), participation in cultural life, recreation, leisure and sport (article 30).

There is a main scope of obligations that states parties to the Convention are obliged to undertake to ensure and promote full realisation of the Convention (article 4). There is another portion of obligation for each state party to the Convention in terms of awareness rising, such as to adopt immediately and provide effective and appropriate measures: (a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities; (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life; (c) to promote awareness of the capabilities and contributions of persons with disabilities, etc. (article 8).

As for the substantive rights, there are equality before the law without discrimination (article 5), right to life, liberty and security of the person (articles 10 and 14), equal recognition before the law and legal capacity (article 12), freedom from torture (article 15), freedom from exploitation, violence and abuse (article 16), right to respect physical and mental integrity (article 17), freedom of movement and nationality (article 18), right to live in the community (article 19), freedom of expression and opinion (article 21), respect for privacy (article 22), respect for home and the family (article 23), right to education (article 24), right to health (article 25), right to work (article 27), right to adequate standard of living (article 28), right to participate in political and public life (article 29) and right to participation in cultural life (article 30).

All these enumerated rights are under Committee`s monitoring as they are applied and implemented within the national legal system of each and every State Party.

COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

Organization

Committee on the Rights of Persons with Disabilities is a body of independent experts, serving in their personal capacity. Initially it was consisted of 12 members. After number of Convention ratifications (accessions) grew over 60, number of Committee members was changed into 18. Committee was constituted as quickly as the Convention itself was adopted, thus holding its first session already in February 2008.

Committee is deeply rooted in the UN system. It is by definition an independent body, when exercising its functions. On the other hand, the Committee has a duty to submit reports to the General Assembly and the Economic and Social Council on its work and accomplishments. Staff and facilities for the effective performance of the Committee, as well as meeting organization, provisional agenda for each session and the election procedure of members are provided by the Secretary General of the UN. Also, a Secretary General`s representative is to be present at all Committee`s sessions. Committee`s finances are also tightly linked to the UN. Committee is funded by the UN. Members of the Committee are awarded from the UN resources on terms and conditions as the UN General Assembly decide, bearing in mind importance of the Committee's duties and responsibilities. Status of Members of the Committee is also defined in terms of the UN stuff. Members are entitled to the privileges and immunities of experts on mission for the United Nations as defined in the Convention on the Privileges and Immunities of the United Nations. As the last information describing relationship between the Committee and the UN it should be mentioned that sessions are normally held at the United Nations Office at Geneva.

Criteria for the members nomination, as well as for the election of a Committee member, is directed according to two sets of conditions – one set of these conditions could be titled as usual or typical, such as high moral standing, recognized competence in the field covered by the Convention, representation of different parts of the world. The other set of conditions is to be titled as specific or subject matter oriented. It is oriented towards engagement of persons with disabilities themselves. Thus, the composition of the Committee combines expert oriented members from all around the world with disability characteristics. In that light methods of communication within the Committee itself are diverse. Besides language communication, display of text, Braille, tactile communication, large print and accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, etc. are recognized.[21]

21 Anna Bruce, Negotiating the Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities: Two Steps Forward, One Step Back, u: Gudmundur Alfredsson, Jonas Grimheden, Bertrand G. Ramcharan, Alfred Zajas (eds.), International Human Rights Monitoring Mechanisms – Essays in Honour of Jakob Th. Molller, Martinus Nijhoff Publishers, 2009, pp. 133.

Each member state is entitled to propose a list with nominations, though not obliged. Members are to be elected by secret ballot from a list of persons nominated by the States Parties at meetings of the Conference of States Parties, for a four years term.

As all the other treaty based committees, Committee of the Rights of Persons with Disabilities do keep inner structure of a Chairperson, three Vice Chairpersons and Bureau of the Committee. Inner Committee`s structure provides continuance of its work and representation of the Committee.

Together with the Convention, Rules of Procedure thoroughly prescribe in details procedural issues of Committees work. Since it is a legal act, designed and adopted by Committee itself, it leaves room not only toward the application of the Convention, but more importantly toward its interpretation. This remark should be especially kept in mind once when working methods are elaborated. It is worth mentioning that first Rules of Procedure were adopted in 2010 and renewed in 2014. It is still a document at the very beginning of its application, yet to be tested in practice.

Methods of work

Methods of work of each treaty based committee are designed according to the legal nature of a committee, that is somewhere in between a supervision body and a court.[22] Main method of work, for all committees as well as for the Committee for Persons with Disabilities is supervision over the implementation of the Convention.[23] But, as for the other universal human rights conventions that recognize several working methods, Convention on the Rights of Persons with Disabilities recognize only report submission as a duty of member states. From the perspective of a member state it is only one duty – a general duty to submit a comprehensive report on the implementation of the Convention, progress that is made and obstacles that a member state is facing. From the Committee`s point of view it is its general duty to review States' reports i.e. implementation of the Convention.[24]

Wording "general duty" should be properly understood. It is not just mere description, but rather a complex notion. Such a formulation has two implications – one is "a duty" as such in respect of the treaty law, as the outcome of the principle *pacta sund servanda*. Other implication of general duty implies duty of member states to respect, accept and fulfill all committee`s considerations, suggestions, recommendation. This is higher level of the obligation to cooperate. Thus, such a duty ultimately define Committee`s real capacity, strength and influence.

From the procedural point of view states parties are obliged to submit their first, initial report within two years after the entry into force of the convention, for the member state concerned.[25] After the initial report, duty of a member state is to submit subsequent reports every four years. Beside the presented calendar, the Committee is entitled to request additional reports or information when finds that it is necessary. Member state obligation is to comply with the request.

The Convention does not regulate composition of report. Thus it is on the Committee to define guidelines for member states. Reports are to be exhaustive, covering all legal system and all aspects of the legal status of persons with disabilities. Reports also should indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention. Subsequent reports should be less detailed and it should not repeat basic information elaborated in initial report.

Non-submission of reports is one of the major obstacles for successful performance of all treaty based committees.[26] The Committee for Disabled Persons is faced with the same problem. One of available measures to prevent and react to non-submission is notification by the UN Secretary General.[27] The other measure reflects the Committee`s power to transmit to the State party concerned a reminder concerning the submission of such a report or additional information and to undertake any other effort in a spirit of dialogue between the State concerned and Committee. Bitter experience with non-submission of all other committees emerged in a new measure for the Committee for Disabled Persons. Thus, if a State party is significantly overdue in the submission of a report the Committee is entitled to open an examination of the implementation of the Convention itself and to produce a report on the basis of reliable information available to the Committee. Still, the Committee may invite the State party to participate in such examination at any time.

If a state party still does not perform its duties, the Committee may include a reference on that occasion in its report to the UN General Assembly.[28]

22 Bertrand G. Ramcharan, The Fundamentals of International Human Rights Treaty Law, Martinus Nijhoff Publishers, 2011, pp. 25-31.
23 Wouter Vandenhole, The Procedures Before the UN Human Rights Treaty Bodies: Divergence or Convergence, Intersentia, 2004.
24 Elleonor Flynn, From Rethoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities, Cambridge University Press, 2011, pp. 22.
25 Serbia has been party to the Convention since July 2009 and it submitted its initial report in January 2012 .
26 Rodley Nigel, The Role and Impact of Treaty Bodies, u: Dinah Shelton (ed.), The Oxford Handbook of International Human Rights Law, Oxford University Press, 2013, pp. 621–648.
27 See: Ramcharan Bertrand G., Preventive Human Rights Strategies, Routledge, 2010.
28 *Op.cit.*

When a report is submitted, the Committee performs consideration of report. Consideration of report may include suggestions and general recommendations. Reporting procedure may consist of only two stages, but it can be expanded as well. After first set of suggestions and recommendations states may respond and explain or provide the committee with additional information, if asked so. On the other hand the committee may request further information from States Parties relevant to the implementation of the Convention.

Reports submitted by states are available to all States Parties to the Convention. Besides, states should make reports available to the public in their own countries, as well as suggestions and recommendations by the Committee.

Influence of the reporting procedure is strengthened yet in another circle of subjects that are to be informed - specialized agencies, funds and programs of the United Nations, and other competent bodies. They are presented both the state`s reports and the Committee`s suggestions and observations.

The founding idea, the mere concept of the Convention is based on the sincere and loyal cooperation between States Parties and the Committee. Thus, cooperation should prevail in their relationship. Cooperation is defined in the Convention as the assistance of a State Party to the Committee members in the fulfillment of their mandate. From the Committee`s side, the Committee should give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

International cooperation is particularly directed toward cooperation between states and specialized agencies, other UN organs that are tightly connected to the rights of persons with disabilities. Convention also directs the Committee to cooperate with other treaty based committees in the field of human rights.

Developing multileveled cooperation between states, committees and international organization it is possible to create a successful web for human rights protection. And as the final duty for the Committee, in a form of comprehensive overview of its work, it is obliged to submit report every two years to the UN General Assembly and to the UN Economic and Social Council on its activities. Within its report the Committee may make suggestions and general recommendations. These suggestion and general recommendations are product of Committee`s work and conclusion that have emerged through analysis of state`s reports. Thus suggestions and reports are directed toward all States Parties and in general they present instruction how to apply or interpret the Convention.

At this point of the overview of Committee`s working methods there is urging need to examine and properly understand difference between recommendations, general recommendations and general comments. Recommendations, as already elaborated, derive from the state`s reports. General recommendations, on the other hand, present synthesis of Committee`s conclusions derived from the examination of states reports.[29] This tool is prescribed in the Convention. Besides conventional norm (Article 39), there is also a rule, within the Rules of Procedure, defining more precise that general recommendations are based on information received through the reports and that they should be included in Committees reports to the General Assembly (Rule 46).

Rules of Procedure recognize yet another working method on behalf of the Committee. In the Rule 47, under the title *General comments and reporting obligations*, a new working method, that Convention do not recognize, is created. According to the rules of Procedure general comments are "based on the articles and provisions of the Convention, with a view to promoting its further implementation and assisting States Parties in fulfilling their reporting obligations". General comments are also included in the report to the UN General Assembly.

General comments present most interesting form of work of all treaty based committees. They are usually prescribed within the Rules of Procedure, with no ground whatsoever in the conventions, yet they are favorite method of work. Up to now the Committee on Persons with Disabilities has adopted two general comments - General comment No. 1 (2014), Article 12: Equal recognition before the law (April 2014) and General comment No. 2 (2014), Article 9: Accessibility (April 2014). Both general comments do interpret substantive law that has been prescribed within convention. Both are kind of essays, theoretical treaties, exposed at about 15 pages. Committee thoroughly explores the right, as it was prescribed in other conventions, explores point of view of other committees, before reaching its conclusion. Obviously there is huge difference between these two general comments as first general comments delivered by the Disabilities Conventions and first general comments adopted by committees that already have history of deliberation. Originally general comments were short notes, just clarifying procedural matters. Nowadays all general comments have grown into the powerful tools of convention interpretation. They can be at the same time welcomed and not welcomed. They do contain a portion of non-legality, since they can change nature of the original rule stipulated within a convention. Thus general comments do deserve special attention, from the point of the Committee members, but also from the side of persons with disabilities, non-governmental organizations and national institutions.

29 Tijana Surlan, Univerzalna medjunarodna ljudska prava – mehanizmi zastite, Beograd, 2014, pp.152-156.

Bearing in mind other committees experience, the Committee on the Persons with Disabilities, has adopted certain rules, within the Rules of Procedure, that precise Convention`s wording and provide working methods in more operative and more effective manner. For example, while the Convention stipulates submission of report as such, Rules of Procedure identify it in specific. Committee is to formulate in advance a list of issues in relation to initial reports and periodic reports submitted by States Parties. Simplification of the submission procedure prescribes that the Committee should set a limit on the number of questions posed, define focus of questions, while states should provide brief and concrete replies in no more than 30 pages.[30]

There is yet another novelty designed by Committee in the Rules of Procedure. It is another working method defined in the Rules of Procedure, modeled on other committee`s experience, although not rooted in the Convention itself. The follow-up procedure relies on the state`s report, Committee`s suggestions and recommendations and state`s implementation of suggestions and recommendations. Follow-up procedure is created as the model of super-supervision over the procedure of report submission. It is entrusted to one Committee`s member to serve as rapporteur to follow up whether and to what extent a state is fulfilling its duties (Rule 75).

PROCEDURE UNDER THE OPTIONAL PROTOCOL

There is strong argumentation that success of the Convention on the Rights of Persons with Disabilities rests on system of reports submission – as the only working method of the Committee. All other methods, well known to other treaty based committees, are incorporated within the Optional Protocol. As previously said this legal act gained significantly less support then the Convention itself. It is not difficult to come with the conclusion that character of duties and scope of Committee`s powers are the main reason for such an outcome.

Optional Protocol does not provide with new substantive rights or duties on behalf of the States Parties. It is formulated solely with improvement of working methods and competences of the Committee. Thus Committee`s supervision remains focused on the Convention.

Main competence of the Committee, according to the Optional Protocol "is to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention" (Article 1).

Who is entitled to submit a communication proves to be of the utmost importance for the implementation of the Convention. While at the first glance it may look as a pure procedural issue, in practice it turns to be of quite an importance. Yet, there is a history of the entitlement. At the very beginning of individual communications recognized before the Committee on Human Rights, only the individual whose right has been violated was entitled to submit a communication. Neither the Committee on Human Rights itself, nor the International Covenant on Civil and Political Rights recognized any kind of relationship with NGO`s, or cooperation whatsoever.[31] It didn`t recognize them as equal partners in the promotion and protection of human rights. Gradually that relationship changed, starting cooperation. Why is this important? If the individual is not willing to submit a communication, while he is the only one entitled, there is no mechanism to react to the violation of the Convention and the system cannot be improved. The function and task of each communication is twofold - to compensate the individual whose right is harmed and to provide more general conclusion, and through each communication to improve implementation of the Convention.

In that light, the Optional Protocol on the Rights of Persons with Disabilities provides entitlement both to individuals and to groups of individuals. A group of individuals is not defined, but in practice it would most likely be an NGO`s. *Raison d`etre* of all NGO`s is promotion and protection of individual rights. Through the communication procedure there is a room for them to act either toward protection of a right of an individual or toward more appropriate implementation or interpretation of the norms.

Principles governing communication procedure are similar to the judicial procedure. Thus, it is usually described as quasi-judicial. After communication has been submitted the Committee should consider its admissibility. The Optional Protocol lists inadmissibility criteria such as anonymous communication, abuse of rights on the submission of communication, incompatibility with the provisions of the Convention, subject matter already examined by the Committee, domestic remedies not exhausted, manifestly ill-founded communication or non-compatible time frame (moment of rights violation and moment of entry into force Convention or Protocol).

Similarly as in the judicial procedure, a state that is subject of the communications is to be informed by the Committee on the circumstances of the communication, with the duty of explanation, clarification and

30 See: Wouter Vandenhole, The Procedures Before the UN Human Rights Treaty Bodies: Divergence or Convergence, Intersentia, 2004.

31 Tijana Šurlan, Univerzalna medjunarodna ljudska prava – mehanizmi zaštite, Beograd, 2014, pp.75-76.

potentially remedy. A state has period of six months to undertake appropriate measures. On the other hand, the Committee has the right and the power to urge a state to take an interim measure if it finds it necessary to avoid irreparable damage.

After a state has expressed its views on the communication, the Committee examines communication and formulates its findings, accompanied with suggestions and recommendations if any. Findings are not judgments and they are not legally binding. But, there is a presumption that a state will take it seriously and act accordingly to the recommendation. The presumption is grounded on the duty for a State Party to imply the Convention and the Optional Protocol in whole, which means that a State Party is also obliged to accept and imply instruction issued by the Committee. Thus, acting accordingly to the Committee`s finding is an obligation that a state has obliged itself to at the moment of the ratification (accession) of the Convention and the Optional Protocol.

Yet, there is an overwhelming understanding that a communication procedure and its outcome should not be, in any terms, understood as a kind of a judicial procedure. The idea that the Committee is not replacement for a court is underlined in the terminology. An individual submits *a communication*, the committee delivers *findings*, not a complaint and a judgment. Duty to respect the findings and act accordingly comes as the legal obligation deriving from the *pacta sund servanda* principle. Duty to respect and act accordingly to the judgment of a court of law stems from the court`s authority and its legal position.

The Committee on the Rights of Persons with Disabilities is empowered with one another competence. The Committee may, when informed with reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, open a procedure of examination of the information. The Committee should invite that state to cooperate in the process of examination and clarification of the situation. Procedure of examination of allegations may be entrusted to a member of the Committee in the form of inquiry and urgent report to the Committee. If the state cooperates inquiry may include a visit to its territory. The outcome of this procedure is also elaborated in the form of findings, supplied with comments and recommendations.

In such a case, when a violation is gross, powers of the Committee are strengthened with one more tool. A state is usually given a period of six months to react and submit its observations to the Committee. If a state is not cooperating, the Committee may invite it to inform the Committee of the measures undertaken according to the findings.

While the procedure in the case of gross violation of the Convention has not yet gone through the test of practice, procedure on the individual communication has already been applied. Up to now several procedures has been completed. Subject matters were various, such as refusal to grant building permission for the construction of a hydrotherapy pool for the rehabilitation of a person with a physical disability on grounds of incompatibility of the extension in question with the city development plan[32], redundancy procedure of the author as an employee with diabetes mellitus (type 1 diabetes)[33], failure by the State party's authorities to eliminate discrimination on the ground of disability by a private credit institution and to ensure that persons with visual impairments have an unimpeded access to the services provided by ATMs on an equal basis with other clients[34], failure by the State party to eliminate discrimination on the basis of disability, and to respect the obligation to guarantee to persons with disabilities political rights, including the right to vote, on an equal basis with other citizens[35], denial of house arrest, detention conditions, access to medical care and timely, suitable rehabilitation services[36].

As the general assessment it can be stated that Committee`s performance in the procedures on individual communication has been successful. Individuals do recognize the committee as the functional body. Such a score, no doubt, is to be attributed to all other committees that have been prior to this one already performing and educated international community on its functionality and successfulness in individual procedures. Yet again, future of this Committee will also be connected with the future position and organization of all other committees.

32 Communication No. 3/2011 from 6 December 2010, Individual against Sweden, Views adopted by the Committee at its 7th session, 16 to 27 April 2012.
33 Communication No. 6/2011 from 25 May 2011, Individual against United Kingdom of Great Britain and Northern Ireland, Decision adopted by the Committee at its eighth session, 17 to 28 September 2012
34 Communication No.1/2012 from 11 March 2010, Individuals against Hungary, Views adopted by the Committee at its ninth session, 15-19 April 2013.
35 Communication No.4/2011 from 22 June 2012, Individuals against Hungary, Views adopted by the Committee at its tenth session 2–13 September 2013.
36 Communication No. 8/2012 from 22 June 2012, Individual against Argentina, Views adopted by the Committee at its elenth session 31 March – 11 April 2014.

APPRAISAL OF THE COMMITTEE`S ROLE ON THE PROMOTION OF RIGHTS OF PERSONS WITH DISABILITIES

Committee`s main task and *raison d`etre* is promotion of rights stipulated in the Convention.[37] Although such a task, duty or rights have not been formulated as such in the Convention, each entitlement is directed exactly in that direction. Main manner for accomplishment of such a task is not vague or self-defined. It is very precise and it finds its framework in the duties of states parties to implement the Convention. Thus, although the Committee is independent body created within the Convention it is deeply connected to the acts of States Parties. From the other point of view, same thought can be formulated somewhat differently. Success of the Committee rests entirely on the cooperation of states parties with it. If States Parties are cooperative, the Committee would be able to promote rights of persons with disabilities. If they are not, the Committee is not empowered to force them or to undertake some individual gestures directed toward promotion.[38]

Such a position of the Committee is understandable, since States Parties did not intend to create a body that would be authorized to act against states. Plus, the Committee on the Rights of Persons with Disabilities has been organized and entitled completely in the manner of the prevailing committee `s competences and powers. System of the report submissions has been proved as non-successful, in general. It turned to be burden for States Parties, especially if we keep in mind that, at the moment, states are about to submit reports to ten committees. Bad experience nevertheless influenced simplification of the report submission procedure, longer terms between two reports and informing only on novelties in consecutive reports. The biggest failure of report submission procedure happened to be states unconcern for suggestions and recommendations formulated in findings.[39]

Thus, criticism of such a system and awareness that deep and systematic reorganization is needed did influence the structure of the Committees powers and its working methods.

But, as already underlined, there is one method that has emerged in the meanwhile.[40] To repeat once again, general comments were not stipulated within the Convention, but only within the Rules of Procedure. Thus, the Committee itself has created new working method and provided itself with a powerful tool. It is completely in the Committee`s power to use it whenever it want to and to design it according to its understanding. It is the only method of Committee`s work that is not following either motion of a state or an individual (a group of individual). Subject-matter of general comments is the Convention, crystallization on how to apply, understand or interpret a norm stipulated in the Convention.[41]

Described in critical manner, general recommendations are double sided.[42] They can truly contribute to better understanding of the rights of disabled persons and promote application of convention, when applied *bona fide*. On the other side, there is open space for arbitrariness and misuse of competences. Legality and real power of general comments, applied by all human rights committees is yet to be examined.[43]

The most powerful tool for promoting rights of disabled persons is through the procedure of individual communications. Very close to judicial procedure, the Committee has the opportunity to influence on how to apply, how to interpret and what is to be improved within the national system. Thus, an individual communication solves one violation of a right in particular, but also addresses in findings toward the state with suggestions and recommendations for improvement. Individual communications, as part of the Optional Protocol, could be employed to limited extent, but yet again suggestions and recommendations could be directed toward all state parties to the Convention.[44] Findings elaborated through communication procedures have the potential to create specific kind of "jurisprudence" in terms of human rights committees, strengthening the role in promotion of the rights of disabled persons.

37 See: Ramcharan Bertrand G., Preventive Human Rights Strategies, Routledge, 2010.
38 Rodley Nigel, The Role and Impact of Treaty Bodies, u: Dinah Shelton (ed.), The Oxford Handbook of International Human Rights Law, Oxford University Press, 2013, pp. 621–648.
39 Kalin Walter, Examination of state reports, u: Helen Keller, Geir Ulfstein (eds.), UN Human Rights Treaty bodies: Law and Legitimacy, Cambridge University Press, 2012, pp. 16–72.
40 Bertrand G. Ramcharan, The Fundamentals of International Human Rights Treaty Law, Martinus Nijhoff Publishers, 2011, pp.61-65.
41 Tijana Surlan, Univerzalna medjunarodna ljudska prava – mehanizmi zastite, Beograd, 2014, pp.129 – 130.
42 Tijana Surlan, Rad Komiteta za eliminaciju svih oblika diskriminacije žena – nadzorne ili kvazi sudske funkcije, NBP Zurnal za kriminalistiku I pravo, Vol. XIX, No. 2, 2014, pp. 57-74.
43 Blake Conway, Normative Instruments in International Human Rights Law: Locating the General Comment, Centre for Human Rights and Global Justice Working Paper, No 17, 2008, str. 2–38; Hellen Keller, Leona Grover, General Comments of the Human Rights Committee and their legitimacy, u: Helen Keller, Geir Ulfstein (eds.), UN Human Rights Trety bodies: Law and Legitimacy, Cambridge University Press, 2012, pp. 116–198.
44 Geir Ulfstein, Individual Complaints, u: Helen Keller, Geir Ulfstein (eds.), UN Human Rights Treaty bodies: Law and Legitimacy, Cambridge University Press, 2012, pp. 73–115.

CONCLUSION

The Committee is structured in the usual manner, but monitoring methods are designed upon the experience that international society already has drawn from previous treaty-based committees. An *ad hoc* committee, while preparing the Convention on the Rights of Persons with Disabilities, did bear in mind obstacles already recognized. Its goal was to provide a Committee that would be efficient, proactive, accessible, and consistent.

Although a pattern to organize a committee to monitor implementation of a single human right treaty was common, throughout the negotiating process for the Convention on the Rights of Disabled Persons, NGO`s and some states favored that model, while others were of opinion that it would be better if an already existing body undertakes monitoring of the new convention as well. Ground for deliberating such a basic issue was general need to reform the monitoring system in human rights law area.

What do we not know at the moment is how the reporting procedure will be fulfilled. It is structured in the usual and well known manner. We also know that the reporting system has proved not to be successful – in general terms. The Committee for persons with disabilities is still new, there is not enough experience for conclusions on success. It has just entered into force; 4 years ago – for 60 states, and there are at the moment 150 states members. This means that there is a huge amount of reports in front of the Committee to consider, with just two regular sessions per year and the Committee consisting of 18 persons.

At the very end of this analysis, it is worth mentioning once again that true respect and promotion of all human rights and especially rights of persons with disabilities, rests on true will of states parties and their devotion to the ideas and values stipulated within the Convention.

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DIGITAL IMAGE FORGERY IDENTIFICATION

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Abstract: Digital image forgery does not differ significantly in its nature compared to ordinary image forgery. Instead of using photograph, digital image forgery refers to digital graphics technology. The process of creating fake image has become easier with the use of appropriate graphics editing software such as Adobe Photoshop, GIMP and Corel Paint Shop, some of which are available for free. There are many different forms of digital image manipulation. All of these forms can be categorized into several basic groups, based on the process involved in creating fake image. This paper aims to discuss general approaches of digital image forgery identification and point out their most important characteristics.

Keywords: digital image forgery, classification, image tampering, identification.

INTRODUCTION

Images are intrinsically different from text, and as such, they serve as an efficient and straight-forward form of communication between humans, since their content is easy to comprehend. Both in historical, as well as traditional terms, visual data is seen as having integrity, e.g. images published in the newspaper columns are generally taken to be standing for the reliability of the given news, or in a similar instance, recordings made by video surveillance are suggested as probationary material in front of a court of law.

Today there is an array of instruments available for the easy capturing of visual material, which gives people a cheap and simple way of recording, storing, and sharing a great number of digital images. It is also to be pointed out that there are numerous image editing software tools that make it easy to modify the image contents, create new images, which in turn means that it is no longer only experts who can tamper with or counterfeit visual material. Moreover, technology today has enabled the creation of photorealistic computer graphics which are barely distinguishable for viewers from original photographic material as well as the generation of hybrid generated visual content.

To sum up, currently a visual digital object can make its way through a number of processing stages during its lifetime, starting from when it is taken up to its full fruition, with the aim of improving the quality, creating new content by mixing preexisting material, or even tampering with the content. The consequence of the previously listed facts is that there is an increasing number of images emerging which have been tampered with in various fields of application, leading to the erosion of trust in images made by today's digital technology. The ever-growing sophistication of the processing tools will only worsen the current condition.

This situation underlines the necessity for methods enabling experts to reconstruct the history of a digital image so as to confirm the reliability and evaluate its quality. There are two issues to be addressed in connection with the history and credibility of an image: Can we confirm the device, which the image is claimed to have been taken with? Does the image still show the photographed original scene? The initial question is crucial in terms of what the source is when the image becomes evidence, e.g. the device the image was made with or the person it was made by; the second question is more of general interest type. The answers to these two questions are easy to come by when the original image is known. However, in practical cases, there is hardly any initial information available regarding the original image. Thus, the task of the investigators is the blind authentication of the image history.

To achieve appropriate solutions, the researchers interested in multimedia content security have proposed several approaches that can be in general classified into active and passive technologies. By "active" we mean that for the assessment of reliability, some information that has been computed at the source side (i.e. in the camera), during the acquisition step, is exploited, whereas with the term "passive," a solution which tries to make an assessment only having the digital content at disposal is to be intended (Piva A (2013)).

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IMAGE FORGERY CLASSIFICATION

Three types of forgery can be identified (Messina G (2009)):

– Forgery created using graphical software

– The content has been altered - Duping the recipient into believing that the objects in an image are something else from what they really are. The image itself is not altered, and if examined will be proven as so. Example: In November 1997, after 58 tourists were killed in a terrorist attack at the temple of Hatshepsut in Luxor Egypt, the Swiss tabloid Blick digitally altered a puddle of water to appear as blood flowing from the temple.

– The context has been altered - Objects are to be removed or added, e.g. a person can be added or removed (Figure 1.).

The easiest way is to cut an object from one image and insert it into another image – copy & paste. By manipulating the content of an image the message can drastically change its meaning.


INTERNET

Spies turn to high-tech info ops

PCs, Internet used for manipulating images, public opinion

ALTERED IMAGE

BY DANIEL VERTON

Federal intelligence agencies are studying ways to use computers and the Internet, rather than just leaflets and radio broadcasts, to shape and disseminate information designed to sway public opinion in the world's hot spots.

As part of its so-called "perception management" program, the intelligence community has for decades created misinformation to trigger political change without direct political or military involvement in countries where the United States has vested interests, such as Iraq and North Korea.

Acting on congressional recommendations to bolster research and development in information technology, intelligence agencies are turning to PCs to develop more sophisticated means of manipulating and delivering digital photos, video clips and recorded sound to portray fictitious events in hopes of provoking desirable outcomes.

Altered Egos

The top photo, of a fictitious meeting between President Clinton and Saddam Hussein, was generated by digitally altering and combining elements from three photos, shown below the altered image. Intelligence agencies plan to use similar techniques to create images and then disseminate them via the Internet in their efforts to influence events in foreign countries, such as Iraq.

Figure 1 *Image forgery – altered context*

Altering images – The concepts have moved into the digital world by virtue of digital cameras and the availability of digital image editing software. The ease of the use of digital image editing software, which does not require any special skills, makes image manipulation easy to achieve.

JPEG STANDARD

JPEG (Joint Photographic Experts Group) is an international compression standard for continuous-tone still image, both grayscale and color. This standard is designed to support a wide variety of applications for continuous-tone images. Because of the distinct requirement for each of the applications, the JPEG standard has two basic compression methods. The DCT (Discrete Cosine Transform)-based method is specified for lossy compression, and the predictive method is specified for lossless compression. A simple lossy technique called baseline, which is a DCT-based methods, has been widely used today and is sufficient for a large number of applications (Huang JD (2008)).

JFIF (JPEG File Interchange Format) stands for a standard which defines:

- Component sample registration
- Resolution and aspect ratio
- Color space

ExIF (Exchangeable Image File Format) allows integrating further information into the file.

The information usually contained into a standard ExIF are (Figure 2.): dimensions of the image, date and time of acquisition, features about acquisition (exposure-time, exposure bias, F-number, aperture, ISO, focal length, GPS coordinates etc.), thumbnail preview (a small picture which would be equal to the original picture). The ExIF information check has demonstrated the possibility of immediate forgery detection. In effect, if the constructor is known, several ExIF data must match the fixed values (Messina G (2009)).

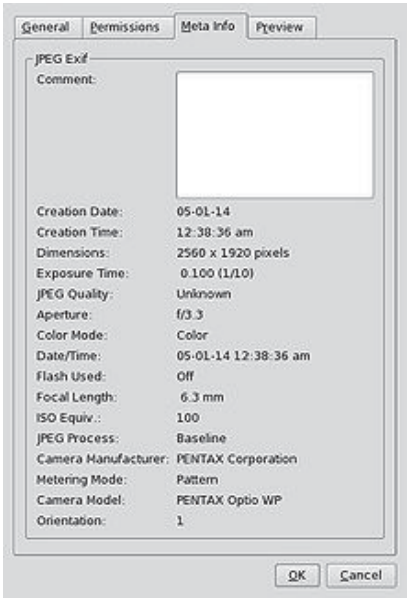

Figure 2 *ExIF information*

Using the available image the thumbnail can be extracted through simple ExiF tools, web sites or open source codes, like: JPEGSnoop, Jhead, Camera Summary and Jeffrey's Exif Viewer. These tools permit the identification of the data that have not been removed by inexpert users.

JPEG COMPRESSION

According to Figure 3 converting an image into JPEG is a six-step process (Messina G (2009)):

1) The image is converted from raw RGB data into YCbCr - The Y component represents the brightness of a pixel, the Cb and Cr components represent the chrominance (split into blue and red components).
2) A downsampling is performed on chrominance channels.
3) The channels are split into 8x8 blocks.
4) A DCT is applied.
5) The DCT coefficients are quantized using fixed tables (the main lossy operation in the JPEG process).
6) An entropy coding (lossless compression) is applied and the image is said to be JPEG compressed.

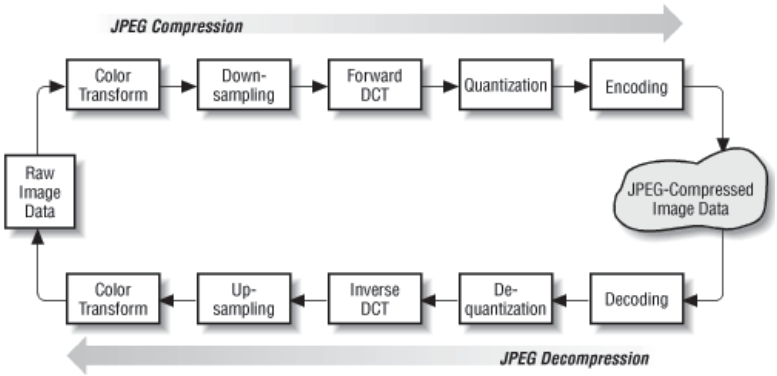

Figure 3 *JPEG (de)compression*

CLASSIFICATION OF IMAGE FORGERY DETECTION TECHNIQUES

There are two categories of digital image forgery detection techniques: the active and passive approach (Figure 4). In the case of the active approach, there is a need for some pre-processing with digital images, e.g. watermark embedding or signature generation at the time of creating the image, thus limiting their practical application. Further, the Internet contains a lot of digital images that have no digital signature or watermark. Given such a situation, it is not possible to use the active approach in order to determine the authentication of an image. As opposed to the watermark-based and signature-based method, the passive approach requires no digital signature generated or watermark embedded in advance.

Passive techniques for image forensics operate in the absence of any watermark or signature. These techniques work on the assumption that although digital forgeries may leave no visual clues that indicate tampering, they may alter the underlying statistics of an image (Gomase PG, Wankhade NR (2014)).

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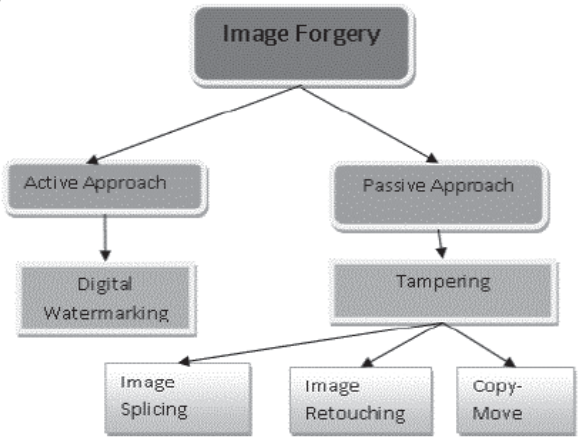

Figure 4 *Classification of image forgery detection techniques*

Almost all state-of-the-art tampering detection techniques aim at compositing operation. With an adequate image editing tool (e.g. Photoshop), compositing tampered images is much easier and can result in much more realistic images. It always involves the selection, transformation, composition of the image fragments and the retouching of the final image (Ng T T, Chang S F, Lin C Y & Sun Q, 2006). It is important to emphasize that a tampered image means that part of the content of a real image is altered. This concept does not include those wholly synthesized images - images completely rendered by computer graphics or by texture synthesis. In other words, an image is tampered implies that it must contain two parts: the authentic part and the tampered part (He J, Lin Z, Wang L & Tang X (2006)).

The past few years have seen the growth of research on passive digital image tampering detection which can be categorized at three levels (Wang W, Dong J & Tan T (2009)):

1) Low level - Methods at this level use statistical characteristics of digital image pixels or DCT coefficients. For example, demosaicing or gamma correction during the image acquiring process will bring consistent correlations of adjacent pixels, whereas tampering will break up this consistency. Investigating double JPEG compression for tampering detection is an example of using statistical characteristics of DCT coefficients. Using a model of authentic images which tampered images do not satisfy for tampering detection also belongs to this level. In short, no semantic information is employed at this level.
2) Middle level - At this level,we detect the trace of tampering operation which has some simple semantic information, like splicing1 caused sharp edges, blur operation after splicing and inconsistencies of lighting direction, etc.
3) High level, i.e. semantic level. Actually, it is very hard for a computer to use semantic information to do tampering detection because the aim of tampering is changing the meaning of image content it originally conveyed. But, sometimes it still works.

The set of image forensic tools can be roughly categorized into five categories (Farid H, 2009):

- Pixel-based techniques detect statistical anomalies introduced at the pixel level. This category includes the following techniques: cloning (copy/paste portions of the image to conceal a person or object in the scene), re-sampling (re-size, rotate or stretch portions of an image), splicing (digital splicing of two or more images into a single composite) and statistical (exploit statistical regularities in natural images to detect various types of image manipulations).
- Format-based techniques leverage the statistical correlations introduced by a specific lossy compression scheme. This category includes the following techniques: JPEG quantization (standard JPEG compression scheme), double JPEG (the manipulated image is compressed twice) and JPEG blocking (Because each 8 × 8 pixel image block is individually transformed and quantized, artifacts appear at the border of neighboring blocks in the form of horizontal and vertical edges. When an image is manipulated, these blocking artifacts may be disturbed).
- Camera-based techniques exploit artifacts introduced by the camera lens, sensor or on-chip post-processing. This category includes the following techniques: chromatic aberration (light passes through the lens and is focused to a single point on the sensor), color filter array (capturing color images using a color filter array (CFA), camera response (differences in the response function across the image are used to detect tampering) and sensor noise (modeling of processing (quantization, white balancing, demosaicking, color correction, gamma correction, filtering and JPEG compression) with a generic additive noise model, and use statistics from the estimated noise for image forensics).
- Physically-based techniques explicitly model and detect anomalies in the three dimensional interaction between physical objects, light, and the camera. This category includes the following techniques: light direction (2-D), light direction (3-D) and light environment (the lighting of a scene can be complex – any number of lights can be placed in any number of positions, creating different lighting environments).
- Geometric-based techniques make measurements of objects in the world and their positions relative to the camera. This category includes the following techniques: principal point - In authentic images, the principal point (the projection of the camera center onto the image plane) is near the center of the image. When a person or object is translated in the image, the principal point is moved proportionally. Differences in the estimated principal point across the image can therefore be used as evidence of tampering. Metric measurements (several tools from projective geometry that allow for the rectification of planar surfaces).

The copy move forgery is one of the difficult forgeries. This is the most common kind of image tampering technique used, where one needs to cover a part of the image in order to add or remove information. Copy-Move is a special type of image manipulation technique in which a part of the image itself is copied and pasted into another part of the same image. Image-splicing is defined as a paste-up produced by sticking together photographic images. In a copy-move attack, parts of the original image is copied, moved to a desired location, and pasted. Detecting copy-move in an image indulges broad search of local pattern or region matches (Gupta A, Saxena N & Vasistha SK, 2013).

DIGITAL IMAGE FORENSIC TOOLS

Sometimes forensic investigators need to process digital images as evidence. There are different tools available; however it is difficult to deal with forensic analysis with a lot of images involved. Images contain a great number of information. A digital image forensic tool extracts this information from provided images and displays them in the form of practical report.

The majority of the available software for the analysis of digital image forgery identification has the capabilities as listed below[3]:

– File digest (a short digital summary of a file) – During evidence evaluation, an analyst needs a method for the confirmation of the correct data. This ensures that the correct file is analyzed and not some, possibly modified file variant. A file can be summarized in various ways. The methods most often used are based on meta properties (the type of file e.g. PNG or JPEG, file size, and picture dimensions) and cryptographic checksums (A single file will always generate the same hash value. Any minor change to the file will cause a significantly different result).

– Error Level Analysis (ELA) - ELA identifies areas within an image that are at different compression levels. With JPEG images, the entire picture should be at roughly the same level. If a section of the image is at a significantly different error level, then it likely indicates a digital modification.

3 FotoForensics. http://fotoforensics.com/, November 2014

– Estimate JPEG quality - JPEG images use a variable quality level to control the amount of compression. The JPEG quality is typically not stored in the metadata. There are ways to estimate the JPEG quality level last used to save the image.
– MIME Information - Multipurpose Internet Mail Extensions (MIME) is a standard to describe content type of a file. MIME is detected using magic number inside the image. Magic numbers implement strongly typed data and are a form of in-band signaling to the controlling program that reads the data type(s) at program run-time. Many files have such constants that identify the contained data. Detecting such constants in files is a simple and effective way of distinguishing between many file formats and can yield further run-time information. The image MIME type is detected to know the image type dealing with, in both contacted (example: image/jpeg) and extended form[4].
– Metadata Analysis - Most image files are not composed of solely a picture. Information (metadata) about the picture is also included. Metadata provides information about the pedigree of a picture, including the type of camera used, color space information, and application notes. Although metadata fails to identify the exact changes made to the picture, it can be used to identify attributes, inconsistencies, additional sources, edits, timelines, and a rough sense of how the image was managed. There are many different types of metadata. Some types are only generated by cameras. Other types are created by specific applications. The most common types of metadata: File, EXIF, Maker Notes, IPTC, ICC Profiles, XMP, PrintIM.
– GPS Localization - Embedded in the image metadata sometimes there is a geotag, a bit of GPS data providing the longitude and latitude of where the photo was taken, it is read and the position is displayed on a map.

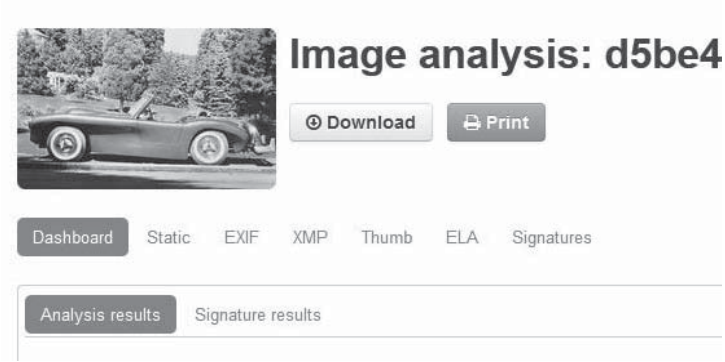

Figure 5 *User interface - example*

CONCLUSION

Digital image tampering detection is increasingly becoming a necessity. There are numerous techniques, this paper presents but a few of them, which portray the difference facets of digital image tampering detection. This overview shows how the majority of tampering detection methods intends to detect inconsistencies in an image. While a number of these techniques prove to be highly promising and innovative, there are certain limitations and neither of them provides a definitive solution.

This paper discusses the various techniques and classification of different image forgery detection. The main goal of the research in this field is the development of a tool, which has to be a combination of different techniques, enabling the detection of forgeries, considering the sum of the collected information. The developed methods have proved to be promising, though further research in this area is still called for.

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UDC: 343.9.018:004.421

PREDICTIVE ANALYTICS IN POLICE WORK

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Abstract: The paper represents a predictive analytics concept with all its features, phases in concept implementation, resource, advantages as well as benefits of applying concepts in police work and its realization. At the time when available funds in public budgets are drastically decreasing and requests set upon state administration are increasing, governments of many countries are forced to find new decision making models and use them to reform traditional point of view of the manner on which public sector provides services to its citizens. State authorities are seeking solutions to decrease operational costs and simultaneously relieve itself of a large number of requests and cases in process, achieving better productivity and efficiency. Nowadays it is a basic task set upon contemporary and well organized police.

On the other hand, the speed of modern technology is constantly increasing, growing the risks that kind of development entails. The manner that data are being stored and exchanged nowadays, among state authorities, by using modern informatics solutions, also represents a great risk to state's available data security. Additionally, data is daily exponentially increasing, making it hard for traditional tools to gather useful information out of plenty unnecessary details. The amount and variety of unstructured and raw data represent a huge problem, unless the state provides a strong technological infrastructure for manipulating those data, as well as come up with a plan and purpose for their precise usage. The amount of data used in investigations and in process of proving a criminal act overcomes human analytical possibilities. Therefore, the analyses of all possible data of a certain criminal act with software tools that are now at disposal to police officers represent a great challenge to both program designers and end users. Results obtained at making inquiry to the system during the investigation phase and gathering evidence phase are useful from the aspect of efficiency in police acting preventive and operational.

Keywords: statistics, crime, police, predictive analytics, data.

INTRODUCTION

Predictive analytics is an area of analytics based on the selection and creation of useful information from existing data in order to identify the causes of certain phenomena, and thus anticipate future events and detect certain tendencies. Predictive models are used in a multitude of statistical techniques and they serve to describe future events or events on which otherwise there is no reliable knowledge. Such describing is performed by software for "data mining" which via loaded algorithms and data about events that have already occurred gives a prediction of what will happen in the future.

As an extremely fast and reliable way to detect risks and opportunities, predictive analytics is being widely used in the modern world. It has become almost indispensable in certain areas of applied mathematics, marketing, services in finance, insurance, telecommunications, real estate market, healthcare and pharmaceutical industries. Today, it is increasingly conquering field of state administration, especially that part which deals with security. Predictive analytics has become a modern policing tool in the fight against crime. "Predicting and preventing" instead of solving already committed offence has become an effective way of nowadays police to respond to their main task - increasing public safety and protecting citizens.

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PREDICTIVE ANALYTICS – ANTICIPATE AND ACT

The main objectives of predictive analytics are predicting potential criminal acts by using existing data, resulting in a reduction of crime rate, time-saving and cost reduction. The objectives of predictive analytics are based on the following:

- predict an event that could turn into a criminal offence
- provide information to the right place at the right time
- take advantage of data sources on crime and incidents, including reports of events, witnesses' statements, emails and social media
- improve the budget allocation and planning by predicting safety of interesting events that could follow next day, next week or next month.

Several cities in Canada, Northern Ireland and the United States, known for their developed intelligence and security systems, entrusted the work to computer software that, based on the analysis of the provided data, inter alia, from previous experiences, enables identification of hot spots or potential crime scenes to which police patrols are sent, thus preventing the commission of an offence.

Data analysis is the brain of public security. The aim of the intelligence activity is for security threats to be detected on time in order to take action to prevent their realization. Models of these threats are hidden in the "forest" of data. Predictive analytical solutions use statistical data (Data exploration and machine learning) about previous events which help find hidden models and trends in criminal activity. Using predictive analytics, it is easier and more reliable to determine which type of intervention will be required and in what place. In a word, it opens up the possibility of planning instead of reacting and accordingly the optimal use of resources.

ADVANTAGES OF PREDICTIVE ANALYTICS

1) More successful spotting of the phenomena
2) Defining priorities
3) Monitoring progress
4) Disclosure of forms
5) Pairing data and making connections between them
6) Optimization of work processes and modes of action
7) Creating a better understanding of the types and relationships of the observed phenomenon
8) Identifying tendencies that can lead to damage before it occurs
9) Achieving improvements in cooperation and control
10) Applying the logic of the system of case management

PHASES OF PREDICTIVE ANALYTICS

1. Gathering and connecting data

The first and most important step is to collect all relevant data. A large number of data could be classified among disorganized or unstructured data because they do not exist in the established (standardized) model. Nevertheless, these data are very important. Non standardized data are considered to be emails, text messages, audio and video files, newspapers and the like. One of the advantages of predictive analytics is the ability to standardize such data and incorporate them into the analysis program as part of the mosaic.

2. Converting unstructured data into insight

As a next step a "normal" or habitual behavior must be defined. The definition of "normal" behavior helps to identify behaviors that deviate from it. It can be accessed in three ways:

a) **prediction** reveals the possible relationships and patterns from previous data, determines causes, behavior and characteristics that could affect their recurrence

b) **connection / associating** identifies events that occur in synergy and by displaying a series of events, determines / predicts what kind of action could be followed

v) **grouping** brings together the events that have similar features.

3. Presentation of insight in the form of the action

Insight gained through predictive analytics is useful only if it is understandable and user-friendly to those who act upon it. Solutions presented by graphs, statistical models and mapping produce results in a way that is clear and cost-effective and takes place in real time.

Predictive analytics can identify unusual behavior, even if there are small differences hardly noticeable by using other methods. Using the technique of predictive analytics it is possible to explore and learn from all dimensions of data, which allows the analyst to combine knowledge, experience and intuition directly in the application of analytical techniques.

Predictive analytics has the ability to combine a wide range of data which contributes to reliable and rapid identification and detection of reckless actions of perpetrators of criminal acts.

By centralizing information and analyzing crime in the past and the present, studying the data and model, the police have a better view of where crime is increasing, which allows directorates to deploy police officers in these areas and prevent the commission of criminal acts.

For example, burglars often commit criminal acts at certain time and certain place, some of these perpetrators have predictable patterns of commiting criminal offences, and events usually happen near homes of these perpetrators or locations in which their families live. In addition, property crimes do not fall into events that are relocated outside a certain place, which means that criminals will not simply go to another location to commit a criminal offence. From this simple example it can be concluded that based on the processed and collected data about them, potential hot spots for carrying out burglaries can clearly be spotted.

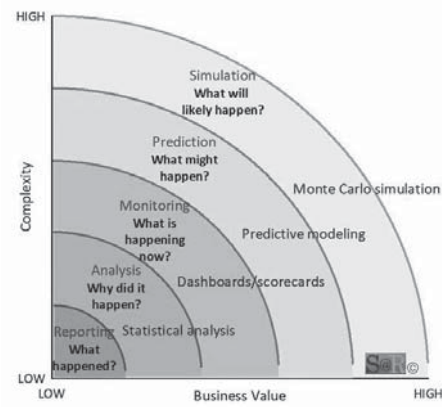

Figure1 *Concept of predictive analytics in phases*

POLICE EXPERIENCE IN USA

In 2006 the US Company IBM first used the software for predictive analytics (Blue CRUSH - Criminal Reduction Utilizing Statistical History) for the purposes of Memphis Police, in the US state of Tennessee. Today, that software is used in ten cities of the United States and in Great Britain.

Practical case no. 1 - Memphis, Tennessee

Memphis Police use IBM SPSS predictive analytics[2]/ software to improve their overall functioning and achieve a reduction in crime rates and the expansion of the territory in their jurisdiction without increasing the number of employees. Blue CRUSH integrates statistical models and analysis with Geographic Information System – GIS enabling police officers to obtain important information for further acting.

The program reduced the crime rate by 30%, in Memphis from 2006 to 2010 and investment recovery was performed on annual level for 863%, including direct and indirect benefits.

Practical case no.2 - Richmond, Virginia

Using IBM SPSS in the period from 2006 to 2007, police in Richmond had reduction in homicides by 32%, rape by 20% and bullying by 18%. Unsolved murder cases from 1989 were resolved in just a few days by using IBM (Crime Information Warehouse Solution).

2 / Software packet of IBM Company is used for statistical analysis; actual versions of this software packet are officially called IBM SPSS STATISTICS

The Police Department in Richmond was faced with a number of problems, such as: oversupply of information and cuts in the budget and number of employees. The fight against terrorism has imposed additional commitment in the form of demands for collecting, analyzing and consolidating the new data, along with those that were already difficult to process within the mainstream of current activities.

None of the analysts or analytical teams in this directorate has not been able to scan collected data quickly and precisely and reveal patterns that might indicate the manner they can best deploy police patrols to complete the prevention of crime and to reveal where the sources of potential threats to public safety are.

Looking for the best solution, the police in Richmond began to use "data mining," a powerful and inexpensive tool that allows the analyst to identify effective patterns and make the right decisions using huge data sets. They chose SPSS Inc.'s Clementine solution (IBM software package services), because it does not require any specialization of employed nor advanced statistical training. The police officers who used the program in the final outcome made better analytical, operational, and more controlled decisions.

As a result of the application of this kind of predictive analytics the following is obtained:

- Police units were deployed at locations where needed most
- Discovered offences that could turn into criminal acts with elements of violence
- The investigation process of criminal act is accelerated.

Most actions and behaviors that lead to committing crimes, like all forms of human behavior, are fortunately predictable. Thus, for example, some perpetrators have certain geographic areas where they feel safe or have a propensity to commit criminal acts only at certain times of the day. These preferences of theirs may be disclosed by the technique of "data mining".

The Police Department in Richmond has two types of police units: patrol and tactical. While patrol units usually respond to calls from citizens, tactical units can be deployed proactively and mobilized for rapid reaction to any part of the city.

By analyzing the data obtained from police dispatchers, police officials from Richmond took advantage of the Clementine system to study extremely large set of factors such as: the time of received complaints, day of the week, the degree and location of their priorities and locations, which separated locations that pose a security risk. This by far exceeded everything that an individual analyst, and even an entire team of analysts, are able to view with great accuracy. As a result, the police directorate in Richmond could have their tactical units, as one of their rare and expensive resources, scheduled where they are really needed, thus increasing the level of public safety, and simultaneously enabling savings in budget administration.

Using SPSS and Clementine system for analyzing a database of perpetrators of Virginia State, the police department officials in Richmond found a strong correlation between certain criminal acts against property and sexual assault. It is particularly interesting that this correlation was higher than the one that existed between persons who had already been convicted of sexual assaults and new sexual assault. This conclusion is supported by consideration of older cases, including the strangling case from Southside committed by an offender who began his criminal activities with burglaries in Northern Virginia. The comparative use of Clementine at sets of gathered data and the analyses of old cases, made it possible to determine the motivation for committing certain offences and thus identify and arrest suspects in cases which may become obsolescent.

Practical case No.3 - New York

A leader in innovation in the fight against crime, the police of New York (NYPD) had a need for better and more efficient management of large amounts of data, different forms and shapes (from manually kept records of the events to the court transcripts) in order to provide police officers and investigators with relevant and current information. Therefore, the NYPD required from IBM to design a unique database on criminal offences in order to centralize and sort the mentioned data in the right way.

EXPANDING THE CONCEPT IN EUROPE: VIDEO MONITORING AND PREDICTIVE ANALYTICS IN THE FIGHT AGAINST CRIME

Aware of the important results which the police in the United States using predictive analytics to successfully oppose crime have achieved, experts in the UK have pointed out the shortcomings of video surveillance (CCTV: Closed-Circuit Television), both in security and economic terms. In times of crisis it is hard to expect police officers to monitor all information obtained from a security camera in which the

United Kingdom so far invested several hundred million pounds. The terrorist bombings in London in 2005 in which 52 people were killed is used as an example for the confirmation of this assertion.

Britain, however, is not alone in mapping hotspots using CCTV security cameras. According to a study by researchers RNCOS[3]/, around $ 23 billion (14 billion pounds) will globally be spent on video surveillance by the end of 2014.

Some European countries plan to use a predictive analytics technology as an addition to the surveillance system used to protect public safety. The central problem of the police of European Union countries are difficulties in the effective analysis of material obtained by video surveillance.

The research project of the European Union *Indect* seeks to improve the way of analyzing already existing images obtained by video surveillance in order to identify security related events and behaviors. The goal is to get the computer program to"sieve" (make selection) of a large amount of video images in real time and to indicate the potential place of the crime. It could for instance, be the place where large public gatherings are happening such as concerts or sports matches where potentially dangerous items may be thrown from the audience.

Predictive analytics does not only save time but it saves money as well. In a time of austerity and budget control (while crime is becoming increasingly sophisticated) crime prevention and the deployment of police officers in the city where criminal offences may be committed not only reduces the criminal rate, but also the costs. Using predictive analytics, it is easier and more reliable to determine which type of intervention will be required and in what place. In a word, it opens the possibility of planning instead of reacting, and accordingly the optimal use of resources. The experience of countries where software of predictive analytics is used by the police proved successful.

Memphis Police calculated that predictive analytics software on average annually costs less than $ 400,000. The benefit is greater, considering that in the first four years they managed to reduce the crime rate by 30% and regained investment annually by 863%.

FUTURE AND IMPORTANCE OF PREDICTIVE ANALYTICS

Acceptance of technologies that enable applying the concept of predictive analytics in the future will become imperative because saving time can save lives and make the community safer for living. While the previous way of combating crime was reduced to improve the ability of reactions to crime - a faster arrival to the scene, following the clues in the investigation and arrest of suspects, today's proactive approach to crime is active. Police acts before an event even occurs. Examples of countries in the region, such as Slovenia and Croatia, show that instead of post-delict activities of analytical services, an increasingly important role begins to perform pre - delict activity, in which the concept of predictive analytics up to this moment is unsurpassed.

It is believed that predictive analytics will not be limited to the fight against crime, but will expand to other areas of public safety, including fire, ambulance, police, education, health and social organizations.

ONE APPROACH TO THE PREDICTIVE ANALYTICS CONCEPT IN THE MINISTRY OF INTERIOR OF THE REPUBLIC OF SERBIA

MoI is expecting intensive modernization in business during the next couple of years. This modernization is impossible without modernization of IT software infrastructure. The current situation is such that all available data and statistics are found in a wide variety of applications and memory locations. In order to get information about security occurrence, it now requires hiring of a higher number of police officers from various lines of work in the Ministry, and the data is being collected from different applications and manual records.

MoI in its analysis and estimates relies on a few large sources of data, but each of them has independent business and data models. This fact points out the need to consolidate the mentioned models in one common model, and then approaches the implementation of unified data warehouse (Data Warehouse - DWH). According to Gartner, by 2020, 90% of organizations with more than 5,000 employees will in their analytical services systematically analyze the content from the Internet, an especially social network, which also stresses the need for a central DWH.

3 / British consulting company

CONCEPT AND REQUIREMENTS FOR FUTURE SYSTEM

- Such DWH should be realized so that it is:
- Always available for search,
- Easy (understandable) for use and handling,
- Effective because it displays data transparently and meaningfully,
- Complete because it includes all data management,
- Complete because it includes more than 12 months of history (!) and more.
- Exact because it provides "a single version of the truth" regardless of the views and approach,
- Detailed because it contains all the levels of necessary details,
- Easy to expand by changing or adding new analyses,
- Easy to expand by adding the old / new IT systems,
- Independent of technologies, tools, approaches,
- Agile so it avoids waiting for the reports and analyses several hours / days....

The objectives of the concept are to promote and integrate a system of data processing and reporting which contributes to the achievement of the strategic directions of the Ministry of Interior and the functions of crime prevention. Furthermore, it is building a unified analytical database, with functions of ad hoc reporting and applying of the principle of predictive analytics.

Data Warehouse through the transaction processes periodically or on-line in real time "pulls" the data from the source database that already exist within the MoI such as, records on criminal offenders, records of daily events, records from transport and traffic field, records of work in the field of public order and peace, records of work in the field of fire and explosions, and many others. In addition, the DW environment would include an internal database in Excel formats that exist in the records, and which are not being produced adequately, due to their complexity and inability to update cross data. In this manner with the "right" and pooled data necessary for the functioning of software tools to model a system for predictive analytics would be at disposal. Then all historical data and information would be found in one place what is actually currently happening. Integrating these data, it is only possible to predict the occurrence in the future, which is essentially based on the concept of predictive analytics.

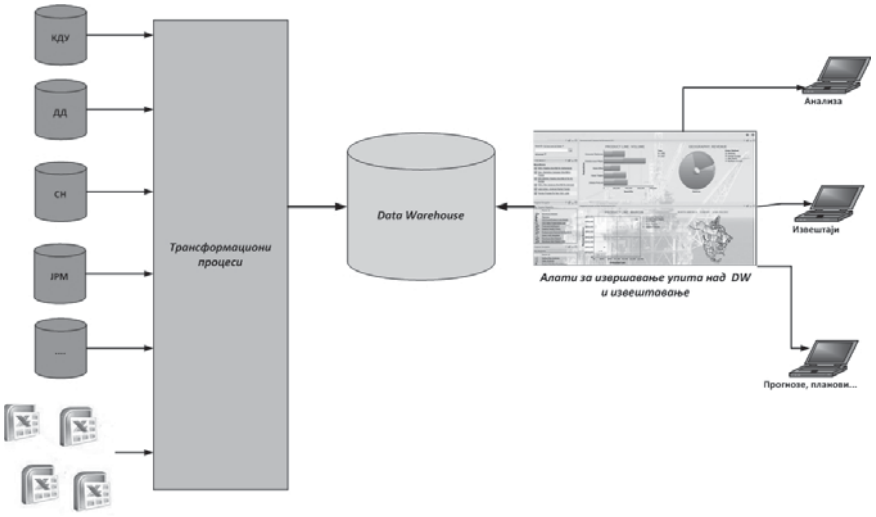

Figure 2 *Graphics representing goal of modernization of business functions.*

The modern solution consists of subsystems DWH, BI subsystems and subsystems for extracting and manipulating data.

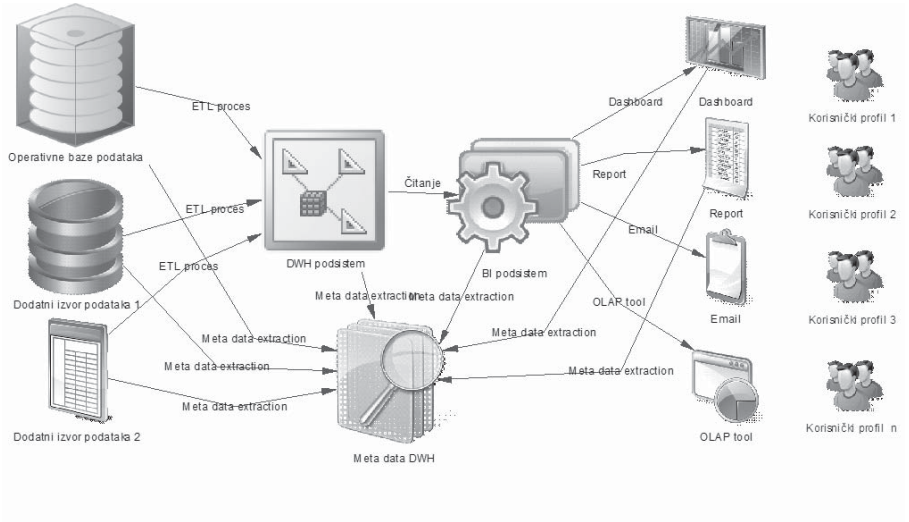

Figure 3 *Architecture of predictive analytics concept*

Bearing in mind the function, human resource management and territorial dispersion, we have chosen the following steps in introducing a central DWH:

1) Evaluation of modelling DWH,
2) Modelling DWH, which will include three to five most important sources of information,
3) The training of personnel for further work on the modelling and implementation of DWH,
4) Implementation of the first phase of DWH with support of selected partners during implementation,
5) Further expansion of the system by the centers of expertise that will be established during the first phase of implementation,
6) Maintenance of the system to the fullest extent its own personnel capacity of the Center Expertise

In order to achieve quick visible results we decided to start and establish front-end systems for the production of the results of the analytical work based on the so-called "BusinessInteligence" (BI) technologies parallel with the DWH modelling.

BI platform that they use should have the following tools:

- A tool for creating predefined reports (statical reporting)
- A tool to create ad-hoc reports on multidimensional cubes that will be implemented in the DWH system (ad-hoc reporting)
- OLAP analytics tool, which allows the processing of data to the level of basic dimensions of data (individual data) and synthetics of such data to the highest level (OLAP analitycs, OLAP data insight)
- A tool for free search data from the above mentioned multidimensional cubes in a manner similar to web search engines (Google like search)
- A tool to create complex graphicly polished reports on key indicators of work, which include the possibility of "WHAT IF" analysis (dashboard - example dashboard BOBJ)

Furthermore, in order to achieve the function of predictions based on the facts it is necessary to purchase tools for predictive analysis of structured and unstructured data (data mining, predictive workbench).

Defining the same hardware infrastructure includes modernization of the central DataCenter, as well as peripheral centers to access a central DataCenter through the purchase of server infrastructure, storage systems and client side (desktop plus mobile access).

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Topic I

CRIMINALISTIC AND CRIMINAL JUSTICE ASPECTS OF CLARYFYING AND PROVING OF CRIMINAL OFFENCES

UDC: 347.998:343.57(73)
343.244(73)

ALTERNATIVE DRUG COURTS IN THE UNITED STATES – FUNCTIONING, SCOPE AND LIMITATIONS

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Abstract: Alternative drug courts in the United States are designed as a form of state response to criminal offenses committed by non-violent, drug-addicted offenders in order to expose them to a particular treatment and rigorous judicial monitoring. The aim is to encourage them not to use drugs and not to commit any other criminal offense. This kind of treatment leads to coordination and mutual cooperation of prosecutors, defence attorneys, education providers, social services and drug courts themselves. In the paper the authors analyze the organization, the way of functioning and the conditions that the offender has to fulfil in order to participate in the treatment before drug court. Also, the authors analyze the results obtained through the treatment before this kind of courts, related to repeated use of drugs by offenders and their recidivism.

Keywords: alternative courts, drug, treatment, monitoring, recidivism.

INTRODUCTION

During the 1980s large-scale increase in drug-related arrests and prosecutions overloaded the criminal justice system and prisons were overcrowded by drug offenders. Realizing the fact that imprisonment does not break the cycle of drugs and crimes and that some kind of drug treatment is needed in order to reduce drug abuse and criminal activity, many jurisdictions in the US have developed drug treatment courts to process drug and alcohol addicted offenders.[3] Thus, drug courts emerged as a diversionary alternative to traditional case processing due to frustration with ineffective law enforcement in the 1980s which was doing little to break the cycle of drugs and crimes.

Drug courts originate from court initiative developed in Miami, Florida in 1989, and the idea was to include non-violent, drug-addicted offenders in court supervised drug treatment and rigorous judicial monitoring.[4] Namely, in response to a crack epidemic, the jurists in Miami emphasized that something has to be done in order to break the revolving relation between addiction and recidivism with the aim of reducing drug use and drug-related crimes. The basic concept of drug courts means intense intervention by the court in cooperation and coordination with an entire team including the defence, prosecution, treatment, education and law enforcement.[5] In return for a promise of a reduced sentence, appropriate non-violent drug-addicted offenders are given a chance to enter voluntarily the court-supervised treatment. All conditions and rules of the treatment are stated in contracts. As the results were very positive, the drug courts were established all over the country.[6] Comparing with other methods that existed in justice system, it can be said that the aim of the drug court model is less punitive and more healing and restorative in nature.[7] Namely,

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3 D. C. Gottfredson, M. Lyn Exum, *The Baltimore city Drug treatment court: One-year results from a randomized study*, Journal of Research in Crime and Delinquency, vol. 39, no. 3, 2002, p. 337-338.
4 D. Driscoll-Connolly, *Drug Treatment Court Overview*, 2014, p. 1.
5 *Problem-solving courts, Drug courts*, NYCOURTS.GOV
6 *Ibid.*
7 J. S. Goldkamp, M. D. White, J. B. Rabinson, *Do Drug Courts Work? Getting Inside the Drug court Black Box*, Journal of Drug Issues, vol. 31, no. 1, 2001, p, 29., available at: http://www.antoniocasella.eu/archila/Goldkamp_2001.pdf, access: December 2014.

drug court system offers an integrated, systematic approach in dealing with a broad range of drug-using offenders, because the emphasis is on using a team approach to negotiate win-win solutions for all parties.[8]

New York State led the nation in the expansion and institutionalization of drug courts into daily court operation. Today, there are more than 2,800 drug courts in the United States, of which half are adult treatment drug courts.[9] Drug courts have become also widespread in other countries such as Canada, the United Kingdom, New Zealand, Australia, South Africa, Bermuda, Jamaica, etc.[10]

DRUG COURTS CONCEPT

In the traditional adversarial legal system defendants through their attorneys and the state through prosecutors follow an objective set of rules. This means that defendant and the state represent and defend their positions and interests through the proceedings and the outcome is determined by a neutral judge who bases his judgment on the facts presented by the parties. On the other hand, drug treatment courts are based on the understanding of physiological, psychological and behavioural realities of drug abuse.[11] In drug courts, while representing their clients, attorneys work within the structure of the drug treatment court in order to achieve the optimal recovery plan. The whole process management is in the hands of the judges, while prosecutors have got the right to exclude selected cases ('high-risk' offenders, cases with high public interest, etc.) in order to protect public safety interest.[12] At the same time, defendants are considered to be accountable for participating in the treatment and complying with a known set of rules. Most drug court treatments are based on the belief that treatment can be useful and successful if the participant can somehow stay in the treatment and that the longer participant is in the treatment, the chance of achieving a successful outcome is greater.[13]

It must be emphasized that drug courts are not separate courts but, rather, a special section within court's criminal division. Cases assigned to the drug court section are those involving non-violent defendants charged with drug possession or related offences committed as a result of their drug use and/or addiction.[14] There are many kinds of drug courts. At first, drug courts were local courts for adult offenders with illicit substance abuse problems, but in recent years many other kinds of drug courts were established, for example, drug courts for juvenile offenders and offenders charged with driving while under the influence.[15] Although there are different kinds of drug courts, most of them are designed to achieve two primary goals – a reduction in drug use and a reduction in criminal activity among drug-abused offenders.[16]

As noted, although drug treatment courts are not all the same, they share a number of common characteristics. There are ten essential key components of the drug court model: 1. Drug courts integrate alcohol and other drug treatment services with justice system case processing; 2. Using non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights; 3. Eligible participants are identified early and promptly placed within the drug court program; 4. Drug courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services; 5. Abstinence is monitored by frequent alcohol and other drug testing; 6. A coordinated strategy governs drug court responses to participants' compliance; 7. Ongoing judicial interaction with each drug court participant is essential; 8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness; 9. Continuing interdisciplinary education promotes effective drug court planning, implementation and operations; 10. Forging partnership among drug courts, public agencies and community-based organizations generates local support and enhances drug court program effectiveness.[17] Generally speaking, in comparison with traditional court sections, drug court offenders: 1. Appear more frequently in front of judges; 2. Are required to enter into an intensive treatment program; 3. Undergo frequent, random urinalysis, undergo sanctions for failure to comply with program requirements; 4. Are encouraged to become drug-free, develop vocational and other skills to promote re-entry into community.[18]

8 J. Tauber, *Development and Implementation of Drug Court Systems*, National Drug Court Institute, 1999, p.1-3, available at: http://ndcrc.org/sites/default/files/mono2.systems.pdf, access: December 2014

9 *Drug courts*, US Department of Justice, available at: https://www.ncjrs.gov/pdffiles1/nij/238527.pdf, access: December 2014

10 O. Mitchell, D. B. Wilson, A. Eggers, D. L. MacKenzie, *Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts*, Journal of Criminal Justice, no. 40, 2012, p. 61.

11 S. Turner et al, *A decade of drug treatment court research*, Substance use & misuse, vol. 37, no. 12-13, 2002, p. 1491

12 *Ibid.*

13 E. Piper Deschenes et al, *Drug Courts*, in: J. L. Sorensen et al, *Drug abuse treatment through collaboration practice and research partnership that work*, 2000, p. 87, available at: http://psycnet.apa.org/books/10491/, Access: December 2014.

14 C. S. Cooper, *Drug Courts: Current Issues and Future Perspectives*, Substance use & misuse, vol. 38, no. 11-13, 2003, p. 1673.

15 O. Mitchell, D. B. Wilson, A. Eggers, D. L. MacKenzie, *op.cit*., p. 61.

16 C. Spohn, R.K. Piper, T. Martin, E. D. Frenzel, *Drug Courts and Recidivism: The Results of an Evaluation Using Two Comparison Groups and Multiple Indicators of Recidivism*, Journal of Drug Issues, vol. 31, no. 149, 2001, p. 152.

17 D. B. Marlowe, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States*, National Drug Court Institute, 2011, p. 14-15., available at: http://ndci.org/sites/default/files/ndci/PCPII1_web%5B1%5D.pdf, access: December 2014.

18 S. Turner et al, *op.cit*., p. 1492.

SOME KINDS OF DRUG TREATMENT COURTS

Family Dependency Treatment Courts are program models designed for alcohol and other drug-abuse parents. These courts include regular court hearings, intensive judicial monitoring, substance abuse treatment, frequent drug testing, and rewards or sanctions related to treatment compliance. During the program parents get clear messages about what they need to do in order to reunify with their children.[19]

Juvenile Drug Courts are courts for eligible alcohol and other drug-abuse offenders aged 10 to 18 years who are charged with petty misdemeanour and felony offences. These courts are not designed for juveniles who are merely experimenting with alcohol or other drugs. They do not accept violent offenders, sex offenders or offenders involved in selling drugs for profit.[20]

Driving While Impaired (DWI) Courts are designed for repeat and/or high blood alcohol content offenders charged with driving under the influence (DUI) or driving while impaired (DWI), in order to include them in substance abuse treatment and other condition of community supervision and refrain them from further DWI behaviour.[21]

Re-entry Drug Courts target alcohol and other drug-abuse parolees (probationers) or inmates conditionally released from custody. They are designed as means by which offenders could be reintegrated into communities after release from correctional facilities. Re-entry drug courts facilitate, monitor, supervise and rehabilitate offenders after they are released and accepted back into the community.[22]

Campus Drug Courts are designed for alcohol and other drug-involved college students who are facing exclusion.[23]

Veterans Treatment Courts work with local authorities with the aim to include offending veterans with addiction and/or mental illness in treatment which means counselling, drug and alcohol programs, job placement programs that contemplate veterans' specific physical and emotional needs. These courts generally target non-violent offenders, but some of them accept violent offenders, too.[24]

DRUG COURTS TARGET POPULATION

Drug courts can differ with respect to their target populations, treatment methods and monitoring process. Despite these differences, they target non-violent, drug-abusing offenders. With respect to target population, treatment regimes are designed with three primary goals: first, the elimination of offenders' physical dependence on drugs through a period of detoxification; second, treatment of psychological 'craving for drugs' through medication, individual and group counselling, or drug education programs; third, drug courts seek to increase offenders' educational levels and employment status.[25]

One research showed that almost all drug courts are targeting individuals with at least moderate substance abuse and 90% indicate they are targeting the individuals diagnosed with severe substance use. This includes the participants with alcohol dependency or the participants who use any chemical substance, illegal or legal, including prescription drugs and inhalants. But, neither program deals with nicotine addiction.[26] Further, research showed that significantly more males than females take part in drug court programs; most drug court participants have been using drug for at least 10 years, or much longer; most used multiple drugs, including alcohol; over one-third of participants do not have a high school degree and a small percentage have postsecondary education; a significant number is unemployed or employed on a sporadic basis.[27]

As target populations vary from country to country, we will mention only some of these solutions. In Denver, Colorado, only 'pure' drug cases are assigned to the drug court, and the court handles felony drug cases which include a broad spectrum of criminal activity – from possession of small amounts of illicit

19 B. L. Green et al, *How Effective are Family Treatment Drug Courts? Outcomes from a Four-Site National Study*, Child Maltreat,vol. 12, no. 43, 2007, p. 43-44, available at: http://cmx.sagepub.com/content/12/1/43.short, access: December 2014.
20 C. L. Asmus, D. E. Colombini, *Juvenile Drug Courts*, Springer New York, 2007, p. 263., available at: http://link.springer.com/chapter/10.1007/978-0-387-71433-2_18#page-2, access: December 2014.
21 D. B. Marlowe, *Introductory Handbook for DWI Court Program Evaluations*, The National Center for DWI Courts, 2010, p. 8, available at: http://jpo.wrlc.org/bitstream/handle/11204/2119/3369.pdf?sequence=1, access: December 2014.
22 J. Tauber, *Reentry Drug Courts*, National Drug Courts Institute, 1999, p. 1., available at: http://www.reentrycourtsolutions.com/wp-content/uploads/2009/10/Reentrypdf1.pdf, access: December 2014.
23 D. B. Marlowe, *Painting the…*, p. 8.
24 J. M. Cavanaugh, *Helping Those Who Serve: Veterans Treatment Court Foster Rehabilitation and Reduce Recidivism for Offending Combat Veterans*, New England Law Review, vol. 45, 2010, p. 465-466., available at: https://d3gqux9sl0z33u.cloudfront.net/AA/AT/gambillingonjustice-com/downloads/206783/Cavanaugh.pdf, access: December 2014.
25 D. C. Gottfredson, M. Lyn Exum, *op.cit*., p. 339.
26 C. S. Cooper, *op.cit*., p. 1680-1681.
27 *Ibid*., p. 1688-1690.

drugs by defendants with no prior felony record to large scale cases.[28] The Hennepin County Drug Court in Minneapolis, Minnesota, also targets all persons arrested on felony drug charges, except those who are also charged with the felony 'person' crime or those who are on felony probation at the time of new felony drug arrest. The drug court in San Bernardino County, California, targets all felony and misdemeanour drug cases, including those with minor non-drug charges, but excluding persons who have prior prison record or violent background.[29]

PROCEEDINGS BEFORE DRUG TREATMENT COURTS

Beside the mentioned differences, a generic description of drug court process looks as follows.

When a defendant is arrested for drug possession, the arrest is immediately followed by the review by a prosecutor for drug court eligibility, based on the charge and the defendant's past criminal history. In this phase it is essential to carry out screening and assessment. Screening determines eligibility and appropriateness for participation in drug court, while the assessment helps to identify specific types of services and determines the intensity of treatment needed. Screening and assessment activities enable the court and the treatment provider to become familiar with the participant, and also enable the participant to become familiar with the goals and expectations of the program.[30] Drug courts screening consists of *justice system screening* – to decide if the potential participant meets the predetermined eligibility requirements related to criminal history, current charge(s), circumstances of the current offences, offences type and severity, etc., and *clinical screening* – to determine if the potential participant has a substance abuse problem that can be addressed by available treatment services, and if there are some other clinical features, for example serious mental health disorders, that could interfere with an individual's involvement in the treatment.[31] In pre-trial drug court programs, justice system screening is usually in jurisdiction of the prosecutor and pre-trial service or other drug court staff, while in post-conviction programs justice system screening is usually conducted by the prosecutor and probation officer.[32] When the justice system screening is completed, the clinical screening begins. After screening the completion assessment follows if it is determined that the participant is detoxified and sober. The purpose of the assessment is to develop a treatment plan and to decide the timing and application of services and programs. Assessment is an ongoing process and must adapt continually to new issues that arise and new information obtained during the treatment.[33]

If he is eligible, the defendant will be offered the option to enter the drug court. If the defendant is interested, an expeditious appointment will be scheduled with the public defender, who will review the defendant's charges, explain the drug court program and merits of the process before drug courts with regard to traditional proceeding.[34] Drug courts recognize that immediacy is a key factor of the treatment process, because an arrest creates an immediate crisis for the substance abuser, and that is why the offender would be taken quickly before a judge.[35] If the defendant agrees to enter the drug court, he or she will appear at the next drug court hearing, probably the following day, when the court judge will again explain the drug court program to the defendant. If the defendant is still interested in entering the program, he or she will sign a participation agreement (contract).[36] The rules of participation are defined clearly in the contract agreed upon by the defendant, the defendant's attorney, the district attorney and the court. When signing the contract, the defendant becomes a fully enrolled participant in the drug court program which lasts mostly from 12 to 18 months in duration, although some participants may need more time to satisfy the conditions for program completion.[37]

On becoming a participant, during the period of participation, the defendant will be required to: attend outpatient treatment 4-5 times per week during the first phase of the program, but this number will decrease as he or she progresses; submit to random urine testing 2-3 times per week initially; attend individual or group meeting 3-4 or more times per week; obtain a mentor in the community; and, the most

28 J. Tauber, *Development…*, p.11.
29 *Ibid.*
30 R. H. Peters, E. Peyton, *Guideline for drug courts on screening and assessment*, The Authors, 1998, p. 3-7., available at: http://treval-uation.com/wp-content/uploads/2013/08/Drug-Court-Screening-and-Assessment-Guidlines.pdf, access: December 2014.
31 *Ibid.*, p. 3.
32 *Ibid.*
33 *Ibid.*, p. 21
34 C. S. Cooper, *op.cit.*, p. 1673.
35 P. F. Hora, W. G. Schma, J.T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System`s Response to Drug Abuse and Crime in America*, Notre Dame Law Review, vol. 74, issue 2, 1999, p. 472-473, available at: http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1629&context=ndlr&sei-redir=1&referer=http%3A%2F%2F-scholar.google.com%2Fscholar%3Fq%3Dcampus%2Bdrug%2Bcourts%26btnG%3D%26hl%3Dsr%26as_sdt%3D0%252C5#-search=%22campus%20drug%20courts%22, access: December 2014.
36 C. S. Cooper, *op.cit.*, p. 1673.
37 D. B. Marlowe, *Painting the...*, p. 7.

important, appear at regular court hearings, often weekly initially.[38] During the hearing the judge reviews their progress in treatment and compliance with the program conditions. The main indicator of the defendant's improvement is usually his or her drug tests results and attendance at treatment sessions.[39] Based on participants' progress the judge may impose them some consequences. These consequences may include rewards (e.g. verbal praise, reduced supervision, promotion to the next phase, reduced frequency of court status hearing, reduced frequency of urinalysis, early termination from the program, etc.), modification of the treatment plan (e.g. transfer to a more intensive model of care – increased frequency of court hearings and urinalysis) and punitive sanctions (e.g. writing assignments, community service, brief jail detention).[40] Each participant has a different treatment plan according to his individual clinical needs. Besides substance abuse treatment, the services often include mental health treatment, family counselling, educational assistance, housing assistance.[41] Drug treatment court understands that the return to drug use is an expected and accepted part of a drug offender's treatment process. So, instead of immediately revoking a drug offender's probation and putting him or her in jail for a positive urinalysis, judges will use 'smart punishments' - therapeutic response to the behaviour of drug offenders.[42] If the defendant shows progress in the drug court program, some additional requirements can be imposed, for example, to find a job, obtain a high school degree, pay regular child support payments, etc.[43] Generally speaking, the treatment includes three to four phases – detoxification, stabilization, aftercare, and/or educational counselling.[44]

The treatment before the drug court can be finalized in two ways, depending on the fact whether the defendant fulfilled all contract requirements or not. In order to graduate, participants must demonstrate continuous abstinence from drugs and alcohol for a substantial period of time (often six months or longer), satisfy treatment and supervision conditions, pay applicable fines or fees and complete community service or make restitution to victims.[45] Participants who complete treatment through the drug court and comply with the court orders could earn a dismissal of their charges or a reduction of sentence. Those who fail to complete the program may have their charges reinstated by the court.[46] Generally, the sentence the defendant receives after the termination is the same as if he had never been the participant in the drug court. Most frequent reasons for unsuccessful termination of drug court participants are repetition of drug use, missed court appearances, missed treatment appointments, recommendation of treatment provider, new arrest, alcohol use, etc.[47]

ROLES OF SOME ACTORS BEFORE DRUG COURTS

A great number of actors in the drug court system increase the need for coordination and cooperation, as well as team meetings and interdisciplinary education.

It can be noticed that the drug court is understood as a therapeutic program with the *judge* at the centre leading the treatment process. The role of the judge serves to stimulate the treatment process into a more powerful and accountable form of rehabilitation than previously available in the criminal justice system. The drug court model incorporates a more proactive role for the judge, who in addition to presiding over legal and procedural issues of the case, also functions as a reinforcer of positive client behaviour. Drug court programs require the judges who understand the disease of addiction and drug abuse behaviour patterns. Without the knowledge of addiction and the effects of drugs, the judges cannot act successfully and apply the 'smart punishment' necessary to keep the offender on the path to recovery.[48] Through frequent court hearings judges establish honest relationship with offenders, in order to become powerful motivators for offenders' rehabilitation. Without judicial leadership involving active monitoring of an offender's recovery, the drug treatment court would not work. The role of *treatment providers* is very important, because they keep the court informed of each participant's progress so the rewards and sanctions can be provided.[49] Although the judge is the central figure in the program, most drug courts function as a team in which prosecutors, defence attorneys and counsellors work together in order to help offenders to recover and solve other problems related to family, work and finances.

38 C. S. Cooper, *op.cit*., p. 1676.
39 *Ibid.*
40 D. B. Marlowe, *Painting the...*, p. 7.
41 *Ibid.*
42 P. F. Hora, W. G. Schma, J.T.A. Rosenthal, *op.cit.,* p.469- 470.
43 C. S. Cooper, *op.cit*., p. 1677.
44 P. F. Hora, W. G. Schma, J.T.A. Rosenthal, *op.cit.,* p. 475.
45 D. B. Marlowe, *Painting the...*, p. 7.
46 J. Tauber, *op.cit*., p. 13.
47 C. S. Cooper, *op.cit*., p. 1687.
48 P. F. Hora, W. G. Schma, J.T.A. Rosenthal, *op.cit*., p. 477.
49 *Ibid.*, p. 480.

Drug court *prosecutor* also has to behave as a therapeutic team member, but he still enforces public safety by ensuring that each candidate complies with all drug court requirements. This also means that the prosecutor will not file additional charges against the offender who has fulfilled all the requirements. The prosecutor has the most important role in judicial screening through determination of offender's initial eligibility.[50]

Defence counsel has an important role before drug courts. Defence counsel ensures that before entering drug court program, the offender understands the requirements of the program, the nature of his legal rights and the consequences of successful and unsuccessful termination of the program. During the screening process defence counsel reviews the defendant's criminal history and estimates with the prosecutor whether the defendant meets program requirements. Further, the defence attorney tries to ensure that the defendant stays in the treatment program until graduation.[51]

In drug court process many *substance user treatment services* take part. Their role is to support drug court programs by providing detoxification, counselling, drug education, therapy, medical screening, housing services, acupuncture, job training, educational development and other life skills. There are also public health services for participants with possible infectious disease and other medical conditions, and services for special populations related to participants who have mental health problems, female participants, pregnant or postpartum participants, foreign-speaking participants, victims of domestic violence, participants dealing with childhood trauma, etc.[52]

EFFECTIVENESS AND LIMITATIONS

In the literature it is stated that the effectiveness of drug courts is a product of more than two decades of exhaustive scientific research. One research has shown that drug courts significantly reduce the use of incarceration from a base rate of 50% to roughly 42% for jail, 38% for prison and 32% for overall incarceration. Positive side of this is that drug courts eliminate the experience of incarceration for many drug-involved offenders.[53] A great number of research and meta-analysis[54] have shown that adult drug courts are more effective than traditional community-based interventions at reducing the criminal activity of drug-involved offenders. Most recent meta-analysis indicates that drug court participants have lower recidivism than non-participants and the size of this effect varies by type of the drug court. Considering adult drug courts, the average effect of participation is equivalent to a reduction in general recidivism from 50% to approximately 38% (12% reduction) and reduction in drug-related recidivism from 50% to approximately 37% (13% reduction). Also, these reductions in recidivism preserve for at least three years after program entry.[55] The effects of DWI courts on recidivism are similar to those of the adult drug courts. But, with respect to juvenile drug courts, it can be stated that they have relatively small impact on recidivism. The average impact of juvenile drug court participation is equivalent to a reduction in recidivism from 50% to approximately 43.5% (6.5% reduction).[56] Two factors have influence on this: 1. Juvenile drug courts generally target relatively high-risk offenders, while other drug courts mostly exclude high-risk offenders; 2. Juvenile drug courts use less demanding interventions than adult drug courts, for example, drug testing and courts hearings are less frequent.[57]

Further, one of the important questions concerning drug courts is whether the costs of this type of program are lower or higher than costs of the traditional criminal procedure? The answer is that drug courts have also proven highly cost-effective. Some meta-analysis has shown that drug courts produce an average of 2.21$ in direct benefits to the criminal justice system for every 1.00$ invested. Also, when they target higher-risk offenders, the average return on investment was determined to be higher – 3.36$ for every 1.00$ invested. All these savings, which are enormously useful for criminal justice system, derive from reduced re-arrests, law enforcement contacts, court hearings and use of jail or prison beds.[58] Savings are also seen

50 *Ibid*., p. 477-479.
51 *Ibid*., p. 479.
52 C. S. Cooper, *op.cit*., p. 1681-1683.
53 E. L. Sevigny, B. K. Fuleihan. F. V. Ferdik, *Do drug courts reduce the use of incarceration?: A meta-analysis*, Journal of Criminal Justice, no. 41, 2013, p. 423.
54 'Meta-analysis is an advanced statistical procedure that yields a rigorous and conservative estimate of the average effects of an intervention. Independent scientists systematically review the research literature, select only those studies that are scientifically defensible according to standardized criteria, and statistically average the effects of the intervention across the good-quality studies', referred to: D. B. Marlowe, *Painting the*..., p. 9, footnote
55 O. Mitchell, D. B. Wilson, A. Eggers, D. L. MacKenzie, *op.cit*., p. 69.
56 *Ibid.*
57 *Ibid.*
58 D. B. Marlowe, *Research Update on Adult Drug Courts*, National Association of Drug Court Professionals, 2010, p. 3.

in the activity field of prosecutors and law enforcement agencies, particularly in regard to preparation time and court appearance costs for attorneys and witnesses.[59]

There is a wide range of additional areas where drug court programs brought benefits including educational achievements, employment, the birth of drug-free babies and family unification.[60]

Before drug courts, problems are mostly related to conflicts between prosecutors and defence attorneys about relapse or treatment compliance. Also, sometimes there are problems between treatment providers and drug court judges or drug court staff. These problems come from different opinions on treatment decisions, such as moving a client to the next treatment phase or response to poor treatment progress.[61] This is also one of the situations where the role of the judge is crucial in resolving disputes and conflicts between various drug courts actors. Also, problems are noted in the lack of a stable funding base for drug court services and the lack of a cadre of judges willing to assume oversight of the program.[62]

CONCLUSION

Drug courts were developed in the US as consequence of the apprehension that in order to break the cycle between drug abuse and crimes, the new approach, different from traditional court process, is needed. The basic setting of drug courts is the effort to reduce drug-related crimes by placing drug offenders in treatment. Namely, after a voluntary entrance in the drug court program, eligible non-violent addicted offenders become part of a monitoring process which requires the coordination and cooperation among drug court judges, prosecutors, defence attorneys, law enforcement, educational provider and many different social services. All actors included in the treatment have to possess some knowledge about drug addiction and to recognize it as a problem, because the aim is to help drug-abuse offenders to recover and quit their criminal activities. As it was seen that drug courts can achieve this aim, because research showed that these courts are effective in reducing the rate of recidivism, they spread all over the US.

Drug courts are based on the idea that rehabilitative treatment of drug-involved offenders will improve their chances to recover and return into the society as law-abiding citizens. The rehabilitative treatment includes all-time monitoring, frequent court hearings, frequent drug tests, individual and team meetings, or some special program, and all these methods are harmonized with individual condition and needs of each participant. The result of fulfilment of all program requirements can be a dismissal of all charges against the offender or a reduction of sentence.

Based on all these facts we can conclude that a constructive use of judicial authority together with rehabilitative treatment and involvement of many different services can contribute to the change of lives of those who were drug-addicted for many years, reduce crimes and recidivism, and free judicial, prosecutorial and public defence resources for adjudicating non-drug cases.

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59 C. S. Cooper, *op.cit*., p. 1692.
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EVIDENCES AND VERSIONS IN THE CRIMINAL PROCEDURE

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Abstract: The evidence as a fact is always a change in the objective reality that is associated with the crime, the perpetrator and the victim, which is detected and collected in a manner and in a form that is consistent with the applicable criminal procedural regulations. The process of proving covers the procedural actions taken by the court to form its own opinion on the existence of legally relevant facts that may affect its decision. They are required for implementing the law and applying the law to the facts. The fact is that fraction, fragment of reality as reflected in human consciousness and represents cognitive (gnoseological) phenomenon. In criminal proceedings the facts should be interpreted based on the fair relationship that exists between them and in their totality, not arbitrary and torn away from the system of crime.

Version represents one of many possible explanations (presumption, thought working assumptions and ad hoc hypotheses) of the crime or event, and is imperative for successful discovery and proof of the crimes and their perpetrators.

In this sense, through this paper first are elaborated theoretical aspects of evidence and proof, and then the process of planning versions is emphasized through criminal activity in understanding the function of objective truth and establish the relevant facts and evidence in criminal proceedings.

Keywords: criminal procedure, facts, evidences, clues, versions.

GENERAL NOTES

Criminality manifested through numerous and diverse manifestations, unfortunately, in modern conditions of life represents one of the more serious social adverse events, trends and evil, which threatens the vital human rights, freedom, social values and civilization progressive development in general.

In the whole complex of various organized preventive and repressive measures and actions taken by the competent state bodies and institutions - law enforcement agencies, as well as subjective forces in the fight against crime and its perpetrators, revealing has a central place. The discovery of the crimes and their perpetrators, as a specific form of the search for truth in this area, should be in a function of social progress, because it removes one part of the obstacles which legally/illegally occur in the whole set of social development and progress, and therefore, it also enriches the freedom of human and the freedom of society as well[4].

Basically, detecting crimes and their perpetrators in operational terms represents a process of human knowing that consists in determining the facts, evidences, conditions, and circumstances that indicate and confirm that some criminal offense was committed. That means that the perpetrator is revealed by facts and evidences provided through criminal-trial proceedings, and after that he is brought to the judicial authorities.

These relevant facts and circumstances that always exist in objective reality, whereby proving the existence of the crime and the offender, are subject to the study of the criminal procedural law, criminology, criminalistics and many other scientific disciplines.

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4 Спасески, Ј., "Остварувањето на општествената самозаштита како ефикасен инструмент во откривањето на кривичните дела и нивните сторители и проблемот на доказите и докажувањето", Правна мисла – списание за правни и општествени прашања, бр. 4, Скопје, јули-август, 1983, p. 269-270

GENERAL DISCUSSION OF FACT, ACTUAL SITUATION, EVIDENCE AND PROOF IN THE CRIMINAL PROCEDURE

For the term fact (lat. *factum*) in philosophical, methodological and criminal procedural literature, there are still different and sometimes contradictory interpretations. In a broader philosophical sense, the fact is experientially determined objectively existing relationship between objects. Thus, according to Bogdan Sheshic[5] fact is thought-sensory activity, determined objectively-real existence of a particular thing, appearance, process, event, feature or relationship. In that sense, he succinctly writes: "We cannot conclude any, even the simplest fact situation without or beyond the basic factors of cognitive process, and they are sensuous activity and theory as thought part of the whole activity". Vladimir Vodinelic[6] indicates that the fact is that section, part, or fragment of the reality that human diverged from the system of the overall relationship between conditions and events, reflecting into his own awareness. This means that any condition, event, occurrence, feature, become a fact, only when human perceived and treated it some meaning (interpretation). Thus, the term fact underlines its dialectical contradiction: it indeed, exists as an objective reality, but not complete and all. According to this, we can call the fact only that fragment of reality which is reflected in human consciousness. Therefore, it is gnoseological term, which means contradictory unity of objective and subjective. The fact is always a moment of realization, which directs towards the existing situation or event independent of human consciousness, but it becomes a fact even in the process of knowing.

According to the Dictionary of the Macedonian language[7], the term fact means: 1) something that is known to be true, that occurred, or exists: strong facts; the facts speak for themselves; the fact is that. 2) verified information or knowledge, 3) true, reality.

In this paper, in the first place, we are interested in the fact as a legal category and its determination in legal, criminalistics and forensic context. So in terms of criminal procedural law and criminal procedure facts are defined as phenomena that appear in reality, in which there are conditions for application of substantive law for the application of criminal sanctions in some case and conditions of procedural law for performing of criminal procedure and formal activities.[8] In terms of proof law, the term and the content of the facts are identified with the notion of proof that means that the main court activity in criminal proceedings is establishing of the actual situation according to the evidences (unless it is not unnecessarily) that needs to match the (material) true. The fact situation is understood as complex, or a set of specific facts that must be established in the criminal proceedings for the adoption of a final decision, or as a set of facts that are directly based on the application of the material or formal criminal law in a certain criminal case.[9] In the literature it is defined as the entirety of the material-legal and procedural legally relevant facts.[10]

The criminal proceeding, as any other litigation, seeks to determine the actual state of facts that are important for specific criminal event and for establishing the truth of a certain quality (whether material, absolute, real, objective or any other). In other words, only those facts are determined that are relevant to the proceedings by the cognitive aspect. According to a criminal - process theory, criminology and criminalistics, as specific facts that must be established in this procedure are those who will give us the answer to the following questions: 1. Was a crime committed in the concrete case?, 2. Is the person against whom it is raised request for initiation of criminal proceedings the perpetrator of the crime?, 3. Is the person guilty or not guilty for the offense he is charged?, 4. Whether in terms of substantive law criminal sanction can be applied?[11]

Also, for the term of proof (also evidence, lat. *probatio, argumentatio*, ger. *Beweis*, fr. *evidence*) in the criminal process literature, there have been personal discrepancies and inequality for a long time in the labeling of its contents. It is emphasized that in the former practice existed identification of the terms proof and fact.[12] According to theoreticians (Markovič, Dimitrijevič, Miloševič, Stevanovič, Bejatovič, Ilić, Modly, Korajlić, Krapac, Simonović) of criminal and procedural law, evidence is defined as: a set of bases or explanations which tells us about the veracity or reliability of certain important facts in the procedure; facts about the truth or falseness of the disputed factual state; facts on the basis of which the existence or non-existence of disputed legally relevant or other facts is determined which are identified in a criminal procedure; facts on the basis of which the relevant authority determines the existence or non-existence of facts whose identification in the criminal procedure is necessary; every form which speaks in favour of the authenticity of

5 More of this in: Sheshic, B., Logika, Beograd, 1962, p. 620, Шешиќ, Б., Општа методологија, Научна књига, Београд, 1974, p. 273, Драшковиќ, Д., Методологија на истражување на безбедносните појави, Скопје, 1984, p. 77

6 Водинелиќ, В., Криминалистика, откривање и докажување, Том-1, Скопје, 1985, pp. 110-125

7 Мургоски, З., Речник на македонскиот јазик, Филолошки факултет, Скопје, 2005, p. 863

8 Bayer, V., Kazneno procesno pravo – odbrana poglavlja, Knjiga I, Uvod u teoriju kaznenog procesnog prava, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1955, p. 165

9 Grubiša, M., Cinjenično stanje u krivičnom postupku, Informator, Zagreb, 1980, p. 1-4

10 Krapac, D., Kazneno procesno pravo, Prva knjiga: Institucije, Narodne novine, Zagreb, 2003, p. 304

11 Sijercić-Čolić, H., Krivično procesno pravo, Knjiga 1, Krivično-procesni subjekti i krivično procesne radnje, Pravni fakultet Univerziteta u Sarajevu, Sarajevo, 2005, p. 257

12 Grubiša, M., Činjenično stanje u krivičnom postupku, 1980, p. 2

an important fact in the procedure; it is criminal law relevant information contained in persons and objects, which is obtained in the process prescribed manner with the use of process allocations; it is a source of information on important facts which in criminal proceedings cannot be determined by personal observation, so the processes body refers to its determination to bring the contents of the statement of the persons, technical documents or photos with a locking of the existence or non-existence of fact; proof represents found, relevant link between the processes that directly or indirectly affect the occurrence of the crime, traces, objects and people. Finally, evidence in criminal proceedings is nothing but such a change in the criminal event and its relics (objects and traces of criminal procedure) that show as the criminal-relevant, and therefore it is necessary to notice that change in particular, but not such later change, which has no meaning and can not be proof[13].

In criminalistics theory it is stressed that evidence represents an identified, established, relevant relation between the processes, which directly or indirectly influenced the occurrence of the crime, the traces, the objects and the persons. Seen from gnoseological aspect, evidence refers to all the changes in the environment of the preparation, commission, concealment and enjoyment of the fruits of the crime, which are in relevant relationship with the act.[14]

All stated before are different definitions of the so-called intermediaries in the determination of the facts in the criminal proceedings, therefore, evidence. As the evidence in criminal proceedings are considered: statement of the suspect or defendant, witness testimony and the testimony of the expert for the facts set out in the criminal proceedings, and then the documents and photos obtained by technical registration containing facts as determined in criminal proceedings.[15]

Evidence is comprised of two elements: probative basis and probative media. *Probative basis* (probation, argumentum, reason), is an already known, identified fact on the basis of which is determined the veracity of the other fact which is about to be determined in the specific case and which is an *object of proof*[16]; *Probative media* (*media probandi, instrumentum*) are *sources* from which during the criminal procedure *data* or *facts* are collected which are considered as *probative basis*[17]. Probative media are actually *forms* which contain *probative bases*.

According to Vodinelić[18] "evidence tool" is a term that is different from the term "source of evidence". For example, crime scene investigation (insight) is the source of any evidence or proof, because with the crime scene investigation is not proven anything, but only with its results. It is not difficult to agree with the previous statement that insight really proves nothing, but with its results directly or indirectly is proved facts. It is a process form to ensure that samples of some traces from the place of occurrence of the crime as possible source evidence (and thus the information they provide) are found, collected and provided in a legal manner and in proper procedure be admissible in any subsequent proceedings as evidence. Similarly is the case with testimony. A person can have a significantly wider range of relevant information in respect of the offense, and in terms of the perpetrator or all circumstances relating to the criminal event and as such they are of great importance for the criminal proceedings. But such information, although very valuable for trial and adoption of correct judicial decisions, is not important to the proceedings, if it is not put in adequate formal context, in other words, when such person is called in the proceedings as a witness. Thus as a result of the application of adequate standards for interrogation of a witness provided in the criminal procedural law, is a statement of a witness and with that something is proved.

In this sense, the insight and questioning of the witness are essentially only ways of getting evidence, and they are some kind of means of proving. It should be borne in mind that the insight as was mentioned ahead despite the fact it represents one of the ways to gather evidence for the criminal proceedings and the kind of immediate-personal observation of the subjects of the criminal proceedings. So, the process activity that allows the subjects of the criminal proceedings knowing the relevant facts for the criminal proceedings based on their own observations.

With reference to the above said, it is emphasized that the court can collect, obtain or verify evidence. This can sometimes be carried out by other subjects as well, but only the court can present the evidence. The court should be convinced that the facts are true, based on some bases which correspond to the laws of reasoning. The reliability of a certain fact which should be proven is determined by the court on the basis of other already proven facts or the facts which are related to the fact which is to be proven.[19] Taking into consideration the fact that numerous physical evidence are obtained by using all contemporary methods

13 Vodinelić, V., Kriminalistika, Savremena administracija, Beograd, 1984, p. 62
14 *ibid*., p. 293
15 Bayer, V., Kazneno procesno pravo – odbrana poglavlja, Knjiga I, Uvod u teoriju kaznenog procesnog prava, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1955, p. 177
16 Марина, П., Матовски, Н., Казнено право, 1972, p. 190
17 Матовски, Н., Бужаровска, Г., Калајџиев, Г., Казнено-процесно право, Правен факултет – Јустинијан Први, Скопје, 2009, p. 184
18 Водинелиќ, В., Криминалистика, откривање и докажување, теоретски и практични криминалистички и доказни проблеми, Том 2, Центар за образование на кадри за безбедност и општествена самозаштита, Скопје, 1985, p. 1099
19 Матовски, Н., Бужаровска, Г., Калајџиев, Г., Казнено-процесно право, pp. 190-198

and techniques of fundamental and applied sciences, these types of evidence are often referred to as *scientific evidence*.

The process of *proof* encompasses the actions taken by the court for forming its belief about the existence or non-existence of facts which can affect its decision. The court's action consists of identification of facts necessary for the application of the law and the application of the law on relevant facts whose veracity is proven. The process of proof encompasses all facts that the court considers important for making a proper judgment (art. 314, par. 2, Law on Criminal Procedure).

VERSIONS AND PLANNING THE INVESTIGATIVE AND CRIMINAL PROCEDURE

Criminal procedure (lat. *processus criminalis*, fra. *procedure penale*, ger. *Strafprozess*, ital. *procedura penale*) represents a set of procedural actions taken by procedural subjects in case of reasonable doubt that a particular person has committed a certain crime[20]. As a complex and dynamic process, in the criminal proceedings the procedural actions are undertaken in a manner specified in the Code of Criminal Procedure (CCP)[21], by the authorized entity and only if the prescribed conditions are fulfilled. In addition, in the criminal procedure a number and variety of procedural actions are taken between which there is mutual connection and continuity. Criminal procedure in the Republic of Macedonia consists of the following stages which are linked to each other and constitute a systematic whole: 1) pre-trial (investigation); 2) accusation (indictment and evaluation of the indictment); 3) trial and judgment, and 4) procedure for legal remedies.

Pre-trial procedure is the first stadium and the initial stage of the procedure that is undertaken with the aim to provide material to the Public prosecutor to assess whether the reasonable grounds to suspect as initial knowledge transferred in reasonable doubt as a higher degree of suspicion based on collected evidence that suggests conclusion that a person has committed a crime. The Public prosecutor after that will submit to the court act for starting the process of accusation and trial. This procedure is still appointed as criminalistics proceedings or police investigations. It essentially is realized through the process of criminalistics-operational activity (within the systematic activities through criminalistics control and criminalistics processing), by the competent authorities from the Ministry of interior and judicial police. Its object consists of: detecting crime; finding the perpetrator; discovering and securing traces of the crime and the objects that can be used as evidence; collecting all information that could be used for successful procedure, as well as taking certain investigative actions for which there is a danger of delay. From a procedural point for commencement of pre-trial procedure there is not a rule for adopting any formal decision. As a reason for starting a pre-trial procedure is the moment when the Public prosecutor and the judicial police will hear that some crime is committed by direct observation, rumours or crime report (art. 272 CCP). That is initial information and signals at the level of reasonable grounds to suspect (clues) as the lowest degree of probability that alert for a crime and its perpetrator. In that sense, the reasonable grounds to suspect are findings which on the basis of criminalistics knowledge and experience may be considered as evidence of a crime (art. 21 p. 14 of the CCP).

The investigative procedure is the other stadium of the first stage in the procedure that is initiated against a person whenever is a reasonable doubt that he committed a crime that is prosecuted *ex officio* or upon the proposal (art. 291 par. 1 CCP). Reasonable doubt is a higher degree of suspicion based on collected evidence pointing to the conclusion that a person has committed a crime (art. 21 p. 15 CCP). The process of investigation is conducted by the Public prosecutor, who gives instructions to the judicial police. As part of the investigation is gathering evidence and information which needs to the Public prosecutor for taking decision whether to press charges or drop the criminal charges. During the investigation the Public prosecutor is obliged to collect evidence which is against and in favour of the suspect.

The main subject of the criminal procedure in research terms is the thesis that in the procedure should be clarified. This is achieved through research and exposure which achieves the purpose of criminal procedure - true for the subject of the criminal procedure as a research problem. Criminalistics actions include things which are not directly aimed at the research problem, but are related to procedure. Criminalistics research includes examination of the factual circumstances in three main interrelated objectives: the offense, the blame and the punishment (sanction).[22]

Regardless of possible specifications, each crime scene processing contents: securing the crime scene, collecting information on the place of the criminal event, insight and making a record. Activity outside the

20 *ibid*, p. 16
21 Official Gazette of the Republic of Macedonia nr. 150/10, 51/11, 100/12
22 Pavišić, B., Uvod u kriminalistiku, Zagreb, 2002, p. 47

place of the criminal event, which refers to the questioning the witnesses or suspects, examinations in labs and similar procedures, also belongs to the broader concept of criminal processing.

Generally, the term version means one of many possible interpretations (explanations, assumptions, hypotheses, variants) of one case, event, or occurrence in the real world. From the criminalistics aspect observed, however, such a plurality of variants of possible explanations or assumptions will be directed on the interpretation of any criminal event that according to the actual situation points to the possible existence of a crime. Through planning and checking versions, as a kind of special method or tactical means for establishing the truth in operational activity and criminal proceedings is expected to discover and clarify the important features of the criminal event.[23] If these characteristics indicate a crime and its perpetrator (mostly unknown in the beginning of the procedure), the discovery and proof of the crime and the phenomenal form of the method of its execution go through the process of planning all feasible general (typical), special versions by the activity in the crime, that through assessment and verification, through their gradual exclusion or elimination, leading to detection and cleanup of the agents and other relevant facts and circumstances that contributed to the preparation, performance and concealment (masking, staging) of a criminal attack. "Ideally request is from all set and tested versions, at least one to match the reality of the criminal event. By eliminating all but one version would have to obtain a high probability that this one remaining version corresponds to the reality of the criminal event".[24]

Planning, checking and general operation with criminalistics versions in searching for objective truth through clarification of the relationship of facts of the criminal event has significant criminal practical significance for each of the methods of detection, evidence and clarification of any group of crimes.[25]

Versions as probable, uncertain, presumptive forms of knowledge based on hitherto insufficiently clarified criminalistics and criminal procedural information and explanations or interpretations of known facts. Their study in criminal literature in the West is totally neglected, while in the eastern criminal theory some authors retain the issue, stressing the role of the development versions of heuristic criminalistics. All of them[26], with similar or different approach, determine the essence of the concept of the version in criminalistics science such as hypothesis; a special type of hypothesis; assumption of the investigative judge; working hypothesis; explained lock or guessing, etc., emphasizing its logical and psychological component.

Based on inductive-deductive method or by analogy as typical logical means, starting from the collected initial clues for the alleged crime that looms from the system-structural integrity of the criminal event, at the same time, relying on basic and initial facts for the possible perpetrator, criminalist still in the initial stage of the procedure creates mental structures as for the whole of the criminal event, also for the certain parts (for one or a group of reasonable doubt or circumstances). In addition, such a logical conclusion and interpreting he directly builds on his own criminal experience and on the basic rules and settings of criminalistics science, as well as those sciences and scientific disciplines with that it (criminalistics) is closely related and for its goals used, adjusts and improves their academic achievements (criminal law, chemistry, physics, forensic psychology and psychopathology, forensic and other).

The discovery, evidence, clarifying and preventing crime is based on the planned takeover and use of general criminalistics rules, tools and methods tailored to the specific requirements of each individual criminalistics methodology, which covers individual groups of crimes related by similar methods of committing.[27] Otherwise, these groups of crimes whose criminal characteristics determine the nature and substance of any criminal methodology, often do not match the criminal legal classifications of crimes.

From the moment of knowing for the existence of a possible crime or possible potential perpetrator (or together for both criminal-tactical situations), through the final clarification of the criminal event which indicates the existence of a crime and its particular phenomenal form, until the determination of the committed crime and its perpetrator, the search for truth in the discovery phase, as well as while the prosecution and adjudication must be conceptualized and lead the way in order to achieve the purpose of pre-trial and trial procedure. This will be achieved if the criminal procedure from its start is based on a methodical and systematic planning.

The *investigation* is the only process where one thing results from another. The high quality of the detection and the examination of evidence necessary for clarifying the crimes and finding the perpetrator is only possible when unity of the investigative procedure – expediency of the procedure is achieved. The detection process in the prior (pre-trial) procedure and criminal procedure is actually a systematic and fundamental approach in discovering latent and potential information and their decoding (deciphering).

23 Симоновиќ, Б., Криминалистика, Крагујевац, 2012, pp. 57-63
24 Водинелиќ, В., Криминалистика, откривање и докажување, p. 182
25 Ангелески, М., Криминалистички теории, Скопје, 2014, pp. 28-36
26 Р. С. Белкин, А. А. Старченко, А. Ј. Винберг, Р. К. Рахунов, А. Н. Василев, Т. Н. Мудјугин, Н. А. Јакубович, В. Е. Шеребкин, Ј. М. Лузгин, В. Ј. Тербилов, А. Н. Колесниченко, А. М. Ларин, Г. В. Арцишевски, Т. Н. Александров и др.
27 Ангелески, М., Криминалистички теории, pp. 24-27

The success of the fulfilment of the investigation plan depends considerably on its timely preparation, as well as the elasticity in the process of its implementation, i.e. timely introduction of changes in the plan. The basic task of every crime scene investigation plan, as a thinking and creative process, given its specificity in every concrete criminal case, actually consists of the following coherent elements: 1) identifying the scope of circumstances and facts which have to be discovered, clarified and proven (in accordance with the main issues of criminalistics – the object of proof; 2) identifying versions of the main issues of criminalistics; 3) identifying and defining operative-tactical measures and investigative actions which should be taken for determining criminal-legal relevant facts; 4) identifying the sequence and timing of operational and tactical measures and investigative actions; and 5) prior evaluation of the collected evidence and reflection on the circumstances which are discovered and determined, and the ones which still need to be discovered, investigated and clarified.[28]

Setting up the plan begins by comparing all discovered and caused facts (of material and personal nature), which are identified during the first intervention, and developing such versions (hypotheses, working assumptions, presumptions), which should be based on actual (objective) and verified facts. The versions are marked as one of the possible interpretations of a particular event and their number and diversity (plurality) is an important element of the notion itself, and they actually represent a kind of an "embryo" of the system of general and specific versions. In the course of the overall investigation, the general versions are assumptions about the object of proof (*thema probandi*), the other versions are *versions about the subject* (subjective side – component) and the object (objective side – component) of the crime, while the specific/special versions are assumptions (hypotheses) about the *probative facts.* Namely, in the whole system of all established versions - general versions play the role of a kind of "armature" (for example, general version about accusation – culpability, general version about defence – innocence). Assumptions about direct and indirect evidence which are called special versions need to be in accordance with the object of proof (general versions). The versions about the subject of the crime (who committed the crime?), the subjective side of the crime (commission with intent or out of negligence – what happened?), the motive for the crime - why?), the object of the crime (when or what?), the objective side of the crime (the manner and the method of commission - how? using what?) as well as the way of hiding the crime, have the task of being a kind of a binding tissue between general and specific/special versions.

In criminalistics and tactical action (through full application of the three methods: system of accumulation of evidence, method of defunding – in relation with negative facts and method of elimination – exclusion), the relationship between indications and direct evidence is established, above all, when they, each for itself and all together, complement each other in reaching the conclusion, i.e. they either confirm or eliminate a specific version (hypothesis) while, independent of each other, point out to the same fact (object of proof – *thema probandi*). The object of proof is the key fact through which all indications and direct evidence are mutually interrelated. For instance, the fire and the smoke after electricity short-cut are not in a mutual direct relationship, but through their common cause (reason) – the short-cut, as two consequences from the same cause. Or, the threat and the escape are mutually related as rings of the single system of the crime, but only when that specific person really committed the crime. The process of unifying the evidence is referred to as *a complex of accumulation of evidence.*[29]

One object, if taken in isolation, per se, does not have the quality of evidence, and in order to be considered as relevant evidence it is necessary to take into consideration the following two elements:

1) For an object to be considered as physical evidence, it is necessary to identify its relation to the crime or to the perpetrator and the victim. Only then can such an object serve as evidence. Therefore, in finding such objects it is necessary to make a written record of them, in a manner prescribed by the Law on criminal procedure, to collect and describe the object, the place where it was found and its relation to the specific case;
2) It should be taken into consideration that all things/objects change, which implies that their quality also changes. In such cases measures should necessarily be taken to obtain that object/thing as evidence, and to take all necessary conservation measures. But, there are objects which cannot be conserved and kept in their initial state. In such cases, the objects should be described in detail, photographed, sketched, or provided as evidence in some other adequate way. We think that physical evidence should not be viewed as probative media which has advantage (prevalence) and greater probative value compared to other evidence. In our legal system there is no such thing as classification of evidence according to their probative value, but all the evidence is approached with equal attention by the court and is appropriately evaluated.

28 Водинелиќ, В., Криминалистика, откривање и докажување, pp. 29-38; Ангелески, М., Криминалистички теории, Скопје, 2014, pp. 28-33; Мургоски, Б., Криминалистичка обработка на сообраќајните несреќи, Годишник на Факултетот за безбедност, Скопје, 2009, pp. 53-58

29 Водинелиќ, В., Криминалистика, откривање и докажување, pp. 191-194

DETECTION, COLLECTION AND ROLE OF PHYSICAL EVIDENCE

Detection, collection and provision of physical evidence are carried out according to the general views on the burden of proof, but there are also certain specificities. Physical evidence may be given by the parties themselves, and also by third parties, but it is specific that in practice they are often revealed by the court or law enforcement officers. If physical evidence is not disclosed voluntarily, the court and the law enforcement organs are obliged to obtain them by force, namely, via crime scene inspection, searches, physical searches of persons and the application of appropriate methods and instruments in criminalistics technique – forensics. Fixation of the situation as it was established at the crime scene is carried out with the application of the verbal method, the method of photographing and video recording, memo-graphical method and the method of picking up objects and traces from the crime scene for further processing – carrying out the analysis. The basic precondition for a successful crime scene investigation is the engagement of professionals with appropriate technique for carrying out the investigation. The quality of the investigation which is carried out depends on several factors, among which, we will single out the following: the level of training and competence of the members of the investigative team (various profiles of experts), meteorological conditions, security of the crime scene, and also the equipment of the investigative team (how sophisticated it is, its quality, adequacy etc.).

The advancement of technology enables availability of advanced possibilities for fast collection of a great amount of data, which were not available in the past, and which can be used by analysts in the analysis of events in the court procedure. With the application of contemporary devices possibilities are created for forming a multimedia investigative documentation with a great scope of information and possibilities for carrying out a greater number of further analyses, which should lead to better analyses and a great number of evidence. Fixation of the crime scene in the virtual world makes it easier to reconstruct to crime scene, to check the statements of eye-witnesses and to test the hypotheses of the event.[30]

Provision of physical evidence in the procedure is carried out with specific procedural actions, such as: inspection, reconstruction, expertise and recognition of persons and objects. These actions help in the collection of the data which are provided by the physical evidence for clarification of important facts in the criminal case. The probative value of physical evidence in the criminal procedure is evaluated on the grounds of the general rules for evidence evaluation. However, generally speaking, in addition to the value of this evidence, also called as "mute witnesses of the crime act", it can be stressed that they themselves are objective and unbiased.

STANDARDIZATION OF THE PROCEDURE FOR THE PROVISION OF EXPERT ANALYSIS MATERIAL AND THE PROCESS OF EXPERT ANALYSIS

For an object to serve as evidence, it should necessarily be preserved and kept intact (uncontaminated) and adequately transported. In the course of the criminal investigation the evidence substance should not be changed, the place where the evidence was found should be precisely recorded, as well as its relation with the object of proof.

1) Standardization of the procedure for obtaining the material[31] for expert analysis refers to the optimization of the procedure with physical traces during: securing the crime scene, carrying out on-spot inspection, collecting physical traces from the spot for further lab processing (expert analysis), packaging, transportation and keeping, as well as collecting materials for comparative expert analysis. When doing this, the following should be defined: the qualifications of the forensic expert for conducting inspection, the necessary equipment with adequate documents proving the equipment's functionality, the procedures for acting at the crime scene related to the situation found at the scene and the fixation of the traces found there, the procedure for writing the adequate documents (records, reports, crime scene reports etc.) the procedure regarding the packaging and keeping the traces during the transportation to the forensic laboratories, as well as the lab equipment with appropriate documents proving the equipment's functionality and the required qualifications of the persons, procedures relating to the conduct of the persons when dealing with the submitted samples and the equipment, application of adequate methods for investigation and interpretation, and the form in which the results will be presented.

30 Lipovac, K., Bjelovuk, I., Nesić, M., Zbornik radova, Pravo i forenzika u kriminalistici, Kragujevac, 2010, p. 36
31 Žarković, M., Bjelovuk, I., Nesić, M., Zbornik radova, Suzbijanje kriminaliteta i evropske integracije, Kriminalističko policijska akademija, Beograd, 2010, p. 242

2) Standardization of the procedure for expert analysis refers to standards for keeping the material subjected to expert analysis in laboratory conditions – the places where the analysis is carried out, standardization of the methods which are used in specific types of expert analysis, standardization of the form of presenting the results of the expert analysis process (documentation about the completed analysis should contain a written part which consists of introduction, findings and opinion, and also appropriate annexes in the form of photographs, sketches, calculations, diagnosis, schemes etc.), and standardization of the ways of presenting the results from the expert analysis before the court.
3) Talking about the procedure with physical traces taken from the crime scene to the laboratories for expert analysis, the following standards are particularly important: before and after unpacking the parcel where the specimen are transported, the delivered materials are photographed (special care should be taken that the parcels are unpacked on a clean lab table so that the traces do not get contaminated); after completing the processing of the traces, the remaining part is taken back to its original package (the material which is submitted for expert analysis should never be wasted in its entirety); care should be taken that the traces taken for expert analysis which refer to different court cases are processed, so as not to make unintentional errors and mix the findings and opinions referring to different expert analyses.

CONCLUDING REMARKS

The fact is always a moment of realization, which directs towards the existing situation or event and is independent of human consciousness, but it becomes a fact even in the process of knowing. Proof represents established, found, relevant link between the processes that directly or indirectly affects the occurrence of the crime, traces, objects and people. From gnoseological aspect, evidence posing any changes in the field of preparing, executing, concealment and enjoying the fruits of the crime, which are relevant in connection with the crime.

In the course of the criminalistics and forensic processing of the crime scene by authorized and competent persons and investigative teams, it is necessary to fundamentally and thoroughly investigate and provide all relevant facts and evidence, and to transfer them to forensic labs for adequate expert analysis in accordance with the stated standards. During the investigation information should also be obtained about all specific conditions and circumstances which contributed to the occurrence of the crime through criminalistics and victimological analysis (relationship: perpetrator-victim). This should be accompanied by equally attentive and careful investigation of all facts, circumstances and evidence, both in favor of the defence and the prosecution.

In building the evidence during the pre-investigative and criminal procedure, we think that the only correct strategic principle, whenever necessary, is to turn towards *combined evidence*, which consists of personal and real (physical), direct and indirect evidence. By doing so, individual types of evidence mutually complement, assess, prove or contradict each other. Thus, the worth of the combined evidence is naturally equal to the importance of its elements.

During the investigation, apart from positive facts and circumstances, equal attention should be paid to the so called negative "facts", which mean not only absence of something, but also existing traces and objects from the crime, if they contradict the usual course of the event.

In the future, we think that it is necessary to apply an interdisciplinary and coordinated approach in the investigation of crime events for the prevention of crime, with constant use of contemporary methods and investigation techniques. Within this context we advocate a dully continuation and intensification of a contemporary and continuous process of trainings in the area of forensics for competent organs and subjects.

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ORGANIZED ENVIRONMENTAL CRIME[1]

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INTRODUCTORY NOTES

The term organized crime is nowadays considered to be generally known and is used in everyday life not only in the academic and professional framework, but also among the general public, whereby there is no unique definition of it. In a way that is understandable because it is a dynamic category, as indeed society itself is, susceptible to constant changes. Therefore, it is difficult to give a universal definition of organized crime, a definition which would be neither too restrictive nor too extensive, and yet it is a necessary precondition for the fight against it. Today is considered to be no longer adequate the approach of defining the concept of organized crime as a special manifestation of the crime, but it is better viewed as a continuum in which certain forms of serious crime are more organized than others. [3] Organized criminal groups are continually searching for new sources of illegal income i.e. for new illegal activities, which will enable them to quickly acquire extremely high profits and power. In that sense, organized criminal groups have shown special interest in the environment in the past few decades. As the totality of natural and man-made values and their mutual relations, the environment is in its entirety in the spotlight of the attention of the general, professional and academic world, and is subject of regulation of a number of regulations at the national and international level. The most severe forms of threats to the environment represent criminal offenses. Environmental crime is a complex, growing activity which is "(...) often transnational in nature and involves organized crime activities such as trafficking in natural resources, the illegal trade in wildlife, illegal, unregulated and unreported fishing and illegal exploitation of and trafficking in minerals and precious stones."[4] The most prominent environmental crimes featuring the involvement of organized crime in the EU are the trafficking in illicit waste and the trafficking in endangered species. [5]

Yet, the great danger arising from the organized environmental crime has been pointed out during the nineties of the last century. For example, in 1998 at the G8 Summit in Birmingham "(...) stressed the importance of joint law enforcement action against organized environmental crime in order to protect the global environment, the health and livelihoods of people in developed and developing countries alike and last but not least to enforce multilateral environmental agreements."[6]

Organized environmental crime is in the scientific and professional literature considered in three ways. The majority opinion is that it is a type of economic crime, the second standpoint considers this type of crime as a phenomenon per se, and according to the third standpoint, it is an intersectoral form of crime - professional, environmental and economic. [7] Organized environmental crime represents the security risk.[8] These phenomena fuel corruption and money-laundering, and undermine the rule of law, ultimately affecting the public twice: first, by putting at risk citizens' health and safety; and second, by diverting resources that would otherwise be allocated to services other than crime.[9] This danger may be included in the fact

1 This paperwork is a result of a research on the Project "Biosensing technology and global system for continuous research and integrated management of ecosystems", the number 43002 in 2014.. Funds for realization of this Project are provided by the Ministry of Education and Science of Republic of Serbia.
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7 Fröhlich T., Final Report Organised environmental crime in the EU Member States, http://ec.europa.eu/environment/legal/crime/pdf/organised_member_states.pdf , p. 212.
8 Today, more people talk about ecological security as a new modern form of security arising from the need to prevent jeopardizing the environment and it protects the basic components of the environment and without it there is no survival. V. Матијашевић Обрадовић Ј., Обрадовић А., Угрожавање безбедности савременог друштва у светлу угрожавања еколошке безбедности, Култура полиса, No. 23/2014, http://kpolisa.com/KP23/kp23-V-1-MatijasevicObradovic.pdf, p. 264.
9 UNICRI, Transnational threat of Environmental Crimes, http://www.unicri.it/topics/environmental/

that illegal activities of organized criminal groups, within the sphere of the environment, directly influence the loss of biodiversity, as well as certain plant and animal species and therefore affect the survival of humanity. For this reason it is considered to be not only a matter of the environment, but criminal protection of the society and that it is necessary to act urgently and coherently by all means. [10] The factual background clearly indicates endangering the basic human right to a healthy environment, which is also in our country guaranteed by the Constitution (Article 74, paragraph 1) as the highest legal act. [11] On the other hand it is necessary to point out that around 500 international and other agreements relating to the environment have been signed, 300 of which were passed in the last 30 years.[12]

CHARACTERISTICS AND FACTORS OF ORGANIZED ENVIRONMENTAL CRIME

The most severe form of environmental crime is organized environmental crime, which has been characterized as extremely profitable,[13] with low risk of detection and provability, and with low penal rate. Organized environmental crime besides characteristics that are at the same time also characteristics of environmental crime such as: "(...) expansion, dark figure, organization, white collar crime, and especially interesting characteristic in victimological aspects, where everyone is a victim, thus providing the surroundings that no one is a victim,[14]" also has specific characteristics such as: "(...) high expertise and professionalism in realization of criminal activity, protection of large capital, the participation of larger number of persons involved in taking part in committing this type of crime, high level of cross-border mobility, connection with terrorism, locating in those areas where there is a possibility of making profit in a short period of time, the skill to adapt to new socio-economic and political relations, continuously generating new forms of (organized environmental crime)."[15]

The emergence of organized environmental crime is influenced by numerous factors. Factors as components that in any way affect the emergence of this type of crime, or on it as an individual act are: "(...) incomplete legal framework, the fragmentation of competence and powers over a large number of different authorities, incompetence of the environmental issues staff, insufficient technical equipment of the authorities, unsatisfactory preventive and repressive activities of the authorities, as well as various influences and pressures by political and economic entities without legal basis,"[16] minimal investments, high profits, low risks, mild sanctions. In addition, the factors of organized environmental crime also include:[17] low level of environmental awareness; delay in the implementation of adequate regulations that are often imprecise and insufficient, therefore arises the possibility of acting in so-called gray area; strong territorial control by certain organized crime groups.

SPECIALIZED AUTHORITIES FOR THE FIGHT AGAINST ENVIRONMENTAL CRIME

In some European countries there are specialized police and prosecutorial authorities for the fight against environmental crime on the grounds of the specifics of this type of crime.[18] With the emergence of organized environmental crime, arose the question of validity of forming special authorities specialized in organized form of environmental crime taking into account the specifics of the offenders and extreme

10 The Global Initiative Against Transnational Organized Crime, Organized Environmental Crime: Act Now or We Will Lose, http://www.globalinitiative.net/organized-environmental-crime-act-now-or-we-will-lose/

11 Official Gazette of the Republic of Serbia No 98/2006.

12 Mastny L, French H., Crimes of (a) Global Nature, Excerpted from September/October 2002 World Watch magazine, http://www.worldwatch.org/system/files/EP155A.pdf , p. 13.

13 According to estimation 23 millions of dollars is annually made from illegal fishing (The Global Initiative Against Transnational Organized Crime, Organized Environmental Crime: Act Now or We Will Lose, http://www.globalinitiative.net/organized-environmental-crime-act-now-or-we-will-lose/).

14 Matijević M., Specifičnosti suzbijanja ekološkog kriminaliteta, 1stInternational Conference Ecological safety in post-modern environment 2009, Banja Luka, http://apeironsrbija.edu.rs/icama2009/011-Mile%20MAtijevic%20Knjiga.pdf , p.1.

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16 Амицић Г, Ђулум Д, Кријумчарење и илегално уношење нуклеарног материјала и радиоактивног отпада као облик угрожавања еколошке безбедности, Полиција - Грађани, година IX, број 3-4/13, p.150.

17 V. Massari M., Ecomafias and Waste Entrepreneurs in the Italian Market, This paper was presented at the 6 th Cross Cross- border Crime Colloquium, held in Berlin, Germany 2004 ,http://www.cross-border-crime.net/pdf/CCC-2004-Massari.pdf, p. 6.,

18 V. Lukić T., Otkrivanje i istraživanje ekološkog kriminaliteta, Revija za kriminologiju i krivično pravo 1-2/2012, pp.219-234.; Лукић Т, Писарић М., Специјализација правосудних и других органа у борби против еколошког криминалитета, Зборник радова Правног факултета у Новом Саду 4/2012, pp. 219-239.

danger and serious consequences. Obviously it is not yet clearly recognized the need for such authorities in comparative law, and the existing authorities of the police and prosecution who specialize in environmental, as well as in organized crime, along with numerous difficulties they are facing, they meet challenges and demands that are placed before them.

In France[19] for example, there is no authority which is specialized in fighting organized environmental crime. Within the gendarmerie, although there is no centralized unit for environmental crime, 500 employees (*formateurs relais environnement ecologie* - FREE) have completed special training regarding the environmental issue and they are, inter alia, responsible for crimes against the environment. Police closely cooperate in discovering and proving environmental crimes with Customs, Ministry of Environment, the agencies for environmental protection and other competent authorities. The investigative methods used by the gendarmerie and customs when it comes to detecting and proving criminal offenses against the environment are: "(...) initiative investigation for clarification of an initial suspicion; co-operation for clarification of an initial suspicion; use of electronic devices, event-related and random controls; monitoring of monetary flow in order to detect illegal profits; monitoring of trade and commerce in order to detect the transport of illegal substances and their precursors."[20]

There are authorities in Germany specialized in environmental crime, but not in organized environmental crime. The preliminary investigations are conducted and coordinated chiefly by a number of police forces and other authorities, *Laender* police forces doing the bulk of the investigation, federal police forces concentrating especially on coordinating activities:

- Police stations/headquarters (*Laender* authorities): investigation with specialized departments for environmental crimes, and sometimes additional tasks, e.g., monitoring of waste shipments.
- *Laender Bureaux* of Investigation: mainly coordinating activities.
- Federal Bureau of Investigation (*Bundeskriminalamt*): focal point for national and international investigations concerning environmental crime, intelligence work/exchange of information; coordination and support in foreign criminal investigations, investigations in cases of special interest, development of counteractive measures, partner of EUROPOL and INTERPOL, membership in INTERPOL Working Parties.
- Customs (federal authority): monitoring the import and export of goods, including related criminal investigations.
- Water Police (*Laender* authority): investigations on larger rivers and in harbors.
- Federal Border Police: investigations at territorial seas and within the Exclusive Economic Zone, investigations on sites owned by the Federal Railway.
- Mining Authorities (*Laender* authority): investigations on mining sites.[21]
- Each Criminal Police Office has one department for environmental and/or economic crime, which is also responsible for handling organized crime.[22] Cases of serious environmental crime and thereby also those termed organized environmental crime fall under authority of the criminal police and are transferred to this office after initial investigation by the uniformed police force.[23]

The department for organized and general crime exists within the Federal Criminal Police (*Bundeskriminalamt BKA*) and it is also competent for organized environmental crime. [24] This department also exists within the Customs Criminal Office. [25] In reference to Police Forces, there are very often overlapping areas of activities and in case of environmental crime, this is particularly common with cases involving cross-border waste trafficking, as these trans-frontier crimes generally involve illegal transport/relocation of waste inland, or other connected preparatory crime, and so are not simply limited to the border location.[26]

The Federal Public Prosecutor is competent for the prosecution in case of crimes against the environment committed by an organized criminal group and he also may appoint a coordinator for cases of organized crime, but not a single public prosecutor's office in Germany contains the section for organized environmental crime.[27]

19 Fröhlich T., op.cit., pp. 460-481.
20 Ibidem, p.469 and p. 475.
21 Gallas A., Werner J., Transboundary Environmental Crimes: German experiences and approaches, P.376,377., http://www.inece.org/5thvol1/gallas.pdf
22 Fröhlich T., op.cit., p.490.
23 Ibidem, p.487.
24 Ibidem, p.492.
25 Ibidem, p.506.
26 Ibidem, p. 509.
27 Ibidem, p.515 and p.516.

In Italy[28] there are a number of state authorities competent for organized environmental crimes: the *Direzione Investigativa Antimafia* (DIA) (special anti-mafia investigation directorate) as a joint force of *Polizia di Stato*, *Carabinieri* and *Guardia di Finanza*. In addition to this, crimes against the environment lie under jurisdiction of some police and customs authorities: *Corpo Forestale* (forest police, *Carabinieri – Nucleo Operativo Ecologico* (NOE) (operative environment group of paramilitary police), *Guardia di Finanza* (revenue police), *Polizia di Stato* (state police), and *Agenzia Doganale* (customs).

In Spain there are no special enforcement agencies/bodies exclusively in charge for organised environmental crime (as separated from environmental or organised crime in general), but the vital role is played by the *Guardia Civil division Grupo de Consumo in Medio Ambiente* (GCOMA) which is in charge of any organised crime with explicit competence also for environmental issues and – at the initial stage – the *Guardia Civil* department SEPRONA.[29]

POLICE COOPERATION IN THE FIGHT AGAINST ORGANIZED ENVIRONMENTAL CRIME

In the context of police cooperation in the fight against organized environmental crime Interpol plays an important role. Interpol has a special programme relating to crime against the environment (The INTERPOL Environmental Crime Programme) in which it:[30]

- Leads global and regional operations to dismantle the criminal networks behind environmental crime using intelligence-driven policing;
- Coordinates and develops international law enforcement best practice manuals, guides and other resources;
- Provides environmental law enforcement agencies with access to our services by enhancing their links with INTERPOL National Central Bureaus;
- Works with the Environmental Compliance and Enforcement Committee to shape the Programme's strategy and direction.

As an effective way to combat this type of crime is related to the activities that takes place from the point of view of international and multi-agency approach. This multi-agency approach means that criminals can be attacked from all angles - from on-the-ground wildlife poaching or dumping waste to investigations into their financial and tax affairs - so that all avenues of escape and evasion are closed.[31] The organized nature of these activities makes it difficult to detect without equally sophisticated response of the competent authority, which must be based on cooperation and needs to be coordinated. Exactly in this sense there is a recommendation of Interpol to member states to form the National task force for environmental security (National Environmental Security Task Forces (NESTs) [32] that would be able to provide a response to organized transnational environmental crime which would be composed of the representatives: of the police, customs, agencies for environmental protection, other specialized agencies, prosecutors, NGOs and intergovernmental partners. [33] The basis of any form of cooperation is the exchange of information and therefore it is important to foresee all the ways (channels) for the exchange of information. At an international level, the National Central Bureau - NCBs provides a fast, secure and efficient electronic communications network and offers direct access to I-24/7, INTERPOL's secure global police communications system ensuring direct and instant access to information. If the NEST is located outside of the NCB, I-24/7 should be extended to the NEST agencies as a matter of priority.[34]

In addition to Interpol and Europol, an important role in fighting environmental crime is given to a number of organizations such as: the World Customs Organization, International Maritime Organization, Eurojust, UNEP, UNICRI and others.

Cooperation in fighting cross-border environmental crime is primarily related to the control of transport, and when it comes to cross-border pollution it is extremely significant to form organizational structures that are efficient. An example of this is realized through the so-called Augias project whose initiators were Belgium and Hungary, and which was executed with the support of Interpol and Europol. The purpose of this project was to provide the police services with the necessary practical resources that will facilitate the transport control on the roads (on the land, on the water and in the air). All data collected in this

28 Ibidem, p.544.
29 Ibidem, p.582.
30 INTERPOL, Environmental Crime, http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-crime
31 INTERPOL, Environmental Security Sub-Directorate, National Environmental Security Task Force Bringing Compliance and Enforcement Agencies Together to Maintain Environmental Security, Februar 2014, p.7.
32 Ibidem, p. 3.
33 http://www.interpol.int/Crime-areas/Environmental-crime/Task-forces
34 INTERPOL, Environmental Security Sub-Directorate, op.cit, p. 24.

way will be subject to analytical processing, which aims to gain a true perspective of the movement of waste across Europe. Cooperation between the criminal police, traffic police and other relevant police services is particularly important here, because success in the work is directly dependent on the information obtained through transport checks performed by the aforementioned services, thus creating a significant database that police services may use well in their intelligence work.[35]

A new form of cooperation is a cooperation achieved within the European Network for Environmental Crime - ENVICRIMENET[36] which was established in 2011 and the legal base was EU Council resolution 10291/11. ENVICRIMENET is informal network facilitated by Europol and utilizing existing legal framework. The members are: environmental crime investigation services or competent authorities responsible for fighting environmental crime in the framework of the statement of Intent and Public prosecutors or their networks in European states. Member states are obliged to undertake objectives /functions detailed within the Statement of Intent and designate an National Contact Point for each country with direct access to practitioners in this area.

The meeting of experts on the environment, held within the framework of Europol on December 1, 2014, was particularly significant. Apart from several presentations, mainly by law enforcement members, an introduction to the environmental application (app) of the Dutch National Police was given to the 43 delegates, who ranged from specialized investigators to specialized prosecutors and this app helps police officers to take the initial steps in combating environmental crime.[37] These guidelines are related to: waste, asbestos, soil, felling trees, animals, flora and fauna, noise nuisance, facade cleaning, crop protection, manure, fishing, scrap vehicles, fireworks, water.[38]

ENVICRIMENET is aiming to improve the results of the fight against environmental crime by, for example:

- Ensuring that member states become aware of the fight against environmental crime at the strategic level;
- Mutual sharing of expertise;
- Establishing relevant risk assessments that can be exchanged amongst the participants;
- Learning from one another in the fields of risk assessments and intervention strategies;
- Establishing tactical analyses of particular forms of environmental crime;
- Establishing joint investigations into environmental crime;
- Exchanging investigation methods;
- Exchanging information prior to initiating the operational phase;
- To create the right training and schooling possibilities in cooperation with Cepol.[39]

In addition to inter-police cooperation, it is extremely important for the police to cooperate with state authorities that are in charge of monitoring the environment, and this exchange of information is especially important primarily in the detecting and proving crimes. That is why it is important to mention the relevance of biosensing technologies - primarily biosensors which are used in environmental monitoring, and which timely and accurately detect the presence of prohibited substances and other indicators of threats to the environment (this is particularly important, for example for waste disposal, solid as well as hazardous). In criminal proceedings, the biosensors are used for the purposes of forensic analysis, which is an essential part of the evidentiary proceedings in criminal proceedings for criminal offenses against the environment.

Because of their exceptional capabilities, including high specificity and sensitivity, rapid response, low cost, relatively compact size and user-friendly operation, biosensors have become an important tool for detection of chemical and biological components for clinical, food, law and environmental monitoring.[40] Biosensors play an important role in enhancing the procedures of crime detection. The field of forensic sciences will have a new way to detect and find out the criminal in a more efficient and accurate manner

35 V. Lukić T., Otkrivanje i istraživanje ekološkog kriminaliteta, op.cit, p. 226.
36 http://www.basel.int/Default.aspx?tabid=2939
37 https://www.europol.europa.eu/latest_news/experts-environmental-crime-met-europol
38 https://webapps.politieacademie.nl/naslagwerk/environment; As an example for Guidelines for water: https://webapps.politieacademie.nl/naslagwerk/environment#boekdeel-4086 Water: Safety-Think of your own safety, for example if dangerous substances are present. Dumping, tipping and discharging on banks, shores, forelands, et cetera are also covered by the regime of the Water Act. Hazardous waste -Alert the environmental police officer or consult RMT (regional environmental team). Responsibility - The owner of the substances and the party that dumps the substances. Not caught red-handed - Examine the substances for traces of the owner. Possibly allow a specialist take samples in connection with gathering evidence. With more serious forms of water pollution - Alert the water quality manager (the Water Board or Directorate General for Public Works and Water Management). The water quality manager makes sure that samples are taken and analyzed. The water quality manager can recoup the costs of the pollution from the offender.
39 http://envicrimenet.eu/EN/
40 Singh V., Kamthania M., Pavan R., Singh S., Kumar N., Biosensor Developments: application in crime detection, National Conference on Synergetic Trends in engineering and Technology (STET-2014), International Journal of Engineering and Technical Research, Special Issue, www.erpublication.org , p.163.

and the use of various different biosensors for detecting different types of biological components generally found at crime scenes will help to get good results in less time.[41]

CONCLUDING OBSERVATIONS

Environmental crime and its links with other forms of crime, in particular organized crime, constitute a serious threat to sustainable development, peace and security.[42] The belief that environmental crime is phenomenological form of victimless crime is wrong, because everyone is the victim, and the consequences of threats to the environment are often not visible immediately after the crime is committed, but they are "distant in time - allocated" in relation to committing the offence. It is widely known and confirmed that the long-term effects of offenses against the environment are manifested in the loss of irreplaceable ecosystems, the negative impact on biodiversity, loss of endangered species, harmful effects in the atmosphere and more. Organized environmental crime today undoubtedly represents a growing factor of (in)security and a new phenomenological form of transnational crime that necessarily imposes requirement for a proactive approach by all competent authorities and the application of harmonized and coordinated measures and actions to be undertaken at all levels. The basic prerequisites for successful fight against organized environmental crime are:[43]

- monitoring and intelligence
- harmonization of environmental criminal law and integration of environmental criminal law into organized crime legislation
- similar approaches for the specialization on environmental organized crime
- in the various subsystems of criminal justice respectively links between traditional organized crime units and units that specialize on economic and organized crime.
- establishment of a system of liaison officers which could be established in
- administrative bodies and law enforcement agencies to efficiently organize
- cooperation on national and international level.
- harmonization of environmental administrative laws and methods by developing concepts of use of shaming strategies towards companies and organizations backed up by the adaptation of codes of ethics and conduct of best practices.
- introduction or further development of internal monitoring schemes in corporations and organizations to increase sensitiveness towards environmental problems.

Environmental crime, unlike other forms of crime, is often revealed as a result of targeted investigations, rather than reports on an environmental offence committed.[44] As for the prosecution, when it comes to cases of crimes against the environment, regardless of whether the perpetrator is an individual or an organized criminal group, the difficulties are consisted in the lack of expertise of the public prosecutor in relation to the issue of the environment, which is mostly manifested in an action of collecting evidence, contributed by factors such as insufficient number of controls, a lack of specialized police units and the impossibility of intelligence-led policing due to a lack of data. In addition, in certain cases it is very difficult to make a clear distinction between legal and illegal activities, which is especially the case when it comes to waste-trafficking, because in some cases, which are not rare, companies are doing business with regular documentation and approvals, while at the same time performing illegal activities. The purpose of the investigation regarding crimes against the environment, regardless of whether it is about one suspected perpetrator or an organized criminal group, is to collect key data relating to the location of the scene, the date and time of the crime, the data (facts) about the crime, the parties involved; as well as the consequences. In the process of discovering and taking evidentiary actions, forensic laboratories for the environment have an extremely important role. These laboratories apply subscribed standards related to: proficiency testing, facility improvement, management information systems etc. However, given the complexity of forms of environmental crime, there are requirements for the establishment of other standards relating to the collection of evidence outside forensic laboratories. Elements such as field sampling, evidence custody and preservation, and proper documentation can affect the prosecution of the criminal case and should be included in the

41 Ibidem, p.165.
42 International Conference Environmental Crime – Current and Emerging Threats, Organized by the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the United Nations Environment Programme (UNEP), in collaboration with the Ministry for the Environment and Ministry of Justice of Italy, Rome, 29-30 October 2012, Action Plan on Combating Environmental Crime, http://www.unicri.it/topics/environmental/conference/Plan%20of%20action.pdf , p.2.
43 Fröhlich T., op.cit., p. III, p. IV.
44 http://envicrimenet.eu/EN/ .

quality management provided by properly designed accreditation standard.[45] Preserving and controlling evidence are crucial to the integrity and credibility of the investigation in order to prevent its alteration or loss and to establish the accuracy and validity of all evidence, which are collected.

Based on all the aforementioned in connection with the fight against organized environmental crime, a conclusion can be drawn that it is better and more appropriate to work on improving cooperation within and between judicial authorities, rather than implement institutional reforms. It is also necessary to promote multi-agency approach to prevent and combat environmental crime (as for example National Environmental Security Taskforces (NEST). Cooperation should be achieved with EUROPOL, Eurojust, the European Network of Prosecutors for the Environment (ENPE), the EU Forum of Judges for the Environment (EUFJE), and the European Network for the Implementation and Enforcement of Environmental Law (IMPEL).

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45 Beam E.W, Biggs D.E., Collins W., Dusenbury M., MacLeish P.P., Nottingham K.E., Smith D.J., Suggs J.A., Environmental Crime Technical Investigation-Evidentiary Forensic Analysis, EPA office for criminal enforcement forensics, and training, www.nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=9100TI9W.TXT, p.40.

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CRIMINALISTIC CHARACTERISTICS OF HOOLIGANISM – VIOLENCE AT SPORT MATCHES

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Abstract: The purpose of this paper is to explain the criminal characteristics of violent behaviour among youth during sports matches. To do so, we will try to describe why there is hooliganism, which are the factors that contribute to its presence and which are the negative consequences of this phenomenon. Violence among youth and hooliganism represent criminal behaviour, which often have severe consequences for the life and physical integrity of the person who is a victim, can lead to serious property damage and serious disruption of public order and peace, also destruction of material goods and objects of public and social interest etc. Violence among youth can take many forms in society, while hooliganism as a product of an escalation of this violence, which is done by young people, is typical during public meetings, rallies, especially during sports matches.

This paper will elaborate the subject of interest by analyzing the literature in this area, interpretation and discussion of the pros and cons of the measures and actions that are applying by the law enforcement agencies in fight against hooliganism. Also, it gives comparative analysis of the legal framework for combating hooliganism in some countries and the Republic of Macedonia. This paper should find the real deep reasons for hooliganism and assess whether and how existing measures and activities help to prevent this phenomenon. In this way, it will contribute and offer an appropriate strategy on national level for reducing and preventing youth violence during sporting events.

The originality is seen in the assessment and evaluation of existing measures and actions for combating this phenomenon, which will be conducted by counting and analyzing the seriousness of the acts of violence among young people during sports matches in the Republic of Macedonia in last few years.

Keywords: violent behavior, violent crime, criminal act, sporting events, hooliganism.

INTRODUCTORY REMARKS

What is worrying today is the rising trend of a specific type of crime- the violent crime. The violent crime, broadly speaking is a crime characterized by aggression, aggressive behavior and violence by its perpetrators. The violence is expressed in different variations and different scope and intensity.

Every civilized society in its development tends to reduce and eliminate the violence and the aggression. But, unfortunately we witness that more people are resorting to violence, which is one of the worst and heaviest events of today. Thereby, the abusers leave deep mark on people and nobody can tell if that will ever stop. At the end the victims remain deeply hurt from those events with endangered rights, freedom and life.

However, we should mention that the violence is not a new and modern phenomenon, but it has followed the man from their originally being, from their primeval community. Therefore, we can say that the violence has its anthropological basis, actually its violent basis. The violence from young people is one of the most visible forms of violence. Fatal and nonfatal attacks, including young people, significantly contribute to the global number of premature deaths, injuries and disabilities. The violence among youth hurts deeply not only the victims but also their families, friends and communities.

There is a close bond between youth and other forms of violence. The violent young people often perform a number of crimes and show other social and psychological problems. According to the World Health Organization (WHO) every day 556 children and youth aged 10 to 29 years old lose their life as victims of violence. Homicide rates of young people vary by region or state, and death rates among women almost everywhere are significantly less than men.

Youth violence and hooliganism as its heavier form, unfortunately is a problem with constant trend of increasing in our society and requires a multidimensional approach and attention. This is a sensitive topic

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that requires attention from various agencies and individuals who are professionally concerned with this issue, mainly because as perpetrators we mainly identify the minors. To repress this negative social phenomenon we should work on prevention but when the events escalate we need a repression from the legislative-executive organs. As organs that directly deal with this issue and identify juvenile offenders police stations (police officers and juvenile delinquency prevention), organs for social work and care of minors, judicial institutes that are serving juvenile jail, penal provisions governing offenses and crimes committed by minors, non-governmental organizations working in the field of education of young people, social groups for self-protection (where applicable) etc. Also as important factors we should mention the psychologists (even though the minors appear in the role of perpetrators they also appear in the role of victims too), pedagogues, educational workers (the teaching staff in the primary and secondary schools) and of course the family which should provide the basis of the individual in their integration into the society.

FACTORS FOR VIOLENCE AMONG YOUTH

Youth violence and hooliganism as its heavier form, unfortunately is a problem with constant trend of increasing in our society and requires a multidimensional approach and attention.

It is indisputable that today's children grow and develop at a time when violence is present and common in all spheres of social life and when it appears, at least seemingly, that violence, not learning, is paid. The family, the academic and wider social tolerance towards violence correlated with exposure to violence through the media, the Internet, and all that supported by use of drugs, alcohol and weapons create conditions and reasons for the more severe forms of violence among young people - hooliganism.

The answer to the question "Why do children behave in this way?" gives more reasons. The first reason, which should be taken into consideration, is the lack of education, i.e. bad family experience. In the literature, it is well known that the child learns from the model, and if the model is incorrect, the taught behavior will be incorrect, too. Those children who have been exposed to violent behavior by its parents and who have not received warmth and parental care have started to treat their friends the same way because they think that their behavior is acceptable.

Furthermore, another reason can be the omissions of education and the socialization of different actors (the family, the school, the society) as well as the elemental, negative education that lead to spontaneous factors of socialization through which many negative models of behavior are learnt and acquainted.

The school can also be one of the many reasons for violent behavior. If the child is not accepted into the class among its peers and, if not controlled, it is likely that it can develop an urge for violent behavior.

Violence between peers happens in primary schools, secondary schools, institutes, youth homes and other facilities for care and education of young people. Violence does not happen only in the institutions themselves, but also in their surroundings.

As additional reasons for such behavior, some authors emphasize the industrialization and urbanization, ecological environment, society, political views and motives, cultural backwardness and so on.

For example, some studies have shown that over a long period of industrialization and urbanization the trend of delinquency grows as well. There were migrations from the countryside to the city, accompanied by instability in families, the disappearance of the traditional form of control and gradual introduction of a new form of control where the family loses the traditional authority to the person. As a basic problem from this aspect we can detach the process of adaptation in the new environment and new living conditions, performed with difficulty because of disorganization, deviance and change the properties of the individuals themselves and their sphere of mental and emotional habits.

There is an evident fact that the number of young people who commit violence is much higher in urban areas than the number of their peers who commit violence and live in rural areas.

Social factors are also very important reason why young people commit violence. These include alcoholism, prostitution, drugs, and the negative impact from the street - the neighborhood, the impact of mass - media: literature, press, television, radio, the internet, etc.

By living in a modern society, young people have developed communication and have access to impartial information and excessive expansion of media for such violence. Also, at preadolescence stage, many teenagers are looking for their own identity; and through movies they identify themselves with "heroes" with symptomatic behavior which they later as teenagers adopt.

Youth violence can be direct and indirect. Direct violence includes: humiliation, insults, criticism, ordering and request for subordination, hitting, etc. Indirect is difficult to see (girls are prone to it), such as deliberate exclusion of a child from the group games, gossip, etc. These forms of violence among young people occur at an early age, outside the control of teachers, parents and other adults in the school toilets, corridors, playgrounds, etc.

The problem becomes serious when the young people go through the phase of bio-social development (younger towards older minor), where we can detect that young people start with organized and heavier forms of violence, organized in groups with highly expressed degree of self-confidence and the violence is conducted over those who are not part of the group or other rival groups. The violence then is moved from the classrooms to the streets, meetings, sport events and matches etc.

As factors commonly mentioned for the occurrence of violence among young people are mentioned:[3]

- Influences of family and peers;
- Alcohol, drugs;
- The impact of violence in movies and television;
- Lack of parental love;
- Discontinuity of family, school and company;
- Disturbed system of values, which are based on easy enrichment;
- Insufficient attention in the family to the proper development of children;
- Existential needs;
- Poor financial condition and
- Lack of prospects.

As stated above, the factors and the sources, like socialization and youth violence, should be looked among the socio-economic, political, criminal-legal, family and educational conditions of the person. The environmental factors (the family, the peers, the school, the media, the internet) as well as the characteristics (physical, intellectual, emotional and social) may together affect the creation or elimination of preventive measures for youth violence[4].

Minors' criminality in phenomenal view[5] differs from adults' crime, among other things, in the fact that minors were significantly more likely than adults to commit crimes in smaller or larger groups. Such criminal activities are closely related and can in good part be understood on the basis of bio - social and psychological characteristics of the youth.

The concept of violence among young people appears on the expressed influence of personality, with all its biological, psychological, physical and intellectual abilities and characteristics correlated with social conditions and social environment, in which the individual or the minor lives, grows and develops. Two factors have an important role- the first factor gives the juvenile personality characterized by a wide range of desires and needs, defined and undefined, which if not realized causes frustrations that are overcome through excessive behavior and second, that suggests that juveniles are persons who are unable to define their wishes and are not able to delay their fulfillment, so they emphasize the frustrating conditions that result with uncontrollable delinquent and deviant behaviors - as a way of overcoming the frustrations[6]. Furthermore, it is considered that the minor seeks certainty in terms of its continuous development, safety in developing and maturing, for influencing their destiny, life and development, and the fact is that in our society, these social elements are missing gone, and the minors seek solutions through criminal behavior.

SOME SOCIOLOGICAL ASPECTS OF VIOLENCE IN SPORT

The views and the divisions about sport range between emphasizing the different positive and negative attitudes[7]. As positive attitudes we can highlight the following: sport is the most important cultural phenomenon of the present time; sport is an "aesthetic element"; sport is a mechanism for personal and social affirmation; sport is a space where people psychologically enrich themselves; sport is a mechanism of community's fulfillment; sport is an area where the special style of youth is manifested; sport is an area where the relationship between the spontaneous and the organized is manifested; sport is a mechanism for absorbing and spending the excess energy collected - prevents stress; sport is a body culture, the individual energy and the group spirit; sport is a mean for overcoming the low value complex; sport is an area of compensation- especially for people with insufficiently integrated personality and character; sport is a mean for setting an interpersonal relationship - through sport as something mutual people successfully set interpersonal, friendly interactions, connections and relations. On the other hand, negative attitudes

3 Vlajkovic, J., Nasilje mladih odraz neuredjenog drustva, Glas javnosti: Beograd, 2005
4 Savic, M., Knezhic, B., Nasilje medju vrshnjacima u shkoli, NBP, Kriminalisticko-policijska akademija: Beograd, 1996
5 Игњатовиќ, Ѓ., Етиологија на малолетнички криминалитет, Зборник за малолетничка правда – од идеја до практика, Факултет за безбедност: Скопје, 2008
6 Чачева, В., Феноменолошки карактеристики на малолетничкиот криминалитет во Република Македонија, Зборник за малолетничка правда – од идеја до практика, Факултет за безбедност: Скопје, 2008
7 Ковачевич, Б., Друштво, насиље и спорту, Бања Лука, 2011

concerning sport are the following: an area of high risk; meaningless and trivial; an area for gathering the world fans; militarization of the fans' behavior (militarization of the aggression, violence, history, irrational competitions etc.); an area of opposed attitude; an area where the criminal instinct manifests; not a game, or a medium for the development of a collective spirit, communication and other needs, but a means of achieving profit, material goods and social status; deformed capitalist form of play or surrogate of the game, he is alienated, as is life itself - part of the "entertainment industry" and "industrial consciousness"; area for manipulation with the "free time", for control of the behavior; a space for tolerated violence, a sport event is a place for "stress relief"; it stops being pleasure, joy, art and game and becomes a profession. As an expression of the contemporary social relations, sport today has the following properties[8]: sport loses the leisure and the characteristic of game for those who practice it as their profession; sport is a technique, because is an experts' job; sport is being institutionalized, commercialized and becomes a business, a profession, profitable job with huge incomes; sport becomes bureaucratic because certain forces run it; sport creates stars and idols; sport is a high risk area by its expressed aggression and violence. Numerous data implicate on sports violence and victims.

Violence in sports, conducted by youth represents a chronological deviation, which distinguishes the absence of social norms within sport, in terms of sociology. The performance of athletes practically never runs without fans or spectators. The presence of viewers that support athletes and their relation to the competition has a major impact on the conduct of the meeting and the final result. The audience is often mistaken for a social unit, in which individuals are associated with a temporary common interest. The audience is placed according to some order and organization that are caused by the act of sporting event who wants to participate, but its main feature is its disorganization in terms of functional status or structure. On the other hand, sport meets the need of the public for strong and passionate excitement.

The fan groups themselves are a form of organization in which the members are much more tightly bound than in the case of "ordinary" sports audience. Fans are structured, consistent, composed of individuals who share a common goal and objectives and perform certain roles depending on the rules and values of the group. Each fan group has its own structure in which certain individuals occupy different positions. The group has its own interests in a diversified way to participate in something for which the group is created in the first place. Like the other public events, sport events can attract a substantial audience and these events are a recognized way to release tension from the members as individuals. For the fans themselves, this ritual represents an ideal opportunity to get rid of tension, which is tolerated or where you can express behavior that deviates from the norm usually tolerated to some degree.

The fact that society does not sanction sufficiently such and similar behavior in sport and around it, leads to the conclusion that, consciously or not, it helps in stimulation and its further development, although the act of violence is a crime that is punishable under the established legal regulations[9].

SAFETY ASPECTS OF HOOLIGANISM

Hooliganism, in theoretical terms, is defined as a behavior that violates the rules of social norms, the etiquette, the laws, and in general it is a socially destructive behavior.

The term "hooliganism" comes from the Irish surname Hooligan, and sometimes appears as Houlihan. The modern hooliganism appeared sometime in the late 19th century in the UK and it was initially a term describing the socially destructive behavior and lifestyle of street gangs and individuals. So today, this term is accepted and explains the behavior of certain individuals or groups of people who do not fit in the established mainstream society and laws with their destructive behavior.

This type of behavior is characteristic for the fan groups from different sports, usually the group sports, like football, basketball, handball, rugby etc. The characteristics of the sport event that contribute to violence as factors are the following:

- The structure of the fan groups- it's not all the same whether on a sport event there are more male or female visitors, because the probability to come to an aggression and violence is higher if there are more male visitors, especially among young people because the generation of violence is easier. Also, the probability for violence is lower if there are not present members of the opposite fan group.
- The importance of the match- the researches have shown that the more important the match is the higher is the possibility for fan violence. For example, a certain important victory can lead to aggressive behavior and demolition of the property during the celebration of the victory, or on the other hand the low results can lead to aggression if the fans are unhappy with the result of the team they support;

8 Вејновић, Д., Социјологија спорта, Бања Лука, 2006

9 Трамошљанин, Б., Насиље у спорту с освртом на агресију омладине на спортским манифестацијама, Факултет за политичких наука: Бања Лука, 2011

- The quality of the game- every fan comes to a sport event to see e quality game. If their expectations are not in a favor of the team they support then the discontent grows and they usually express it by throwing things on the ground, or in more extreme cases even by fights with the players or the judges;
- Availability of alcohol- it's well known that the alcohol affects the judgment and the accountability of a man. At many sports events in the world and in our country too, the sale of alcohol is forbidden, during the event, before it and couple of hours after it.

However, the most important prerequisite for violence and hooliganism is the structure of the fan group. We should know that **not every hooligan is a fan, and not every fan is a hooligan.**

Fan groups for their structure are relatively stable collective formations with a certain system of values, awareness of belonging to a group where there are norms that determine the roles of members, the set forms of behavior, etc. Regarding the inner structure of the fan groups we can say that they function in a system of hierarchy based on fan experience and intensity of the acting during the group activities. Is it considered that this hierarchy has weak character unless it is focused on pleasing certain needs and interests of the group members. The relationship between the fan group members is informal with high degree of respect between the members of the group. The different motivation significantly affects the behavior of the fans as part of a fan group.

As part of the conducted researches and monitoring of the fans' behavior, some authors[10] have made particular division of the fans inside the fan groups:

- Fan-fan - its basic motivation is cheerleading, i.e. creating atmosphere at the stadium, as an expression of its feeling of commitment and dedication to the club. This type of fan understands the club as their own city, their own religion. Their attention is focused on coming up with songs, slogans, banners, flags and other equipment. The fan mainly disagrees with the policy in football and thinks that that is not healthy for the cheerleading. Also they think that the club's interests may never come into conflict with the fan group's interests, because they consider that the better results the club has, the better the fan group affirms. A fan participates in violence occasionally and only in case when their team is damaged at a certain match.
- Fashion fan (in trend) - participates in the fan groups activities just to be in trend. They try to adapt to the group, idealize and try to promote themselves among their peers. They participate in violence as part of the group, although personally not overly aggressive. Among these fans there are many who consume alcohol and light drugs so they can feel they're part of cheerleading trend.
- Fan-bully- they find the sports events as a place to present aggression. The stadium and city streets are places where they can express their violent behavior. They do that hidden in the group because in that way can make trouble and not be caught up easily. They think that by initializing violence they straighten their affirmation among the peers and often brag about their success. Besides the fights, the verbal incidents they are prone to thefts and other forms of deviant behavior. Usually this type of fan is young and lives in bad material, family and other conditions.
- Fan-political activist - according to the opinions this type of fan uses the fan group only to promote their political beliefs. The sport event itself represents a framework where they can express their political beliefs because of the mass audience as well as because of the atmosphere. At the sport matches we can see this type of a fan carrying national flags and other political marks, singing and shouting things with political connotation. Also, they take part in vandal acts because of extreme political motives.
- Fan-beginner - it is a young adolescent attracted by the trigger and the atmosphere at the stadium and other places where the fan groups appear. They idealize the fan group and its important members. They follow the behavior of the majority in the group and listens to their orders without objections. They take part in vandal acts only when it comes to massive events, otherwise he stands back and observes. They do not have a defined role in the group. They often show courage during vandal acts in order to show that they want to become a full member of the fan group.

Furthermore, as stated above, there is a certain hierarchy into the fan groups, but not in the classical meaning of the term. The basic levels of the fan groups' hierarchy are:[11]

1) The headship (the leaders) - the headship is constituted of several older and experienced fans. Those fans are probably the most active and most prominent members of the group who are most engaged in group activities. Usually, they organize the trips, they take care for cheerleading paraphernalia (banners, flags, drums), they schedule meetings for the group etc. We can conclude that the fan group at the stadium starts to function when the head of the group will start to fulfill its duty. It is very important to note that the members of the headship are in touch with the management of the club, the police and other relevant factors, because it's their duty to represent the group in public;

10 Вејновић, Д., Социјологија спорта, Бања Лука, 2006
11 Ibidem

2) Core - the core members of the group collectively cheer at every game of the club at home, and often go on tours, attend meetings of the group, assist in acquiring fan accessories etc. Many are prone to violent behavior. Also, within the core there is a dozen of engaged fans who are the connection between the headship and the other members of the group;

3) Members-fans - these fans occasionally go the matches at home and sometimes they travel, but never take part in the preparations of the cheerleading activities. Many of the members-the fans- behave in accordance with the cheerleading style of the group which is especially evident in the manner of dressing and high level of knowledge of fans rituals. Their behavior determines the attractiveness of sports event both in terms of the game itself, and in the part of a group and fan allegiance they create.

About the hooliganism as a criminal act that is a heavier form of physical violence, in the world and in our country there is generally accepted opinion that it is committed by a group, and not an individual. If there is no group, mass of people etc., there is no hooliganism. The perpetrators of hooliganism are called hooligans. In terms of the perpetrator of the criminal act in our country through numerous research is confirmed the fact that the perpetrators are usually males from younger generation, usually high school age. They are usually minor- delinquents with previous delinquent behavior, but if they are older it's interesting to mention that usually hey have primary or secondary education. Those are people with unstable character, with minimal or without any family education who were educated by the "street". The most of them are frequent users of different types of drugs and alcohol. The researches have shown that their IQ is low or medium. The psychological profile of the hooligans usually point out that they are xenophobic, with nationalistic ideas and quasi-patriotic. They always, without exception identify with the group and think that their actions are justified. Usually, they have low status in the society and are accepted only in the circles in which they exist and interact with each other.

During the gatherings where group violence and hooliganism is present there is a need for quick police response to prevent physical computing or destruction of public property, as well as a quick evaluation of the situation in order to be set the right action for the present situation. When doing the evaluation that is different for every situation, we should take into consideration several elements of the situation:[12]

- The number of the participants and which of them is the most aggressive;
- Possible motives and intentions
- The victims of the attack;
- The suitable assets for attack the hooligans have and may reach
- The space where the fight happens and the possibilities for hiding, running etc.
- Whether the intruders have drunk
- Evaluation of the possibilities for intervention, so it can be determined if extra help is needed

During such conflicts and actions, the police officers must keep their calmness and adhere to the received orders and instructions. They must not let themselves to be provoked and by unnecessary roughness upset the mass. It is very important from the very beginning to detect the intruders and to discriminate the other people who are not part of the incident but who can easily become victims.

The leaders and provocateurs should be identified and isolated at the beginning of the mass gathering and if that is not possible then they should be followed and in a suitable moment to be taken out which is a decision of the head police officer.

The foreign experiences suggest on established tactic of liaison officers of police, known as "spotters", whose main goal and purpose is to keep track of certain leaders of fan groups at any time and not only at sports events. From them they get useful information about the possible future riots, so they can work on the criminal prevention.

From this perspective, it is important to mention that, hooliganism is an offense which is done by the perpetrators intentionally. Masked in club colors, with striking and the identical symbols, hoodies and items scarves to hide his face, to be recognizable and identified harder by law enforcement authorities during the riots.

Usually victims of this criminal act are the opposite fan groups or fans, sometimes the bystanders, members of different religious, national and political groups and of course the public and state property like busses, traffic signalization, benches, parks etc. that are nearby the sport event, the gathering, the meeting or demonstrations. We should mention also the fact that the victims as objects of these attacks are chosen spontaneously without a previous plan so that's way it is hard for the police officers to work on such events.

From all the changes made in this area, the most interesting is the introduction of Article 13 as part of the Law on the prevention of violence and misconduct of sports fields in the Republic of Macedonia. Namely, the above mention article says: The person who was imposed a ban on the entry and presence

12 Стојановски, Т., Полицијата во демократското општество, 2-ри Август – С: Штип, 1997

of all or certain sports is due no later than 2 hours before the match to come and stay in the police station according to the place where they live or stay during the games and one hour after the game. If the person who has been imposed a ban on the entry and presence at sport matches can't come to the police station then the police officers are due to visit them and check whether they respect the ban. This legal solution is completely correct in the spirit and tendencies of creating "police service to the citizens" but its use in practice is often questioned.

COMPARATIVE ANALYSIS OF THE LEGAL REGULATION OF PROTECTION FROM HOOLIGANISM

Republic of Serbia

The prevention of violence at sporting grounds in the Republic of Serbia is regulated by the Law of Prevention of Violence at sports fields.[13] It should be noted that this law is a response to the requirements of the European Union for harmonization and unification of the Serbian laws in this area with the EU's laws, as part of the integration process of the Republic Serbia in the EU. This law was welcomed by the European public as a step in the fight against vandalism, misconduct and violation of order of sports competitions. The law has strictly defined behavior that is considered inappropriate and makes a part of the offense or the penalty area. The most important to mention are: physical attack - an attack on the physical integrity of any participant at sport events, fights, which is defined as the active calculation of two major groups of participants at sporting matches, then stated that it is forbidden to cause hatred or intolerance that can lead to a physical fight, and damage any inventory of sports facilities and the introduction of fireworks.

The following are mentioned as basic obligations of the organizer of the sport manifestation: they should ensure smooth conduct of the games, as well as the cooperation with regional organizational unit of the Ministry of Interior, if there is a need for the intervention during and after games. If the sport event which itself represents a greater risk, the organizer is obliged to take all the necessary measures to prevent fights between fans through security agency. If this is not possible, again they should refer to the provisions of the law requesting the assistance of the Ministry of Interior. At least 24 hours before the start of the game which is rated as a high risk match, members of units of the Ministry of Interior shall conduct a detailed review of sports facilities and reassess risk.

About the penalties, we should mention that violation of the provisions of the law is a serious offense for which there are fines and protective measures such as a ban on visiting the matches (permanent and temporary). The perpetrator can be any person, legal entity or superior of a legal entity. There are more serious fines for the recidivists as prohibition of doing the activities.

Republic of Croatia

The legal framework that regulates this area in Croatia was taken at about the same time as the law in Serbia. Like the Serbian legislation, the Croatian legislation too was faced with the challenge of bringing up with a common European framework for this area. Due to certain shortcomings that have emerged in practical application of criminal provisions, the Act was amended several times.

If we conduct more detailed analysis of the general provisions of the law, we will see that those provisions are completely similar to the provisions of the law in Serbia. The definitions for sport events, sport objects and participants of sport matches are the same. The only different thing is the definition of protective security units in the Article 3 which are defined as specially trained persons engaged permanently or temporarily by the competitions' organizer. It should be noted that the Croatian law goes one step further in terms of what constitutes illegal behavior during sport events. Article 4 states that such are:[14]

- possession or consumption of alcohol and other beverages containing more than 6% alcohol, drugs, fireworks and other weapons;
- bringing in the sport object some of the above mentioned means;
- Masking of people with hats or other means by which they conceal their identity[15];

13 Zakon o sprecavanju nasilja i nedolicnog ponasanja na sportskim priredbama, Sluzben glasnik RS, br. 67/2003, 101/2005, 90/2007, 72/2009, 111/2009 i 104/2013

14 Zakon o sprecavanju nereda na sportskim natjecanjima, Narodne novine br. 117/03, 71/06, 43/09 i 34/11

15 This attitude is quite interesting, even more, during the last game of the last season of the Champions League and German Cup there were people with masks and no one took any measures, but according to the European Charter for Sport, this is illegal behavior.

• lighting and throwing fireworks and;

• burning, destroying or otherwise damaging the fan paraphernalia.

Just like in the Serbian law, it is provided mandatory evaluation of the risk at the sport match as well as an obligation for the organizer to act according to the instructions of the Ministry of the Interior Affairs. In case of acting contrary to the order, the organizer can be punished with a fine of 10,000 to 50,000 Croatian kuna. The Croatian law is interesting because it gives a detailed description of the security unit's duties. The basic security unit members' are: protection of the participants in the match and the property of the sport object; not letting the fans go to the opposite fan group's gallery; calling the police if their assistance is needed; checking the clothes of the fans; checking the tickets; checking whether any of the persons who want to enter the sports facilities are under the influence of alcohol; prohibiting the entry to a person who is obviously drunk.

The Croatian law has one more specificity and that is prescribing a specific type of misdemeanor offenses in their legal beings. They are:

1) Participation in a fight or attack people during a match;

2) Organization of violence during the match and;

3) Destruction of property and other items of sports facilities.

For these offenses, sanctions can be imposed on adult offenders - fines, imprisonment and preventive and corrective measures for juvenile offenders. The amount of the fines imposed are governed by the general rules of tort law, with respect to the specific boundaries of the fine, which for individuals ranged from 10,000 to 50,000 Croatian kuna, if the guards did not meet requirements of 1,000-10,000 Croatian kuna and legal person from 5,000 to 50,000 Croatian kuna.

Republic of Montenegro

In this country, the Law on Prevention of sports violence was enacted in 2007. This law sets out the measures that should be taken by the organizers of the match to prevent violence during a sports contest, and the powers of the other institutions involved in the prevention of this problem, which include the proper application of the provisions of the Law on Public Gatherings Act and the Law for Public Order and the Law for sports.

The preventive measures taken just before the start of the sport matches are very similar to those prescribed in the Croatian and Serbian law. By those measures the fans are informed about the match, the coordination of the activities and about the measures that minimize the misconduct. We can conclude that these provisions leave open a range of measures that can be taken on a case-by-case basis, depending on the severity of the situation.

Engaging security service unit or security agency stated in the law is an alternative that can be chosen by the organizer of the match.

What is different from the laws of the neighboring countries is being provided an opportunity to implement special measures by the police such as:[16]

• Determine the direction of the fans before and after the game;

• Exclusion of transport vehicles that carry aggressive banners photos, coats of arms, flags, etc.;

• Stop entering in the sports facilities;

• Keep the fans for 2 hours after the match in the place where the match took place.

The organizer of the match is obliged to inform the police 48 hours before the high risk match and the police should check the place and write a report 24 hours before the match. There are fines of 2,500-5,000 euro in case of inaction, breach or violation of the obligations that all the participants should take, and the legal entity will pay 50-550 euro for the same thing. Also, imprisonment is provided in the duration of 60 days.

What's interesting is the fact that a special group of 'fan violations' is provided for which the fine is 60 days of imprisonment. Such violations are demolition of the sport objects, causing a fight, unauthorized entrance in the sport object, and bringing alcohol and other substances. Beside the imprisonment as a fine, the perpetrator will be banned from all sport matches in a period of 1 month to a year.

The disadvantage of this law is the imprisonment as a fine. Although it is reduced to a minimum period (up to 60 days), however, it seems more appropriate for the violations be to imposed other sanctions solely as protective measures and fines. Imprisonment should remain "reserved" only for crimes.

16 Zakon o sprecavanju nasilja i nedolicnog ponasanja na sportskim priredbama, Sluzbeni List RCG, br. 27/2007

Republic of Macedonia

Dealing with the misconduct at the sports fields in Macedonia has always been a deviant phenomenon, which is often present even today. Despite the adoption of the Law on the Prevention of Violence and discreditable behavior at the sports fields in 2004 and its changes and amendments, it seems that the inconsistent application of the legal provisions in practice and the lack of coordination of the departments responsible for dealing with violence are the main problems that still need to be determined.

The standard definitions about sport matches, organizer of a sports events, sports field and masked person of the neighboring countries are accepted in our legislation too. According to the article 3 of the law, violence and violent behavior are:[17]

- possessing or consuming alcoholic beverages or narcotic drugs;
- possession of fireworks;
- inflicting injury or causing violence by people who come to sport events;
- throwing items at competitive space;
- singing songs or heckling messages that can cause hatred or incite violence;
- Burning fan flags, props, etc.

Our law provides mandatory evaluation of the possibility of occurrence of violence by the organizer of the contest, and he is obliged to take preventive measures such as appeal to fans of good behavior before and during the match, to inform the fans about the significance of the match, to coordinate the activities of the clubs when going with their fans at sport events, to prepare an evacuation plans in case of emergency etc.

With the amendments of 2011, a special criminal act was introduced in the law- Violent behavior at sport events (Article 12-a). Violent behavior is any act conducted by a person who has an intention to cause violence, to physically attack the participants of the event, to bring fireworks at the match etc. For this behavior the punishment is imprisonment of three months to one year. If the act has been conducted by a group, every member will be punished by imprisonment of six months to a year. The organizer of the group will be punished by imprisonment of one to five years.

The constitutional weakness of this provision is that it prescribes a crime that does not exist in the Criminal Code, hence the question of its legitimacy. According to the general rules of the criminal law, the only source of criminal acts is the Criminal Code, because it represents the codification. On the other hand, with such standardization, the legal certainty is violated and more and more crimes find their place in special laws that even though they don't belong there. Our opinion is that if a change of this law is initiated in future, then that change should be in a direction of moving this act from criminal to misdemeanor area.

In the section concerning the misdemeanor provisions fines ranging from 500 euros – 1.000 euros are provided for, if the individuals act contrary to the provisions prohibiting illegal acts of violence and misconduct, while the organizer of the competition (legal entity) will get a fine from 1,500 to 5,000 euros.

CONCLUDING RECOMMENDATIONS

The repression of the violence among young people should start from the legislation, as the basis for taking action, through various agencies of the state, educational institutions, social welfare services, and family. A success is possible only if we act in a coordinated and harmonized position on all issues that are unacceptable to any form of violence among young people.

From the comparative analysis of the laws that regulate this area we can conclude that the implemented acts are very similar. Also, the countries with aspirations to become part of the European Union have fulfilled the improvement of its legislation.

The structures aimed at stopping this type of crime, must not and should not reduce this phenomenon only on repression. On the contrary, the police are responsible for taking all the measures in order to prevent any type of violent behavior during the sport events. As such I would especially recommend:

- calling the President of the fan group for an official talk with the police;
- maintenance of educational meetings with the whole fan group;
- taking a written statement by the organizers of the competition that they will take all the measures to prevent accidents;
- taking reports from the organizer of the competition for possible risks and challenges;
- Providing access of police to the field if required prompt intervention.

17 Закон за спречување на насилството и недостојното однесување на спортските терени 2004, Сл. Весник на РМ бр. 89/2004, 142/2008 и 135/2011

In the area of prevention a good solution would be a person-spotter as part of the police structure. That would be an officer who will follow the acts of the fan group and who will be in charge of following the registered offenders and other persons of concern. In this way, those police officers would deal with keeping records of the structure of the fan groups, their movements, acting, organization, the places for meetings, etc. They would work on the plan of prevention, they would have direct contact with those people, would have the correct indicators about the number of the fans, their readiness, aggression and their behavior. This way the fans would be more restrained in their actions, especially when they are familiar with the circumstances that are "supervised" and the Ministry itself, would have a much clearer picture of what is happening there "down the field", what is the possibility and what is the mood of mass action in order to achieve a better plan of action, both in terms of prevention, and in terms of repression. Through these officers we can come to direct information about individuals under the influence of alcohol, drugs and other psychotropic substances that can significantly reduce the awareness, in order to stop them from entering the stadium, halls and playgrounds where the matches take place.

In the other institutions, both public prosecutors and the courts, it would be desirable to have specialized judges and prosecutors who will act solely for such crimes and offenses that are directly related to the violence on the sports fields. This will allow quick and efficient access to the justice, for the perpetrators of offenses and the victims thereof.

The sports facilities should be constructed in such a way as to allow easy entry and exit from the field of defense fans that it is desirable to be physically separated from the home in order to avoid incidents. The organizer of the competition must hire a security service unit which sometimes is very expensive. Namely, the organizer of the match usually hires security agency, but that doesn't stop the fans from acting violently but it leads to fines and additional costs for disturbing the public order.

When it comes to violence on the sports fields and misconduct, much more is needed than legal reform and legal modeling. The base or the frame within all the involved subjects in the process of prevention of these deviant acts should move is set. The next step is consistent application of legal provisions in practice. Also, we find it necessary to raise the awareness among the fans through aggressive campaigns that will primarily emphasize the basic message of the sport - that is fair and honest competition in the field and only between athletes, and not violence outside the ground between fans.

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APPLICABLE CRIMINOLOGY – A "FUNCTIONAL" CRIMINOLOGY WITH TANGIBLE RESULTS IN THE FIGHT AGAINST CRIME

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Abstract: Very often the criminal investigations end up with conclusions and proposals that are deemed as too broad and general. These concluding remarks and recommendations, together with the more specified proposals, are almost unquestionably taken for granted by societies, particularly by bodies and institutions that are entitled to tap into them and make them more applicable. However, in case of more serious criminal forms or complex security issues, organizational documents, strategies, plans of action etc. are drafted, but their implementation hardly ever bears any results. This way, criminologists are faced with the dilemma: are they fulfilling their mission in the society, or, put in other words, is criminology pursuing its noble goal?

The author of this work puts forward the assumption that contemporary criminology is, after all, an academic science with much stronger dedication to the description of the criminal phenomenon, and significantly less focuses on the change of factors and influences that are contributing factors to crime and embedded in its etiology. This is what makes the applicability of criminology particularly limited and questionable.

The goal of the paper is to highlight the indispensability of increased degree of practical applicability of the "functional" criminology i.e. the applicable criminology. It is only in this way that the scientific foundations can translate into well-grounded regulations, activities and social acts that would work in the opposite direction of criminal factors, all of which will enable them to grow into real "regulators" of crime.

Keywords: criminology, applicable criminology,criminal factors, "regulators of crime".

"What is criminology? Criminology is what criminologists do! And what do criminologists do? They only talk, talk and talk at criminological congresses![1]"This simple, ironic criminological monologue seems to hide the full truth of modern criminology. Or, academic criminology still cannot realize its applicative dimension?! In contrast, civilization registers unprecedented criminal forms, alongside emphasized aggression and cruelty during the perpetration. Recently, even through live broadcasts, the whole world was abhorred by terrorist acts and hostage, and millions of people with their own eyes saw executions of innocent people and professionals. And as the world is becoming global, crime is becoming global as well. Even the latest legal and security systems are not effective in the prevention of modern and severe criminal acts i.e. organized crime and terrorism. If the thesis that every society has the crime it has deserved is generally accepted, does this mean that the old criminological theory ought to be generalized; and based on this, should we also assume that civilization consumes the crime it has created?! But then, can criminologists by talking, talking and only talking root out the growing madness?! On the other hand, however, embedded in the main discourse is the belief that criminologists must not live and work in the illusion that they will change the world. They only need to take note on the facts and determine the situation by using well-supported arguments. However, would there be an audience interested to read their observations?!

ABOUT THE CRIMINOLOGICAL RESEARCH

Criminology has developed a research methodology on criminal phenomena from both individual and group perspective. It has successfully adapted and applied social sciences methods, alongside a constant improvement and upgrade of the specific criminological methods. This is the case even when bringing back to focus the anthropological research, although it has long been described as one-sided and insufficient to explain the genesis of crime. Clinical criminology is also a strong orientation and certainly most applied method of research and treatment of crime as an individual phenomenon, where at the core is the personality of an offender. Research techniques are also an advanced segment of the methodological instrumentalism.

1 Lode Walgrave, Revue international de criminology et de police technique N.1/93, Genève 1993

Subjects of criminological research are

– universities within which framework primarily operate law departments and institutes, then departments and institutes of the philosophy faculties offering sociology studies, psychology and social work studies. Certain medical institutes that conduct criminological research, at least in the Balkan region, are included to a lesser degree.
– professional and qualified associations (in Macedonia, the major one is the Association of Criminal Law and Criminology), associations of judges, public prosecutors, penal law experts and others.
– monitoring and analysis of crime within the legally determined responsibilities of state law enforcement organs and institutions in charge: Ministry of Interior, PPO, the courts, the Ombudsman, the penitentiary institutions, establishments and other state-control bodies.
– NGOs, in many areas of activities, especially in the field of human rights and juvenile justice, prevention of deviant behaviour and so on.

In modern scientific theory and practice, criminological research is extensive and interdisciplinary. When browsing the Internet with the entry "criminological research", there are results displayed on over several hundred pages, with hundreds of academic institutions and hundreds of electronic bibliographical units. Derek et al (2014) are right to conclude that criminological research:

> "offers no easy solution to the question of criminal responsibility. It does provide, however, a way of pulling together many diverse strands of criminological theory and research. It also provides both afresh agenda for empirical enquiry concerning offenders' perspectives and, we believe, the prospect of new light on the likely effects of various crime-control policies"[2]

Although the excerpt generally refers to criminological research, it must be pointed out that all developed education systems have specialized schools, institutes, colleges and similar institutions. The leading academic institutions in this field are based in the UK and USA.

The interdisciplinary of the criminological research

The object and purpose of criminological research, or the phenomenology and aetiology of crime and its prevention and suppression, are the same as, and inseparably connected with, the object and purpose of related sciences such as: criminal law (substantive and procedural), criminalistics, sociology, etc. and hence, the research of the criminal phenomenon necessarily includes aspects from criminal law, criminology, sociology and psychology. Therefore, the scientific research in these areas embeds entirely the criminological aspect. In other words, the research of the criminal phenomenon is multidisciplinary and criminological research is primarily phenomenological, so the results of these studies only describe the criminal phenomenon, and not its aetiology. Unfortunately, the applicable dimension is also absent when it comes to the sporadically conducted etiologic research which can indeed reveal valid evidence for the causes of crime. It seems that this is what hinders the success of the mission of criminologists and the criminology *per se*. Therefore, the paper starts with the assumption that criminology is by and large academic science whereas its applicability is somewhat questionable.

Completed criminological research in the Republic of Macedonia

Within the framework of their field of operation, public authorities and institutions are obliged to monitor and analyze crime. Although these tasks do not entail scientific research, the monitoring and analysis produce regular and periodical reports and data through which the criminal phenomenon is being investigated, generally from the phenomenological aspect. Etiological dimension is mostly represented under the caption: "General social conditions in which state authority is working." To a greater or lesser extent they serve to plan and organize future measures and formal activities. Hence, collected data on the crime, perpetrators and victims of these analytical materials are useful in terms of understanding the scope, structure, dynamics and other phenomenological characteristics of crime according to official statistics, despite the fact that these do not take into account the "dark number" of crime. Thus, they do not reflect the real situation in the worst format of unlawful behaviour, particularly in the new emergent forms of organized and economic crime. However, they are indispensable for the official, professional statistics. In terms of actions spurred by an in-depth research, the Ministry of Labour and Social Policy has been the most successful to use results from extensive criminological research when drafting the already adopted three strategies for

2 Cornish Derek, Clarke Ronald, The Reasoning Criminal, Rational Choice Perspectives on Offending, 2014, p. 8

prevention of and protection from domestic violence.[3] Previously such a strategy was adopted in 2008 and covered the period from 2008 to 2011, also using deepened not only phenomenological, but also etiological research.[4]

Criminological researches conducted by professional associations are different in scope and content. Usually the activity of these professional associations of judges, prosecutors, lawyers, mediators, employees at the Social Affairs, penologists and others, boil down to training for application of some legal enactment or stimulation of the enforcement of a new regulation. These activities are further intensified by the diffusion of mandatory training of judges, prosecutors, lawyers and members of other professional groups involved in the prevention and suppression of crime.

The criminal phenomenon in the Republic of Macedonia is primarily researched by the Association of Criminal Law and Criminology, and numerous NGOs - Coalition for Fair Trials, Voice against Violence, Hops and others. The members of the Association are university professors and associates of highest academic status, judges and prosecutors from all instances, police officials and practitioners in the field of social affairs and penitentiary institutions. Every year there is an annual meeting under a current topic, where authors present research results and in-depth analyses and reviews of the problem in question. The last meeting was held in 2014, covering a topic on penal policy of the courts in the Republic of Macedonia, assessment of the sentence in accordance with amendments to the Criminal Code, with particular reference to the Rulebook on sentencing of the Supreme Court in the Republic of Macedonia. The papers were published[5], including individual and final remarks that have pointed to the unlawfulness in the enforceability of this Rulebook, from both material-legal and procedural-legal aspect. Although a general consensus has been reached that the practical application of the regulations prescribed in the Rulebook is not feasible and that there is a need for its voiding, yet nothing has changed.

Academic institutions are researching criminality at two levels:

– During research projects of the departments and institutes at universities mostly within the law schools and independent scientific institutes- Institute for Political and Legal Research at the University "Ss. Cyril and Methodius ".
– By mentoring of individual research within specialist, master's and doctoral degree candidates. Important to stress here is that the latter have almost no influence in changing the social reality.

An Institute, a school, college or separate specialized institution for criminological research, following the example of those in Western theory and practice, does not exist in the Republic of Macedonia.

The results of the criminological research are often published in journals, manuals, pamphlets, monographs and other printed materials. Part of them, as already mentioned, serve as the basis for the adoption of organizational-planning documents: national strategies on fight against drugs abuse, human trafficking, domestic violence, violence between youth, local and regional action plans, agendas, etc. Despite the evident implementation of research results, domestic violence for example has not decreased. Quite the contrary, past months have seen the most cruel multiple murders (in a period of less than one month, there were two multiple homicides in Kavadarci and Probishtip whose perpetrators were current and former members of the security forces, committing the murderers with automatic weapons. In 2014 Skopje was the scene where 2 murders were committed – one of a partner and partner's sister in the first instance, and a partner with the suicide of the perpetrator in the second instance). The effects of adoption on the strategies and action plans for prevention of drugs and human trafficking did not give the expected results. Rather, the author is of the opinion that crime in Macedonia is gradually becoming more complex, more severe, and appearing in much harsher forms; which in fact coincides with similar trends at the regional and global level. Obviously, the problem is not only in the descriptive character of the criminological research, nor only in insufficient implementation of results of significantly less common etiologic research. Indeed, even if there is a satisfactory implementation, this is not effective in the prevention and repression of crime. The question remains how to overcome the evident inefficiency of the of criminological research?! Or, more specifically, how can the criminological research confront the impact of criminogenic factors by revealing factors and influences that work in the opposite direction – the so-called "Regulators of crime." In other words, the question is how to get into the core of the cause of the criminal phenomenon, both at levels of individual criminal behaviour and in the criminal phenomenon as a mass phenomenon.

3 In 2012 in the Republic of Macedonia, alongside with BRIMA – Skopje, and supported by UNDP, the first major research on domestic violence in the state was made, and its results were the basis of the creation of the National Strategy for combating and protection of domestic violence 2012-2015. This national strategy is the second in a row document of the Ministry of Labor and Social Welfare, as the most responsible Ministry to coordinate the completeness of all the activities for combating the domestic violence.

4 More in: Велкова Татјана, Превенција и репресија на семејното насилство,Македнска ревија за казнено право и криминологија no.1/2013, Скопје 2013

5 Македонска ревија за казнено право и криминологија, no.1,2014, УДК 343, ИССН 1409-5327, partner of EBSCO- the biggest world aggregator of magazines, revues and other bibliographies with full texts. The full text of the Revue can be found in EBSCO file - Criminal Justice Abstracts with full Texts database.

ASSUMPTIONS FOR A SUCCESSFUL REALIZATION OF CRIMINOLOGICAL RESEARCH

In my opinion, criminological/etiological research must be intensified. A final, sustained segment of the research must be the identification of the cause or the repetitive nature of the phenomenon based on specific objective or subjective facts, alongside proposals for corresponding "regulators of crime." For example, if the dysfunctional, the so-called criminal family is the primary micro-social factor for the criminal behaviour of the minor, measures of social protection of the appropriate type from the social care institute, the prosecution, or the court will be offered. Another question is whether these bodies are functioning effectively and if not, what are the reasons for this (mal) functioning. This stretches to questions about the efficiency of state instrumentalism that by definition should be the "regulator of criminality"?! If state authorities are ineffective, the reverse is at stake: the criminological impact of the micro-criminogenic factor (in the example criminal family) is multiplied in every dysfunctional society. The final result, even after the completion of a custodial sentence (in a reformatory or re-educational institution), might be a proper criminal instead of a re-socialized repentant.

In case of research on crime as a mass phenomenon, again there are frequent incongruities. Namely, no matter how much the research results indicate that poverty and unemployment as negative economic conditions have direct causal connection with crime, changes do not happen so easily. "The Regulators of crime" are located in the system, and the system is burdened with numerous negative circumstances of objective nature, and numerous subjective inconsistencies. Or, everyone knows the "Regulator of crime", but "we are far away from highly organized social state", therefore, valid research results become useless?! It seems that we will always be locked into a vicious circle if we do not indicate the real micro-criminal factors. That would still be possible by further social and economic research that should be attached in continuity with the already implemented ones.

Hence, applicative criminology despite its own weaknesses, could find the right place to improve the life and behaviour of people only if the system-state accepts and respects its conclusions, suggestions, and recommendations.

Intervention must first be made in terms of funding and other logistical types of support to criminological and related research, and then embedding the results in legal regulations and their practical application in real life. Such research in advanced systems is financed with a budget of several million Euros - pounds - dollars. Here, studies are often supported by foreign states through their embassies and civil society foundations.

Furthermore, we need a complete catharsis of the holders of public power, especially of political factors in the executive authority and creation of a functioning system of law and the rule of law. Indeed, not only declarative populist efforts, but real, honest and dedicated political will to work in the societal interest. Where public interest is strongly prevailing, the culture of indirectly meeting personal interests by direct accomplishments in the general interest comes spontaneously and inevitably. In such a system, the role of professionals and criminologists will be guaranteed. But if the characteristics of the system point to its malfunctioning, we conclude that the social disorganization in all emergent forms should be the main object of the criminological, or more precisely in the focus of the etiological research. This especially refers to social catalysts of violence, as an ever growing form of human ruthlessness and as an almost established way of everyday life. Furthermore, the importance and role of the media as a "regulator of crime" in its own social catharsis is of immense importance. Each sensationalism, tendentiousness and partiality, mostly because of profit, stigmatizes the media as a propaganda machine and makes it accomplice in the misrepresentation of public awareness and fuel of criminal behaviour. Conversely, indispensable are the independence, objectivity and shaping the public opinion in tune with true social efforts to overcome the criminalities - the worst of evils, while, at the same time, applying the results of the criminological research.

CONCLUSION

The current state of crime at a national, regional, and global level implicitly refers to the inefficiency of the criminological, especially the etiological research. Faced with this situation are western scientific and educational systems, which have separate institutions for research of the criminal phenomenon, as well as Macedonia, where the criminological research is usually conducted within other related research. We conclude that the results of the applicative criminology do not provide expected results due to socially disorganized systems. Hence, future criminological research should focus precisely on the elements of social disorganization which profound presence procures large negative impact on the social reality.

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THE HYPNOSIS IN THE CRIMINALISTIC AND CRIMINAL LAW[1]

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Abstract: This paper discusses about the use of the hypnosis in the criminalistics, such as obtaining information on the characteristics of the felony and their perpetrators. Typically, understanding about hypnosis as an altered state of consciousness is subject to the criticism and the criminal laws of the increasing number of the states analyze the treatment of the hypnosis. The main result of the comparative analysis is that hypnosis is mentioned only in the criminal laws of the Yugoslavia countries, almost in the unique way. Then, the paper presents contemporary findings in relation to the hypnosis and the implications of these findings for the use of the hypnosis in the criminal investigation activities. The conclusion is that the latest findings suggest that hypnosis is not an altered state of consciousness, and, the results obtained by hypnosis are unreliable and have problematic effects. Finally, based on the modern research and papers on this topic, the authors suggest that perceptions of hypnosis as a kind of force that exists in the Serbian Criminal Code[2] and in the other countries of ex-Yugoslavia should be rejected.

Keywords: hypnosis, criminalistics, testimony.

INTRODUCTION

Before considering the use of hypnosis in the criminal investigation activities, and its treatment in the criminal law, we will give a brief overview of this phenomenon.

The word "hypnosis" comes from the Greek word for the sleep. The Scottish surgeon James Braid (1795-1860) originally used this term, after his own experience related to the learning and practice of "animal magnetism" of German physician Franz Mesmer (1734-1815). Mesmer invented a method of treatment based on the establishing of balance and free flow of "vital fluid", which, when it is stopped, leads to the discomfort and disease. For example, Mesmer gave one patient who suffered from hysteria to drink medicament with iron. After that, he put magnets on the different parts of her body. When the symptoms disappeared, Mesmer concluded that the magnets caused the healing. Later, in his work, he abandoned the magnet usage, but he continued to try, among his patients, to treat in different ways, a "living fluid". The results of his treatments were "crisis" in patients, such as vomiting, tremor, sweating, etc. Mesner and his followers believed that such crisis lead to the re-establishment balance and healing.

The successful Scottish surgeon watched a demonstration of one of Mesmer's supporter, and, it left a strong impression on him. He began experiments on himself and was pleased with the results. However, he rejected an assumption on animal magnetism, because no one else in these experiments had influence on him, believing that to the impact on the other person in this approach, we do not have a transfer of any "magnetic" influence – it is happening in a mental way. Later, he implemented a mental interventions, guidance and longer fixation of attention on certain features and received effects similar to those described by the followers of "animal magnetism".

In order to distinguish the occult and unscientific assumptions of Mesmer's teaching, Braid uses a term "neurohypophysis", which is also a name of his book from 1899. The core of Braid's understanding is that the patients could be brought in the state of nervous "complacency" by using his techniques, whereby he the term "sleeping" used in a figurative sense, intending to speak about physiological changes in the brain and spinal cord. He denied the effects of hypnosis on which testified Mesmer's followers, such as, for example, the ability to predict future or a special kind of intuition. In addition, Braid spoke about the sources of errors in the implementation of hypnotic experiments and their interpretations that may arise due to the phe-

1 This work is the result of the realization of scientific research project titled Development of Institutional Capacity, Standards and Procedures for Countering Organized Crime and Terrorism in Terms of International Integrations. The project is funded by the Ministry of Science and Technological Development of the Republic of Serbia (no. 179045), and its being implemented by the Academy of Criminalistic and Police Studies in Belgrade (2011–2014); project manager is PhD Saša Mijalković.

2 "Official Gazzette of Republic of Serbia" no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.

nomenon of dual personalities, mutual imitations of respondent researches bias, hyperesthesia, increased memory, imagination and so on. Braid used hypnosis and treated different diseases, such as rheumatism, neuralgia, orthopedic problems, loss of hearing sensitivity, paralysis of limbs, etc.

Therefore, Braid used simple techniques such as focusing attention on uniform appearance like observation of any object in the dark, and considered that he is able to induce a state like sleeping on his patients. In real sleep, according to Braid, there is a complete lack of attention; while in a hypnotic state, attention is fully focused exclusively on the one subject or occurrence, where a person enters in a special psycho-physiological state subjected to the suggestion. According to the Braid, this condition can be used for the treatment of various diseases, most often in conjunction with conventional methods of treatment. In order to explain hypnosis' mechanism, Braid adopts the conception of "ideomotor" reflexes, which is a phenomenon where mental activity can cause physical reactions. Later, the famous physiologist Pavlov tried to explain this hypnotic phenomenon in a similar way, through the mechanism of classical conditioning in which the words or images evoke certain bodily reactions, whereby the lower parts of the brain activate in hypnosis.

The French doctors deal seriously with hypnosis after the Braid's death. On the one side, we have Charcot, who uses hypnosis in the treatment of hysteria, considering it as an integral part of this disorder. Opposite to him, there are Liebault and Bernheim, who consider hypnosis as an extension of the normal functioning, not just hysteria.

Under the influence of French doctors, Freud at the beginning of the development of psychoanalysis uses hypnosis in the treatment of neurosis, and he succeeds in reaching hidden and repressed contents at neurotic patients. At the same time and in that way, he shaped his hypothesis of unconscious mental life. His patients in the state of hypnosis amounted traumatic memories. After that, in the waking state, they notified him that they were feeling better and that their symptoms were weaker. In addition, due to the unreliability and short-term results, Freud quickly leaves this method.

Later researches of the hypnosis, after Liebault and Bernheim, accepted that suggestion is one of the basic components of the hypnosis. It is worth to mention Irving Kirsch and his theory of the expected response. In short, in this theory he considered that people's expectation cause their experience significantly. The research inspired with this theory showed that changes in the expectations might change physical and physiological reactions. This theory found its application in the understanding of human responses to pain, psychogenic illness, depression, anxiety disorders, addictions diseases and asthma. Kirsch considered hypnosis as a kind of placebo effect. According to him, the expectations of the respondents form a basis of the placebo and hypnosis. Moreover, he considered a clinical hypnosis as a "placebo without guile" (Kirsch, 1994).

Traditionally, the hypnosis is defined as an altered state of consciousness or trance state. There was believe that in such, altered state of consciousness, an individual is deprived of control of their own behavior, and we can get to the hidden content of their consciousness and he or she, in that condition, can improve their skills. In recent years, this definition is deprecated and hypnosis is defined as a set of procedures aimed at individual, which cause the receiving (more or less) guidelines and suggestions to imagine or think about certain ideas (for example, Wagstaff, 2010).

The aim of this paper is to review current practice and the importance of recent scientific findings regarded to the definition of the hypnosis, and the implications of these findings for the use of hypnosis in the criminalistics and its treatment in the criminal law.

THE HYPNOSIS IN THE CRIMINALISTICS

Bernheim, in his book "The Suggestive Therapy – Discussion on the Nature and Use of the Hypnosis", devoted one chapter to the general application of the hypnosis and its criminal and legal aspects. In the first place, he induced a case study in which a certain beggar with hypnotic powers managed to break away one girl from her family and repeatedly rape her. The beggar was soon accused and the victim gave her testimony. She said that he had a full impact on her and that she was deprived of her will. At the end of the process, a beggar received a sentence of twelve years imprisonment with hard labor. Furthermore, Bernheim induced experiments in which he suggested to the innocent persons, using hypnosis, to do a felony, or to confess crimes that they did not commit. In addition, in his experiments with hypnosis, they incited in the subjects false memories, that he called "retroactive hallucinations". Subjects, under posthypnotic suggestions, were willing to provide evidence that they were witnesses of serious crimes for which the accused could receive a long imprisonment sentence. By giving new suggestions in hypnosis, the alleged crimes and memories of them would completely vanish. Furthermore, Berheim talks about examples, in which it is possible to implant suggestions without to the hypnosis procedure the certain categories of people, such as children, people with disabilities or "dreamy" people. He mentions the true case of disappearance and the murder

of the French girl, when, due to the religious prejudice, accused thirteen Jews. At the request of the court, the accused thirteen years old child was given into the hands of the police commissioner, who extracted a false confession, and due to it, the court convicted every accused person. Between them was a father of the unfortunate child. Bernheim said that the fear and guilt led to the child's believe that it was a witness of the crime (today, it is called "internalized false confession"). In his book, we can find other examples of how it is possible to instill a suggestion that someone be falsely accused. In addition, he warns of the danger of occurrence of these phenomena in the criminal proceedings. Bernheim gives to the criminalists practical recommendations of how to differ the authentic witness from the witness under the influence of suggestion. He warns that hypnosis is not the only way of creating the suggestion, because, the suggestion can be given unconscious. Further, the witnesses could act suggestive on each other. In conclusion, Bernheim claims that studying a suggestion opens new possibilities for sciences, such as medicine, sociology, and psychology. He says: "Not all offenders are guilty, and it is not every untruth a lie; there are those who mystify, and those who do it unconsciously. There are people who delude themselves." (Bernheim, 1880, 178).

The use of hypnosis in the criminal investigations during the 20th century was sporadic and controversial. There are pale attempts of legal regulation. An example are the instructions of the British Home Office, where it is stated that the hypnotist should be a qualified person of the medical or the psychological profession; the small children must not be a subject of the hypnosis; hypnosis have to be used only in the investigations of the serious crimes; the suggestive questions should be avoided.

On the other hand, there were supporters of this method of the examination. Martin Reiser, the first psychologist with permanent employment in the USA police, was one of the adherents of opinion that hypnosis may bring back memories which are not accessible to victims and witnesses in conscious state of mind. In his "Handbook of Investigative Hypnosis" (1980), he argues that hypnosis is useful for improving of victims' and witnesses' memories. He asserts that hypnosis is particularly suitable for access to repressed contents, as well as it enables lowering of anxiety when a subject is supposed to recall traumatic event. Reiser did not advocate for using hypnosis in extortion of statement from suspected. Hypnosis is a topic of one more Reiser's book - Police Psychology (1980). First of all, short text was dedicated to the use of hypnosis in helping a police candidate who was not able to pass exam for drivers license. During hypnosis, the candidate recalled that he had experienced the car accident when he had been six years old, and for this accident he felt strong fault, since he was jumping on the back seat of the car shortly before the accident. During the hypnotic session, the candidate obtained suggestions directed on strenghtening his self-confidence, self-control, and self-respect. Shortly after hypnotic session, the candidate passed the exam for driver's license easily with very high grades. Reiser's next text reffered to the use of hypnosis as source of help in criminal investigation. Here he mentions an example of middle-aged woman, who was a witness of committing a crime, and she could not have recalled any details about the executor, since she saw him briefly in the hall of a building. After introductory note concerning the nature of hypnosis, the witness was informed that humans' psyche recorded everything, that information which could not be recalled at the moment are recorded on unconscious level, and that hypnosis may activate this information. In hypnotic session with the woman detailed interview was conducted. This interview was the basis for reaching some important information with respect to identification of participants in the crime. In the same book Reiser mentions some other examples of using of hypnosis as a helping source in criminal investigation. He mentions the case of police officer who was injured on duty. After hypnosis, the officer gave some information relevant for sketching of executors' face. In state of wakefulness injured officer additionally confirmed that the face from the sketch was the executor of the crime. The same result was reached in case of murder when the witness saw the executor very briefly, and he was not able to recall any detail. Hypnosis caused full reproduction of all forgotten characteristics, based on which the face of suspected was sketched again. Finally, Reiser mentions the case of kidnapping child in the doctor's waiting room, while the mother left her child only for a short time. Despite language barriers, since the mother was Latin – American and she spoke only Spanish, Reiser succeeded in reaching necessary information with hypnosis and in solving this case successfully as well. In the conclusion about the hypnosis as helping source, Reiser argues that hypnosis is an extremely useful means in case of amnesia caused by trauma. On the basis of hypnosis, other than description of suspected, we could find out information concerning cars' license plate, personal names, places, and other information about which executors were talking during preparation and execution of the crime.

With respect to legal status of hypnosis, Reiser mentions some court cases which accepted results of hypnosis, as well as the cases which rejected it. The reasoning for rejection was interference of fantasy and reality, influence of suggestion, and the problematic nature of understanding of hypnosis as the state of consciousness.

Time has shown that weakness and unreliability of information, obtained by hypnosis during criminal investigation, manifested in the court proceedings. It represented grounds for the appeal of accused, either he/she was the one who made a statement while he was hypnotized, or the victims and witnesses made that kind of statement. The qualifications of examiners (hypnotists) and their methods of examination were questioned as well. Problems concerning use of hypnosis are the following:

– remembering is uncomplete, unreliable, and under strong influence of suggestion;
– occurence of confabulation (imaginary contents fill the gaps in memories);
– influence of beliefs and prejudice on remembering;
– influence of the trauma on remembering;
– possibility that people lie when they are hypnotized.

TREATMENT OF HYPNOSIS IN CRIMINAL LEGISLATION

In order to consider place and significance of hypnosis in criminal law provisions, comparative analysis of criminal law legislation has been conducted[3] in the following countries: Bosnia and Herzegovina and the Republic of Srpska, France, Germany, Croatia, China, Moldova, Montenegro, Russia, Romania, Serbia, Slovenia, and Ukraine.

Simple research has shown that criminal laws of countries of former Yugoslavia mention hypnosis, and these are Bosnia and Herzegovina (and the Republic of Srpska as its entity), Montenegro, Croatia, Macedonia, Serbia, and Slovenia. Criminal laws of other countries do not mention hypnosis at all.

This is the formulation on hypnosis from Criminal Code of the Republic of Serbia. The formulation can be found in paragraph 112, titled "Meaning of Terms in this Code", under ordinal number 12: "force is considered to be use of hypnosis or intoxicated means, with the aim of either bringing somebody against his/her will to unconscious state or disabling him/her for resistance."

These formulations, with only slight differences in English translations, could be found in criminal legislations of Bosnia and Herzegovina, the Republic of Srpska, Montenegro, Croatia, Macedonia, and Slovenia. Actually, the said formulation has been conveyed to these statutes from the Criminal Law of Socialist Federal Republic of Yugoslavia,[4] which split apart in 1990. Interestingly, the formulation on hypnosis has survived even in the criminal law of the self-proclaimed Republic of Kosovo.

Notwithstanding conventional understanding, legislators consider that it is necessary to additionally determine the meaning of force. That is why the legislator says that the force could be used in hypnosis as well. Moreover, hypnosis here is on the same level as the use of intoxicated means, that is, biological factors. The result of the use of hypnosis, according to this formulation, is an unconscious state or an inability for resistance. While intoxicated means undoubtedly have their biological basis, this influence in case of hypnosis is at least problematic. The issue has been raised which are the cases where formulation of hypnosis, as a sort of compulsion, could be applied. We will adduce some hypothetical examples.

1) Providing of hypnotic or post-hypnotic suggestion for committing a crime. The subject who is not familiar with goals of hypnotizer may commit a crime, based on formulation that hypnosis may bring somebody to unconscious state. For instance, he could hurt someone or reveal a state secret.
2) Under the influence of hypnosis, a hypnotized person could be object of the crime, or some other similar act.
3) Under the influence of hypnosis a person could forget the information concerning committing a crime.
4) A person accused of a criminal offence may establish their defense in the criminal proceedings on the thesis that they were hypnotized, and in that way brought to unconscious state, which would deprive them of any criminal liability.
5) The alleged victim of the rape may assert that she was the object of the committed crime during the time she spent in a state of hypnosis.
6) The alleged victim of kidnapping may assert that, under the influence of hypnosis, he/she was taken away and retained at some place against his/her will.

DISCUSSION

Hypnosis, as a means of compulsion which brings a victim in unconscious state while disabling his/her resistance, in that manner has been defined in criminal legislation of former Yugoslavian countries. More-

3 The pattern of criminal laws is appropriate. Since hypnosis is at issue, we have found criminal laws which have mentioned it. "Control group" is, of course, consisted of criminal laws which do not mention hypnosis. The idea was to include all the countries whose laws mention hypnosis, as well as to adduce noticeable number of laws without hypnosis, primarily among the countries which have representatives on the conference "Archibald Reiss".
4 "Official Gazzette of Socialist Federal Republic of Yugoslavia", no. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90.

over, that formulation is simply transcribed from Criminal Law of the former Federation. The comparative analysis of criminal legislation of different countries has established that hypnosis is not even mentioned in these legislations. The issue has been raised what should be done with this problematic formulation. In order to solve this issue, we need to consider once again the definitions of hypnosis. Traditionally, we define hypnosis as the changed state of consciousness. In recent definitions, hypnosis is defined on a behavioral level – as a set of procedures which gives to individual instructions or suggestions to think about something or to imagine something. The alleged effects of hypnosis, in the sense of forcing person to do something dangerous, unpleasant or antisocial, are disguised by the relation between the subject and hypnotist, as well as by the characteristics of the subject. Therefore, it is hard to discuss about "changed state of consciousness", since it is possible that the subject puts himself/herself consciously in the subordinated situation, while having complete confidence to the hypnotist. On the other hand, experiments have shown that subjects, who were not hypnotized, may perform actions, such as destroying of the Bible, cutting of the state flag, making defamatory statements with respect to their superiors, taking in the hands of poisonous snake, selling drugs (Wagstaff, 2010). Hence, regardless of the fact whether they were hypnotized or not, people may perform different dangerous or antisocial actions. Further, some influential organizations, such as American Psychological Association (1994) or British Psychological Society (2001) adduce that a hypnotized person retains possibility of control of his/her own conduct. Also, Wagstaff (1999) adduces that people in the state of hypnosis may lie.

Taking into consideration the experimental findings and opinions of influential organizations, it is clear that hypnosis does not represent any kind of compulsion. That is why formulation on hypnosis, as sort of force which brings person to unconscious state or disables him/her for resistance, shoud be amended in the criminal law provisions. Some of the provisions with regard to incitement to commit a crime, abuse of helpless person, or misguidance of someone, may have some relevance.

With respect to hypnosis, as an auxiliary means in criminal investigation, research has shown that, even though the revival of memories may have some effect, it often causes bad results, sometimes even false memories. Occasional success of hypnotic procedures has been explained by changing of approach, where sometimes stiff and rigid police investigators are changed by empathic and assertive interviewers who do not interrupt the respondents and allow them to give explanations.

The technique of cognitive interviewing has appeared over time. This technique establishes relationship of confidence with the respondent, and he/she is encouraged to talk about everything he/she remembers, they play roles, direct his/her attention and change the context. Also, in order to improve his/her remembering, some elements from hypnosis are used, such as relaxation, closing of eyes, which may have certain results.

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ILLEGALLY OBTAINED EVIDENCE AND EXCLUSIONARY RULE IN SERBIAN AND COMPARATIVE LAW

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Abstract: Exclusionary rule means that evidence illegally seized by the police or prosecutor in violation of a suspect's right, cannot be used in a criminal procedure. An extension of this rule is the so-called fruit of the poisonous tree doctrine implying that if the source of evidence is tainted, than any other evidence derivates from it (the 'fruit') is tainted as well. The purpose of this paper is to examine the scope and implementation of these rules in different procedural models. The basic division is made on the U.S. adversarial model on one side, and other countries on another, having in mind that the American case-law is characterized by the strictest and more consistent application of these principles. Therefore, exclusionary rule in the practice of American courts is analyzed in the first part of this paper. The following parts deal with the exclusionary rule in European countries and with the case-law of European Court of Human Rights (ECHR). In the end the author examines the provisions of former Serbian CPC of 2001 and recently adopted 'adversarial' CPC of 2011 that regulate these issues.

Keywords: illegally obtained evidence, exclusionary rule, fruit of the poisonous tree doctrine, adversarial model, inquisitorial model.

INTRODUCTION

Exclusionary rule that implies exclusion of illegally obtained evidence is a common feature of all modern criminal procedures, but they differ in its scope and interpretation. Here is not possible to make a general distinction between adversarial and inquisitorial (mixed) model,[1] having in mind that American case-law implements this rule more strictly and consistently when compared to other Anglo-American countries. While in domestic literature suppression of illegally obtained evidence is explained by the fact that in certain cases some other values prevail over the 'truth principle' and accurate fact-finding, these rules in the US are created by the courts, primarily with the purpose to deter the police and protect constitutional rights of citizens. Unlike other countries, in the United States the exclusionary rule is mandatory, not subject to the discretion of the judge. That is, once it has been determined that the police have broken 'the rules', then the evidence that was obtained as a result of that violation (including indirect 'fruits of the poisonous tree') may not be used in court. Excluding illegally obtained evidence, the police are left without 'the fruit of their work', which in the end impedes prosecutorial burden of proof, having in mind their duty to provide more acceptable evidence in order to win the case. Contrary, to that, civil law countries do not apply exclusionary rule so consistently, what is explained by non-jury trials, principle of truth and different organization of the police and prosecutorial offices. Unlike adversarial dispute-model of criminal procedure, where suppression of illegal evidence impedes prosecutor's burden of proof, in inquisitorial or truth-model the concepts like 'equality of arms' and burden of proof are not of the crucial importance, bearing in mind that the judge is the one who produces the evidence at the trial. Irregularities in the collection of the evidence are regulated by material law- the policeman who breaks the law obtaining the evidence, should be punished in criminal procedure. Therefore, the question is whether the courts in civil law countries, with centralized and hierarchical organization of police and prosecutorial offices should apply the fruit of the poisonous tree doctrine in the same way as American courts?

However, the practice of American courts served as a model for some legislative solutions and the ECHR often refers to the U.S. Supreme Court's decisions, evaluating whether the use of illegally obtained evidence affected the fairness of the trial.

1 In Anglo-American literature, the model of criminal procedure implemented in the majority of European countries is labeled as inquisitorial, having in mind judicial domination at the trial, non-party investigation and principle of truth, while in Europe this label is not used since it reminds on middle-age inquisitorial proceeding. Instead of that European scholars name this model of proceeding as 'mixed'. More about that: Ambos K. /2003/: "International Criminal Procedure: 'Adversarial', 'Inquisitorial' or 'Mixed'?", *International Criminal Law Review* n. 3, pp. 2-4, Safferling C. /2001/: *Towards and international criminal procedure,* Oxford University Press, pp. 6-7., Damaska M. /1986/ *Two Faces of Justice and State Authority*, Yale University Press, p. 3. In this paper inquisitorial and mixed procedure are used as synonyms.

EXCLUSIONARY RULE IN THE UNITED STATES

Due to the separation of the power between a professional judge and the jury, illegally obtained evidence never comes before jurors. Therefore, deciding on the guilt of the accused jurors cannot have them on the mind, even 'subconsciously'. In the course of preliminary hearing, a professional judge decides about the admissibility of evidence offered by the parties, and only the evidence that passed this 'previous control' can be produced at the trial.

American courts hold that inadmissible is evidence collected in violation of the defendant's constitutional rights. Regarding that, the first significant case dates from 1914, when the Supreme Court of the United States pointed out that the evidence obtained in violation of the fundamental rights guaranteed by the Constitution of the United States has no evidentiary value. The Court unanimously held that the warrantless seizure of items from a private residence constitutes a violation of the Fourth Amendment.[2]

Exclusionary rule in the US mostly applies to the evidence obtained by unlawful search. Inviolability of the home, people and property is guaranteed by the Forth Amendment of the US Constitution, and the courts, during the time established detailed rules for its interpretation. Appropriate (lawful) search implies cumulative fulfillment of the following conditions: a) the existence of reasonable suspicion (probable cause) that the relevant evidence could be obtained like that and b) the existence of a search warrant issued by a judge.[3] The warrant is not necessary in case of 'exigent circumstances' applying when the police are seeking a fleeing suspect, have reason to believe the evidence will be destroyed, or are otherwise engaged in the investigative activities. The U.S. courts go so far to exclude even the stolen items seized during the lawful entry into apartment, if the police did not have a search warrant![4]

Regarding the 'personal evidences' (testimony of the witnesses), strictly applied immediacy principle negates the need for exclusion of previously given statements, bearing in mind that valid evidence is only the testimony given at the trial, before the jury. Although a defendant rarely testifies at his own trial, some material evidence could be obtained due to his examination during arrest, and confession at this stage is often the step toward plea agreement. The rule that obliges on exclusion of illegally obtained confessions was firstly established in 1964 in the case *Escobedo v. Illinois,*[5] but probably the best known case in this regard, quite exploited in Hollywood movies industry, was the *Miranda case* dated from 1966.

23-year-old Ernesto Miranda was arrested for kidnapping and rape of an 18-year-old-girl, and after two hours of interrogation by police officers, he signed a confession to the rape charge. The problem was because Miranda had not been informed of his right to counsel, he had not been advised of his right to remain silent, nor had he been informed that his statements during the interrogation would be used against him. At trial in Arizona, Miranda was convicted of rape and kidnapping and sentenced to 20 to 30 years imprisonment on each charge, but the Supreme Court overturned the conviction. It was pointed out, for the first time, that due to the coercive nature of the custodial interrogation by the police, no confession could be admissible under the Fifth Amendment self-incrimination clause and Sixth Amendment right to an attorney unless a suspect had been made aware of his rights and had then waived them. The famous Miranda warning was proclaimed: "The person in custody must, prior to interrogation, be clearly informed

2 *Weeks v. United States* 232 US 383 (1914) However, it was not until the 1961 and the case of *Mapp v. Ohio* 367 US 643 (1961) that the state courts start to apply the exclusionary rule as well. More about the case: Saltzburg S., Capra D. J. /2004/: *American Criminal Procedure, Cases and Commentary*, 7th edition, West Thompson, p. 500-504

3 In the warrant must be specified the place of search, its purpose, the objects that should be seized and the reasons that justify the 'probable cause'. During the time, in the case law was crystallized that searches of structures, including warehouses, barns, hotel rooms, phone booths and anything else that is not mobile and has a roof must be authorized by a warrant, whereas outdoor searches, including the searches of vehicles and of arrestee's person and possessions, may be performed on probable cause alone. See: Bradley C. /1993/, "The Court's 'Two Model' Approach to the Fourth Amendment: Carpe Diem", *84 Journal of Criminal Law and Criminology,* p. 429

4 Illustrative case in regard with that was *Arizona v. Hicks*, 480 US 321 (1987). Hearing the shooting, the police entered Hick's apartment to search for the shooter, victims and weapons, but they noticed two expensive-looking stereo equipment. Recording the serial numbers, the officer was informed that the equipment had been taken in an armed robbery, for which Hicks was later indicted. However, the court suppresses the stereo equipment as evidence, with the explanation that the police initial entry into Hicks' apartment was lawful, although it took place without a warrant, because of the emergency created by the shooting. But moving the stereo equipment was an additional search, which lacked a warrant and was unrelated to the purpose the police were in Hicks' apartment. The appellate court therefore found that the police actions violated the Fourth Amendment! More about the case: Bradley C.M., ed. /2007/: *Criminal Procedure- A Worldwide Study*, Second Edition, Carolina Academic Press, US, pp. 527-528

5 Escobedo was arrested for shooting and killing his brother-in-law. The police refused him to speak to his attorney, explaining that although he was not formally charged yet, he was in custody and could not leave. The police and prosecutors proceeded to interrogate Escobedo for fourteen and a half hours, and during the interrogation, Escobedo made statements indicating his knowledge of the crime. Escobedo appealed to the Illinois Supreme Court, which held the confession inadmissible and reversed the conviction. After this case was formulated the so-called 'Escobedo Rule' that holds that individuals have the right to an attorney when an investigation goes beyond a general inquiry and focuses on a particular suspect. This principle states that a statement by a targeted suspect who is in police custody is not admissible at trial. *Escobedo v. Illinois*, 378 US 478 (1964) More about the case: Saltzburg S., Capra D.J. /2004/: 690, 777-778 and 816

that he has the right to remain silent, and that anything he says will be used against him in court; he must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that, if he is indigent, a lawyer will be appointed to represent him."[6]

American Courts exclude the evidence not only directly obtained by the violation of the law, but also all the other evidence legally obtained latter due to the illegal evidence. It is the *fruit of the poisonous tree doctrine* that holds that evidence gathered with the assistance of illegally obtained information must be excluded from trial.[7] Thus, if an illegal interrogation leads to the discovery of physical evidence, both the interrogation and the physical evidence may be excluded - the interrogation because of the exclusionary rule and the physical evidence because it is the 'fruit of the illegal interrogation.[8] For example, in the case *Wong Sun v. United States*, the police unlawfully entered the accuser's apartments and found narcotics, but the Supreme Court held that the discovered drugs should be excluded as the fruit of the poisonous tree, because the search was done without a warrant.[9]

EUROPEAN INTERPRETATION OF EXCLUSIONARY RULE

As it was mentioned above, so rigid exclusionary rule as applied by American courts is not a common feature of whole adversarial model of criminal procedure. Ruling on exclusion of illegal evidence, the courts in England do not examine only whether the police have broken the law, but the focus is on the question whether the use of such evidence would affect the fairness of the trial.[10] It was emphasized, for example, that the statement of the defendant who was not warned about his right may be used as evidence, since the lack of such warning does not affect the fairness of the trial.[11] The evidence obtained by illegal search is admissible in general, unless its use at the trial would significantly affect the fairness of the procedure.[12] The fruit of the poisonous tree doctrine is not applied; even more, it is explicitly prescribed that the evidence obtained due to the illegal confessions is not excluded.[13] At the time when American judges strongly insisted on exclusion of the all illegally obtained evidence, the judges in England explicitly stated that the "judge should not care how the evidence was obtained"[14], and that "the role of the court is not to discipline the police but to ensure a fair trial".[15] Thus, it is not surprising that the practice of English courts was often examined by the ECHR because of the violation of the article 6 of the European Convention of Human Rights regarding the use of illegally obtained evidence.[16]

Canadian and Australian courts also hold the position that there is no reason to exclude reliable evidence because of "small" procedural errors.[17] Only New Zealand has applied strict American system for a long time, but it was abandoned in 2002 when the defendant accused for rape and abduction of the child, was discovered after the police took his blood without a warrant.[18]

In the majority of civil-law countries, illegally obtained evidence is not excluded automatically, as in the U.S., but in every single case the judge examines whether and how much such evidence resulted in the violation of the defendant's rights and whether its use would affect the fairness of the proceeding as whole. The theory of balance is applied (*Abwägungslehre* in Germany, *Le mellieur équilibre possible* in France), according to which the violation made with illegal evidence is compared with the gravity of the crime and

6 *Miranda v. Arizona* (1966), 384 US 436. More about the case: Saltzburg S., Capra D.J. /2004/: 702-778.

7 The logic of the terminology is that if the source (the 'tree' of the evidence or evidence itself is tainted, then anything gained (the 'fruit') from it is tainted as well. More about this doctrine: Rothstein P.F., Reader M.S. and Crump D. /2007/ *Evidence*, Thompson West, United States, pp. 372-593, Bain, J. M., Kelly, M. K./1976/: "Fruit of the poisonous tree: recent developments as viewed through its exceptions", *University of Miami Law Review*, Vol. 31/3, pp: 615-650, Bradely C./2007/: 519- 548.

8 This doctrine was described for the first time in the case *Silverthorne Lumber Co. v. United States* from 1920, in which the accused attempted to evade paying taxes. Federal agents illegally seized tax books from Silverthorne and created copies of the records, and the central issue was whether or not derivatives of illegal evidence are permissible in court. The ruling, delivered by Oliver Wendell Holmes, Jr., was that to permit derivatives would encourage police to circumvent the Fourth Amendment, so the illegal copied evidence was held tainted and inadmissible. See: *Silverthorne Lumber Co. v. United States*, 251 US 385 (1920), available at: https://supreme.jUStia.com/cases/federal/US/251/385/case.html However, the popular name of this doctrine (fruit of the poisonous tree) is created twenty years latter by the judge Frankfurter in the case Nardone v. United States, 308 US 338 (1939), where the U.S. Supreme Court excluded not only the records of unlawful wiretapping, but all evidence obtained on the bases of such wiretapping.

9 Wong Sun v. United States, 371 US 471 (1963)

10 See: Archbold, John Frederick /1997/: *Criminal Pleading, Evidence and Practice*, Sweet and Maxwell, London, p. 1468

11 *R. v. Hoyte [1994] Crim.L.R. 215, R. v. Gill [2003] EWCA Crim 2256*

12 Tapper, Colin, Cross /1999/: *Evidence*, London, p. 501

13 Hutton, Glenn, Johnston /2004/: *Evidence and Procedure*, Oxford University Press, Oxford, p. 189

14 Lord Goddard in the case *Kuruma v The Queen* [1955] AC 197, 203

15 R v. Sang [1980] AC 402

16 See for example: *Khan v. the United Kingdom,* App. No. 35394/97, judgment of 12.05.2000. *G. and J. H. v United Kingdom*, App. No. 44787/98 judgment of 25.09.2001., *Chalkley v United Kingdom*, App. No. 63831/00, judgment of 12.06.2003. Available at: http://hudoc.echr.coe.int/

17 Glasser, L. /2003/: "The American Exclusionary Rule Debate: Looking to England and Canada for Guidance", *George Washington International Law Review*, vol. 35. p. 195

18 Mount, S. /2003/ "R. v. Shaheed: The Prima Facie Exclusion Rule Re-examined", *New Zealand Law Review*, N. 45, p. 48

other values, like possibility to obtain the same evidence in legal manner, the need to protect the right of the accused and so on.[19] Therefore, Damaska's statement that "poisonous fruit doctrine sounds almost fantastic to civil law lawyers" is not surprising.[20]

Therefore, the differences between 'so strict American regime' regarding exclusionary rule and much milder European solutions could not be attributed only to the different model of criminal proceeding. The American scholars believe that the primary purpose of the exclusionary rule is to deter and discipline police.[21] Unlike European countries, the centralized 'state' police do not exist in the United States. Instead, there are more than 50 000 different police organizations that are founded by local districts and financed by local budgets. Exclusionary rule is one way to control the local sheriffs- the police under his command must obey the law, bearing in mind that if they lose the 'fruits' of their work, he can lose his position! Criminal procedure is considered as a battle between the prosecutor and defendant. Through exclusion of illegally obtained evidence and its derivates, the police (and therefore the prosecutor as well) are punished for irregularities in work. In that case, the lack of evidence cannot lead to guilty verdict, what could result in the dissatisfaction of citizens who will think during the next elections whether to give a vote to the sheriff and prosecutor, whose fighting against crime was disappointing.

In addition, ideological factors cannot be ignored,[22] having in mind that exclusionary rule had 'culmination' from 1953 to 1969, at the time when Judge Earl Warren presided over the U.S. Supreme Court. It was the time of hippie movement and liberal tendencies when the focus was on the protection of individual rights and freedom and efforts to reduce racial segregation. Thus, it is not surprising that many 'revolutionary' decisions, like Miranda and Escobar, were the result of such tendencies. But during the time, these liberal views were reduced and crime control model gradually prevailed over the due process model. Therefore, during the '80s at the time of Judge Burger presidency over the Supreme Court,[23] numerous exceptions of exclusionary rule were introduced and these trends have continued up to now. By the decision of 1974 it was ruled that the illegally obtained evidence, although excluded from the trial, may be used by the Grand jury in deciding whether to confirm an indictment.[24] Two years later it was decided that unlawful evidence cannot be used in criminal, but can be used in civil, administrative or some other non-criminal proceedings.[25]

In the last decades, American courts made more exceptions of exclusionary rule and fruit of the poisonous tree doctrine, holding that the evidence will not be excluded (1) if it was discovered from a source independent of the illegal activity; (2) its discovery was inevitable; or (3) if there is attenuation between the illegal activity and the discovery of the evidence. In the case *United States v. Leon*, the Supreme Court of the United States created the *good faith exception* to the exclusionary rule, according to which the illegally obtained evidence could be used if the police conducted the search in accordance to an invalid search warrant, but the police cold not know that the search warrant had irregularities.[26] *Inevitable discovery* exception to the exclusionary rule was created in the case *Nix v. Williams*, where the Supreme Court of the U.S. ruled that evidence that would inevitably have been discovered by law enforcement through legal means remained admissible.[27] *Purged taint exception* means that if enough additional factors intervene between the original illegality and the final discovery of the evidence, the

19 About exclusionary rule in France see: Richard S. Frase, "France" in C. M. Bradley (ed.) /2007/: 212-214, 218-219 about exclusionary rule in Germany see: Thomas Weigend, "Germany" in C. M. Bradley (ed.) /2007/: 251-253, 260

20 M. Damaška /1972/: "'Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study", *University of Pennsylvania Law Review*, Vol. 121, p. 522

21 Calabresi, Guido /2003/: "The Exclusionary Rule", *Harvard Journal of Law and Public Policy*, vol. 26., p. 111, Roberts P., C. M. Bradley (ed.) /2007/: 519- 548

22 In accordance with his division of procedural models according to ideological and political factors, M. Damaska believes that exclusionary rule has its bases in liberal ideology and the need to protect the rights of the individual from the interference of the state. See: Damaska M. /1986/: 237

23 Judge Burger presided over the U.S. Supreme Court from 1969 to 1986 and the time of his presidency is named as contra-revolution of Criminal proceeding. See: Alschuler A. /1986/: "Failed Pragmatism: Reflections on the Burger Court", *Harvard Law Review*, vol. 100, pp. 1436-1458

24 *United States v. Calandra*, 414 US 338 (1974)

25 *United States v. Janis*, 428 US 433 (1976)

26 On August 1981, the Californian police received a tip identifying two drug dealers and began surveillance of their homes. Based on this surveillance, a detective wrote an affidavit and a judge issued a search warrant. The police conducted the search, but the search warrant was later found to be invalid because the police lacked the probable cause for a warrant to be issued. The evidence obtained in the search was upheld anyway, because the police performed the search in reliance on the warrant, which meant they acted in good faith. If the warrant proves defective, the mistake is of the judge who issued the warrant not of the police. Since the exclusionary rule was designed to deter police misconduct, and since the only mistake here was of the judge, not the police, there was no cause to exclude the evidence. *United States v. Leon*, 468 US 897 (1984), available at: https://supreme.jUStia.com/cases/federal/US/468/897/ More about the case: Bradley C. ed. /2007/: 530-531

27 In this case Robert Williams, an escaped mental patient, kidnapped and murdered a 10-year-old girl. During the interrogation in the police, one of the detectives proposed that Williams reveal where he had left the body before an impending snowfall. Williams agreed and led the detectives to Powers' body. The problem was because his right to counsel had been violated. However, the judge found that Williams' statements to the detectives was inadmissible, but ruled that the body was admissible as evidence, as it would have inevitably been discovered by law enforcement. It was stated that law enforcement was not required to demonstrate that it had violated a defendant's rights in good faith, only that the evidence would have inevitably been found despite the violation. See: *Nix v. Williams* 467 US 431 (1984), available at: https://supreme.jUStia.com/cases/federal/US/467/431/case.html

link between the two is so tenuous and the exclusionary rule should not be applied.[28] Even more, in 2004 the U.S. Supreme Court departed from Miranda rights, holding that physical evidence obtained due to the statement of a suspect who has not been informed about his rights, are constitutionally admissible, as long as those statements were not coerced by the police.[29]

In spite of these exceptions, remains the fact that strict exclusionary rule and the fruit of the poisonous tree doctrine in the U.S. strongly impede the prosecutorial burden of proof, simultaneously protecting the interest of a defendant. Even if the theories of the good faith or inevitable discovery are applied, the prosecutor is the one who has to prove, by the preponderance of evidence, that the same evidence would certainly be obtained or that the police acted in good faith.

THE PRACTICE OF THE ECHR

The European Court of Human Rights has adopted the position that the use of illegally obtained evidence does not necessarily lead to unfair proceedings.[30] In that sense, in numerous decisions the Court ruled that the question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. Whether or not Article 6(1) ECHR is violated depends on whether the evidence could be contradicted on trial, whether it is the only evidence on which a conviction is based and so on.[31]

In the first significant case regarding this issue *Schenk v. Switzerland*, the question was whether the use of illegally recorded telephone conversation as evidence in murder trial, means the violation of the Article 8 of the Convention that guarantees the right to respect private and family life, home and correspondence. The Court noted that illegal recording was not the only evidence on which the conviction was based, and therefore, article 6(1) of the Convention was not violated.

However, the evidence obtained by the violation of the article 3 of the Convention (prohibition of the torture, inhuman or degrading treatment) has 'particular treatment', compared to the evidence obtained by the violation of another rights guaranteed by the Convention. For a long time the Court has been held the position that the whole procedure must be considered as unfair, if the evidence was obtained by the torture, regardless on the significance that national court gave to that evidence.[32] For example, in the case *Stanimirovic vs. Serbia*, the Court found the violation of the Article 6 par. 1, because the confession that the defendant gave to the investigatory judge was used as evidence, after the torture he had previously been exposed to in the police station. Regarding the statement of the Government that the defendant's confession was not the only evidence, the Court pointed out that "regardless of the impact which those statements had had on the outcome of the criminal trial against him, the trial as a whole had been unfair, in violation of Article 6 § 1".[33]

However, in the case *Gäfgen v. Germany*, ECHR departed from these practice.[34]

The accused Gäfgen had lured a 9-year-old boy into his flat, killed him and hid the body. Afterwards he demanded a ransom of the parents who were unaware that their child had already been murdered. They paid the ransom after which the police followed and arrested the suspect. During his interrogation the police, acting under the assumption that the child was still alive, threatened the suspect with considerable suffering if he persisted in refusing to disclose the child's whereabouts. The suspect subsequently confessed the crime and disclosed the child's body. The German courts, having established that the confession of the suspect had been extracted under duress, did not allow it as evidence during the ensuing criminal trial. However, they did declare the evidence obtained as a result of the ill-treatment, including the child's body

28 An illustrative example is the case Wong Sun v. U.S. Wong Sun was arrested without probable cause, arraigned and released on his own recognizance. Several days later he voluntarily comes to the police station, receives Miranda warning and makes an incriminating statement. Here the statement may be used against him, despite the exclusionary rule, although his statements in some sense 'derived' from his original illegal arrest. But the fact that he had been released for several days between the arrest and statement and the voluntariness of his statement, cut the connection and purge the taint of illegality. More about *purged taint exception:* Emanuel S. L. /2007/: *Criminal Evidence*, Aspen Publishers, Aspen, p. 293

29 *United States v. Patane*, 542 US 630 (2004).

30 See: *Schenk v. Switzerland* Ap. No.10862/84, judgment of 12.07.1988, *Khan v. the United Kingdom,* App. No. 35394/97, judgment of 12.05.2000., *D. Parris v. Cyprus* App. No.56254/00, judgment of 04.07.2002. All ECHR cases available at: http://hudoc.echr.coe.int/

31 *Khan v. the United Kingdom*, *P.G. and J. H. v United Kingdom*, App. No. 44787/98 judgment of 25.09.2001., *Bykov v. Russia* App. No. 4378/02, judgment of 10.03.2009., *Allan v. the United Kingdom,* App. No. 48539/99, judgment of 5.11.2002., *Jalloh v. Germany* App. No. 54810/00, judgment of 11.07.2006

32 *Harutyunyan v. Armenia*, App. No. 36549/03, judgment of 15.06.2010., *İçöz v. Turkey* App. No. 54919/00, judgment of 9.01.2003; *Göçmen v. Turkey*, App. No. 72000/01, judgment of 17.10.2006; *Söylemez v. Turkey*, App. No. 46661/99, judgment of 21.09.2006; *Levinţa v. Moldova*, App. No. 17332/03, judgment of 16.12.2008;

33 *Stanimirovic v. Serbia*, App. No. 26088/06, judgment of 18.10.2011; The same was noted in the Hajnal case- *Hajnal v. Serbia*, App. No. 36937/06, judgment of 19.06.2012

34 *Gäfgen v. Germany* App. No. 22978/05, judgment of 01.06.2010

and the tire tracks found at the dumping site, admissible. Besides, the two policemen who examined the accused were found guilty for the duress and punished symbolically, with the fines.

> In his complaint submitted to the ECHR, the accused claimed that his right to the fair trial was violated, having in mind that all the evidence used in the procedure were obtained on the bases of his confession given under duress, and therefore in violation of the Article 3 of the Convention. Fruit of the poisonous tree doctrine requires exclusion of the all evidence obtained due to his confession, which includes the body of the victim, its watch, bag and traces of the accuser's car. Therefore, the full implementation of this doctrine raises a question whether it was possible at all to initiate the procedure for the crime of murder, having in mind that before the police torture it was not known what had happened with the victim!

The ECHR found no violation of the Article 6 of the Convention, explaining that the evidence obtained in violation of the Art. 3 did not have crucial influence on the outcome of the proceeding, having in mind that the defendant's confession extorted by the police was not used as evidence, but his confession given at the trial. Another evidence obtained due to the confession (victim's body, traces of car, etc.) had, according to the Court, secondary importance and served only to confirm the confession. This argumentation was additionally supported by American theory of inevitable discovery and it was pointed out that sooner or later, the police would certainly find the body and other physical evidence.[35]

EXCLUSIONARY RULE IN SERBIAN LAW

Serbian criminal procedure has gone through significant changes in the last years. Belonging to civil-law countries, Serbia traditionally applied inquisitorial or mixed model, based on the truth principle that implies passive parties and an active judge whose duty was to produce evidence on trial and pass the verdict. The concepts like burden of proof and equality of arms are not fully applicable in this procedural model, having in mind that a judge was the one who collects and produces evidence,[36] all this with the main purpose of full and truthful establishment of all relevant facts. Therefore, exclusionary rule and fruit of the poisonous tree doctrine are also of lesser significance compared to adversarial model. Exclusionary rule was considered as an exception of the truth principle and explained by the fact that in certain cases some other values prevail over the truth and accurate fact-finding.[37] It was questionable by Serbian scholars, whether the fruit of poisonous tree doctrine is applicable in domestic law. While some of them believed that Serbian law accepts this theory, having in mind that CPC explicitly mentions the evidence that is unlawful because of the manner of their obtaining,[38] others believed that "such purity is exaggerated and unacceptable for Serbian law"[39], and that the fruit of the poisonous tree doctrine should not be applied in all cases.[40] Additionally, the courts did not have the unique position with regard to this issue. In some cases this theory was fully ignored and judges for example, accepted as evidence the objects seized during an illegal search,[41] or opinion of an expert witness based on the "fruits" of coerced confession![42] In other cases, the judges accepted this theory ruling for example that the objects sized during an illegal search could not been used as evidence.[43] As in the other civil-law countries, law-breakings during the collection of evidence are supposed to be resolved at the level of material law, by initiation of criminal prosecution against the policeman who made a mistake. Therefore, Criminal Code prescribes numerous criminal offences whose perpetrator could be a policeman who has broken the law, as for example extortion of testimony, inhuman, degrading treatment and torture, illegal search, unauthorized wiretapping and recording and so on. It was considered unfair, contrary to the truth principle and unexplainable to the citizens, passing a non-guilty verdict against

35 In partly dissenting opinion, six judges concluded that a clearer rule in relation to the exclusion of evidence in criminal trials should be found. They considered that fairness "presupposes respect for the rule of law and requires, as a self-evident proposition, the exclusion of any evidence that has been obtained in violation of article 3". Such a conclusion would render any trial unfair where any evidence tainted by the original breach had been admitted, irrespective of whether such evidence was decisive in securing the conviction of the accused or not. See: *Gäfgen v. Germany*- Joint Partly Dissenting Opinion of Judges Rozakis, Tulkens, Jebens, Ziemele, Bianku and Power, Judgment of 01.06.2010, par. 9 and 10.

36 In Serbia an investigative judge traditionally conducted investigations and collected evidence. It was changed by the CPC of 2011, which introduced prosecutorial investigation.

37 Thus, in order to protect the right on family life, the defendant's close relatives are not obliged to testify, in order to protect the right on privacy, secret audio and video surveillance must be implemented within the law, in order to protect physical integrity of a person the law prohibits the torture or inhuman treatment and so on.

38 Škulic M. /2009/: *Krivično procesno pravo*, Pravni fakultet, Beograd, p. 190-192

39 Grubač M. /2004/: *Krivično procesno pravo – uvod i opšti deo*, Službeni glasnik, Beograd, p. 291

40 Vasiljević T, Grubač M. /2005/: *Komentar Zakonika o krivičnom postupku*, 10 izdanje, Beograd, p. 54

41 Municipal Court in Belgrade, decision n. 2333/02 of 19.12.2002

42 Serbian Supreme Court, decisions n. 154/02 of 02.03.2004 and Municipal Court in Belgrade, decision n. 5/00 of 09.07.2002

43 Serbian Supreme Court, decisions n. 1964/04 of 29.12.2004 and n. 2064/05 of. 21.12.2005. Supreme Court of Cassation, n. 90/10 of 07.04.2010

perpetrator at whose apartment the police found 5 kg of cocaine, only because the police did not have a search warrant! In such cases, the involved police officer could be responsible for an illegal search, but the 'fruits' of the illegal search could be used as evidence, since the 'victim' of such an illegal search was also responsible for the criminal offence she/he committed.[44]

By the CPC of 2011 Serbia switched to the adversarial model of criminal procedure, where the trial is considered to be the 'battle of evidence' between the parties in front of a passive arbiter (judge). A prosecutor and a defendant are expected to propose the evidence and produce them at the trial, and CPC of the 2011 introduces, for the first time, cross-examination of the witnesses, explicitly prescribing that the burden of proof is on a prosecutor (Art. 15 par. 2 of CPC/2011). In such adversarial model, where the focus is on a fair trial and equality of arms, exclusionary rule and the fruit of the poisonous tree doctrine have an increasing importance, having in mind that these rules impede prosecutorial burden of proof, simultaneously putting a defendant in a better position and protecting his rights more efficiently. A prosecutor is the one who is expected to prove that a defendant is guilty beyond any reasonable doubt and therefore, if a prosecutor or the police break the law obtaining evidence, they should suffer consequences through exclusion of 'the fruits' of their illegal activities.

With regard to that, Serbian law shows one paradox- it seems that the exclusionary rule had higher importance in the former inquisitorial than in recently established adversarial model of criminal proceeding. Serbian CPC of 2001 prescribed that judicial decisions cannot be based on evidence that is, by itself or by the way of obtaining, inconsistent with the Constitution or ratified international agreements, or on the evidence that is explicitly prohibited by this or any other code (Art. 18, para. 2). Basing a judgment on unlawful evidence was considered as absolute procedural error that implies annulment of the judgment.[45] The Appellate Court had a duty to examine *ex officio* (regardless of appeal of the parties) whether the judgment was based on the illegal evidence (Art. 380 para. 1 of CPC of 2001), and even more, in the case of this procedural error the parties were allowed to submit an extraordinary legal remedy (the request for extraordinary examination of the final judgment, Art. 430 of CPC of 2001).[46]

According to the CPC of 2011, court decisions may not be based on evidence which is, directly or indirectly, in itself or by the manner in which it was obtained, in contravention of the Constitution, this Code, other statute or universally accepted rules of international law and ratified international treaties (Art. 16 par. 1).[47] In addition, it is explicitly prescribed that illegally obtained evidence cannot be used in criminal proceedings (Art. 84 par. 1). The provision of Art 438 par. 2 of CPC/2011 according to which a procedural error exists if "the judgment is based on the evidence on which, under the provision of this Code it may not be based (illegal evidence), except if, in view of other evidence, it is obvious that the same judgment would have been issued even without illegal evidence" is a problem. It is interesting to notice that the Serbian CPC of 1976 hold the same clause that was criticized with the argument that the exclusionary rule was not applicable within this provision, because predictions whether the verdict would be the same without illegal evidence "is an area of pure assumptions".[48] That was the reason why the CPC of 2001 expelled the second part of the provision transforming in that way the use of illegal evidence in an absolute procedural error that requires annulment of the verdict, regardless of other acceptable evidence.[49] Besides, according to the CPC of 2011, the Appellate Court does not care any more about this procedural error *ex officio*, but only about the appeal of the parties.

Therefore, while the former ('inquisitorial') CPC of 2001 use of illegal evidence is considered as an absolute procedural error that always implies the annulment of the first-instance judgment, the adversarial CPC of 2011 use of illegal evidence is considered as a relative procedural error that requires the annulment of the

44 Similar logic was implemented by the German Courts in the *Gäfgen* case (see above), where the policemen who extorted the confession were prosecuted for extortion of testimony, but the evidence found due to coerced confession were used against the defendant. As it was noted above, the ECHR found no violation of the art. 6 of the ECHR.

45 Same: Škulic M. /2011/: *Komentar Zakonika o krivičnom postupku*, Službeni glasnik, Beograd, p. 1055-1058, Vasiljević T., Grubač M. /2005/: 653, Grubač M /2004/: 290

46 Despite these explicit provisions, courts in the practice did not apply exclusionary rule so consistently. In the some cases judges applied this rule, holding for example that the statement of privileged witnesses who were not informed about their right not to testify must be surprised. The same treatment had the statements of the policemen about the examination of the accused or citizens in pre-trial procedure. They were considered as illegal evidence and excluded from the case-files. (Municipal Court in Belgrade, decision n. 551/08 of 29.02.2008, Basic Court in Vranje, decision n. 2081/10 of 26.02.2010). In other cases they, contrary to the exclusionary rule, hold that blood sample of accused can be used as evidence even when it was taken contrary to CPC (Supreme Court of Cassation, decision n. 156/2010 of 23.03.2010), or that search record is valid evidence even if it was signed by the police officer who was not present during the search! (Appellate Court in Belgrade, decision n. 2723/2010 of 08.07.2010). Even more, the court allowed as evidence the confession of the suspect given under torture, explaining that by the fact that coercion must be proved by final judgment! (The judgment of the Appellate Court in Belgrade, Kž.1 3892-1 / 2011 from 28.09. 2011)

47 More about exclusionary rule in CPC/2011: Ilić G, Majić M., Beljanski S. Trešnjev A. /2012/: *Komentar Zakonika o krivičnom postupku*, Službeni glasnik, Beograd, p. 98-101

48 Vasiljević T. /1981/: *Sistem krivičnog procesnog prava SFRJ*, Savremena administracija, Beograd, 604. Regarding that, S. Brkic points out that "Such formulation contributed and even more in certain cases it motivated the state authorities on misUSe of procedural provisions." Brkić S. /2011/, "Upotreba nezakonitih dokaza u krivičnom postupku Srbije", *Zbornik radova Pravnog fakulteta u Novom Sadu*, vol. 45, no. 1, p. 187-188

49 Same: Vasiljevic T., Grubač M. /2005/: 635, Brkic S. /2011/: 188, Grubač M. /2004/: 290

judgment only if, bearing in mind other acceptable evidence, the same verdict would not be passed without problematic evidence. With such a provision the exclusionary rule loses its importance having in mind that the verdict is never based only on one peace of evidence, and every experienced judge is always capable to explain that the verdict would be the same even without the use of disputable evidence.

The exclusionary rule faces one more problem not characteristic only for Serbian law, but for all systems of non-jury trial, that is reflected in the possibility for the arbitrator (trial judge) to be informed about the illegally obtained evidence. The essence of the exclusionary rule is to prevent the possibility that the illegally obtained evidence influences the verdict. In American jury-system written case-files, judges decides on the suppression of illegal evidence at the preliminary hearing, while jurors who decide on the guilt at the trial, could not have any idea about such evidence. Opposite to that in Serbian law, illegal evidence could be excluded even at the trial by trial-chamber, if it was not excluded in previous procedural stages.[50] Particularly in summary criminal proceeding it is reasonable to expect that a trial judge will always be informed about illegally obtained evidence, having in mind that in this procedure a formal investigation and formal confirmation of the judgment do not exist.[51] Although, the CPC of 2011 introduces the so- called 'preliminary hearing' where inter alia, the parties discuss the evidence that will be produced at the trial, this hearing is conducted by the same judge who will be the president of the trial-chamber. Therefore, even if the trial judge is forbidden to base his verdict on the illegally obtained evidence, there is no guarantee that such evidence will not affect his decision. With regard to that, it was legitimately warned that the "every evidence, regardless of the fact whether it was legally or illegally obtained, must inevitably influence the court's decision, because judges cannot simply erase from mind the impression such evidence left on them".[52] The exclusion of the evidence from the case-file does not necessary mean their exclusion from the consciousness of the trial judges, and therefore their indirect influence cannot be neglected.

CONCLUSION

In the adversarial model of criminal procedure the exclusionary rule and fruit of the poisonous tree doctrine have higher importance than in inquisitorial (mixed) model, bearing in mind that these rules interfere with prosecutorial burden of proof, contributing in that way to the equality of arms. The American case-law particularly insists on that, but the purpose of this severe regime is not only to protect the Constitutional rights of a defendant but also to discipline and deter the police. A quite milder 'European' approach to these rules is the result of the civil-law basis in the written laws and the principle of mandatory prosecution. Criminal codes regulate numerous criminal offences that could be committed by policemen during the collection of evidence, while the principle of mandatory prosecution obliges the public prosecutor to initiate a criminal proceeding against anyone (a police officer as well) who breaks the law. The ECHR interpretation of these rules sometimes allows judges to 'turn a blind eye' on evidential irregularities provided that such irregularities do not affect the fairness of the whole proceeding. One more reason why the exclusionary rule has a stronger impact in the U.S. is the consequence of jury trial. Bearing in mind the non-existence of a written case-file and the exclusion of evidence during a preliminary hearing, deciding on the guilt jurors (unlike European judges) cannot take into account illegal evidence, not even subconsciously.

The Serbian law shows a certain paradox with regard to these issues. It seems that the former CPC of 2001 provided a stronger protection of this rule providing that its violation means an absolute procedural error that implies the annulment of the first-instance judgment. Instead of that, the CPC of 2011 softens this procedural error providing that the same exists only if the same judgment, in view of other evidence, would not been issued without illegal evidence. Such a provision is problematic in a newly established adversarial model that requires more consistent and severe application of the exclusionary rule, all with the purpose to protect the equality of arms and fairness of the trial.

50 According to CPC different procedural actors decide on the exclusion of evidence in different stages of criminal procedure. Thus, during the investigation, the exclusionary rule is implemented by a pre-trial judge (art. 237 par. 1 CPC of 2011), during the confirmation of the indictment the same rule is implemented by the non-trial chamber, before the trial and during a preliminary hearing a trial judge decides on the exclusion of evidence, the trial-chamber during the trial and the appellate-chamber in the second-instance (appellate) procedure.

51 All criminal offences with prescribed punishment up to eight years of imprisonment, which constitutes the 80 % of all crimes prescribed by Criminal Codes, are prosecuted in summary criminal proceedings. This proceeding is characterized by the lack of the formal investigation (although the prosecutor can take some investigatory measures) and the trial by an individual judge instead of the trial-chamber. The indictment is shorter compared to the indictment in a regular criminal proceeding and it does not pass through the stage of confirmation by the pre-trial chamber. See Serbian CPC of 2011, Art. 495-511

52 Bayer V. /1989/: *Jugoslovensko krivično procesno pravo –knjiga prva- Uvod u teoriju krivičnog procesnog prava*, Zagreb, p. 106

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25. Vasiljević T, Grubač M. /2005/: *Komentar Zakonika o krivičnom postupku*, 10 izdanje, Beograd

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LEGAL STATUS OF A SUSPECT IN THE CONTEXT OF APPLICATION OF THE INSTITUTE OF DETENTION[1]

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Abstract: The institute of detention of a suspect is one of the measures that ensures the presence of a suspect during the preliminary investigation, and is undertaken for the hearing; however, it can last up to 48 hours. During the undertaking of this measure certain rights are guaranteed to the suspect, among which the special right is the right of defence and the associated set of rights with which it is accomplished, i.e. the rights that are necessary prerequisite and an integral part of the right to defence. This law, as well as basic characteristics of the institute of detention are the subjects of this paper. The analysis of those questions was done through the prism of current legislation and with consideration of practical problems in the implementation of the institute of detention and realization of a set of rights that characterize the legal status of the suspect. The paper critically discusses issues relating to the legislation of detention, such as standardized material condition and the reasons for the application of detention, but also the issues governing the corpus rights belonging to the suspect.

Keywords: legal position of the suspect; detention.

INTRODUCTORY REMARKS

A key feature of the legal position of the defendant is manifested through the right of defence, as one of the basic and fundamental rights of the defendant, which at the same time is realizing the basic function of this subject in criminal proceedings. As it is known, the right of defence is complex and includes a large number of guarantees of procedural position of the defendant in criminal proceedings. This includes: contestation of criminal offence, free method of selecting the defence, including protection against self-incrimination, the right to engage a defence lawyer and his presence during the hearing, the right to a fair trial, the right to develop the evidentiary activity, to use the benefits provided by law remedies and to undertake other law anticipated actions. The essence of the right to defence is linked to the development of processing activities which is aimed at total or partial denial of the charges done by an authorized prosecutor.[5] The most important segment of defence rights is the right to a defence lawyer, since with it the realization of the principles of equality of parties in the legal proceedings is enabled, as well a fair trial. The principle of a fair trial (proceedings) requires that the defendant in a criminal proceedings, conducted in the form of a dispute between equal parties, is helped by a law specialist, in order to remove the deficit of real possibilities of the defence on the defendant's side in comparison with the public prosecutor (behind which there is an entire apparatus of the state authorities) especially if the defendant is in detention.[6]

If we tried to define the right to a defence lawyer, we could conclude that it is the right of a suspect i.e. an accused to administer the defence with the help of knowledgeable legal entities, registered in the directory of lawyers. A defence lawyer is a processing assistant to the defendant who with his legal knowledge and procedural skills helps the defendant in finding and establishing facts in his favour, the application of

1 This paper is the result of the realization of scientific research project under the title "Development of institutional capacities, standards and procedures for combating organized crime and terrorism in conditions of international integrations". The project is financed by the Ministry of Science and Technological Development of the Republic of Serbia (no. 179045), and it is implemented by the Academy of Criminalistic and Police Studies in Belgrade; in which the project manger is PhD Saša Mijalković.
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5 Grubač, M., *Criminal Procedure Code,* fourth and amended publication, Official Gazette, Belgrade, 2006, page 180.
6 Krapac, D., *Criminal Procedural Code, First book: Institutions*, II changed and amended publication, "National Newsletter", Zagreb, 2003, pages 166-167.

regulations that are most favourable to the defendant, and the use of procedural rights.[7] The rights of a lawyer are generally equated with the rights of an accused and can be implemented not only in criminal proceedings, even prior to its commencement, i.e. in the pre-trial investigation.[8] According to the national legislation, the engagement of a lawyer is possible when undertaking a number of activities in the pre-trial investigation, even when detaining a suspect.

The remainder of this paper will analyze the current legal solutions in the national law and point out some concerns in the legislation of the issue concerned.

CURRENT LEGAL SOLUTIONS FOR THE INSTITUTE OF SUSPECTS` DETENTION

Detention is a measure of procedural coercion consisting of the preventive deprivation of personal liberty, which ensures the presence of a suspect in pre-trial investigation. The basis for the legal regulation of these measures can be found in the Constitution of the Republic of Serbia,[9] which in addition to the provisions of deprivation of liberty indirectly contains provisions on detention. Namely, within the provisions on the rights of deprivation of personal liberty without a court's decision[10] the Constitution stipulates the obligation of taking the arrested person without delay or at the latest within 48 hours to the competent court, or in other case there is an obligation to release such a person (Article 29. page 2).

This set of constitutional framework was sufficient for the legislator to determine the legal basis for detention, material and formal requirements for the application, authorized entities to undertake these measures, the manner of its documentation and the rights of detained person. Detention of a suspect in pre-trial investigation is undertaken against a person who is arrested by the police or citizens during the performance of an offence, as well as to the originally or subsequently suspected person[11] for interrogation. Detention of a suspect may exceptionally be determined by a public prosecutor, with the provision that it cannot last longer than 48 hours from the time of arrest, i.e. from the time of responding to a summon.

Compared to the previous solution, there is a noticeable difference in determining the authorized entity to undertake these measures. Namely, so far the implementation of such important powers was under the jurisdiction of the police, and now is under the exclusive jurisdiction of the public prosecutor. The reason for such a change probably lies in the new managerial role of the public prosecutor at the preliminary investigation and previous criminal proceedings and the desire of the legislator to strengthen that position with such broad power corpus. We are of the opinion that this solution has its practical benefits, with respect to certain other provisions of the Criminal Procedure Code, i.e. the provisions under which the police is obliged to bring an arrested person to a competent public prosecutor without any delay and that the interrogation of the arrested is done by the public prosecutor (Article 291 paragraph 1 and Article 293 paragraph 1 of the CPC).[12]

The material condition for the application of detention is not directly determined by the law, but the conclusion of its existence can be drawn from the provisions which define the content of the regulation that determines detention. The law in the enumeration of the elements of this document states that the following must be stated: the offence for which a suspect is charged, grounds for suspicion, date and time of arrest or summons, and the start time of detention (Article 294 paragraph 2 CPC). In addition, physical condition or reason for implementing detention arises from the provisions under which the detention is determined for a hearing, provided that we remain in doubt as to whether that hearing is undertaken by

7 *Ibid.*, page 166

8 In accordance with the explicit interpretation of the legislator, preliminary investigation involves charging criminal complaints and dealing in accordance with it, the authorizations of the public prosecutor, police and other officials before the criminal proceedings starts (see: Ilić, G.P., Majić, M., Beljanski, S., Trešnjev, A., *Review of the Criminal Procedure Code in accordance with the legislation from 2011 with changes and amendments 2011*, Official Gazette, Belgrade, 2012, page 49). On the other hand, the law binds the start of criminal proceedings to an order to conduct an investigation, confirmation of the indictment which was not preceded by investigation, adjudication on detention before charging the indictment in quick criminal proceedings, specifying the trial or hearing for sentencing in quick proceedings and determining main trial for imposing the security measure of mandatory psychiatric treatment (Article 7 CPC). More on the new concept of investigation and the dynamics of the criminal proceedings, see: Bošković, A., *Prosecutorial police concept of investigation and efficiency of criminal proceedings* (unpublished doctoral dissertation), Law Faculty at the University in Kragujevac, Kragujevac, 2010.

9 Official Gazette of the Republic of Serbia no. 98/2006

10 Despite this particular constitutional provision, the Criminal Procedure Code, completely correctly, makes no difference in rights, and thus in the possibility to detain, between the categories of persons deprived of liberty ('arrested') without a court decision and a person deprived of liberty ('arrested') on the basis of the court's decision (Article 69 paragraph 2 CPC).

11 Initially, a suspect is a person who has been invited as a suspect for questioning and subsequently a suspect is a person who has been invited for questioning as a citizen (presumptive witnesses) for whom during the gathering of information it was found that there are reasonable grounds to believe that that person is a perpetrator of a certain criminal offence (Article 289 paragraphs 1 and 2 CPC).

12 Criminal Procedure Code of the Republic of Serbia, Official Gazette RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

the rules for interrogation of a suspect or arrested person, given that the legislator recognizes the rights of a detained person as for the rights guaranteed to an arrested person (Article 69 paragraph 1 CPC), so it would be logical that the person is questioned in accordance with the mentioned.[13]

To put it simply the requirement is the existence of grounds for suspicion that a person has committed a specific crime, which is lower than the level of suspicion required for an arrest. Given that the detention rate, by which a suspect is deprived of liberty for a certain period of time, i.e. 48 hours, should 'step up' the material condition and depict it with reasonable suspicion. This solution seems to be justified because of the fact that the legislator sets the position of an arrested person as similar to the position of a defendant[14], and the defendant is a person against whom there is reasonable suspicion of committing a crime, or a set of facts that directly support the reasonable suspicion and justify raising of charges (Article 2 paragraph 1 point 19 CPC).

In support to this view, there is a fact that a more serious arrest, which detention certainly is, cannot be determined with a lower degree of suspicion, as it represents a broader and more difficult invasion into the right of liberty, which has been confirmed in numerous decisions of the European Court for Human Rights.[15] Additionally, in practice, in the template of the decision on detention one is talking about reasonable doubt.

The formal condition for detention is the legal authority which constitutes the authority of the public prosecutor for determining this measure. Opposed to deprivation of liberty, which is a de facto measure in which the police prepares a report on the implementation of police arrests and arrested persons, and detention measures is documented with a decision. The decision about the detention is passed by the public prosecutor, but this power can be transferred to the police. No matter what authority issues a decision, it must be submitted to the detained person immediately or at the latest within two hours from the moment the suspect was told that he is detained.

The mentioned decision represents a significant step forward in the protection of the rights of detained persons, given that the Criminal Procedure Code of 2001[16] did not determine the moment from which a period of two hours should start, whether from the moment of the deprivation of liberty or responding to a summons or from the moment when the person was told that he would be detained.[17]

As we mentioned, the law stipulates certain content for decision on detention, with the provision that in practice the decision contains the following elements: the name of the authority that determines detention; the legal basis for the implementation of that measure; the full name of a suspect with known generalities; the conclusion that he is being detained for 48 hours and from which moment that time is being counted; the reasoning (which comes down to the explication of a reasonable suspicion that a criminal offence was committed); the information about the engagement of a defence lawyer by a suspect or a public prosecutor; the signature of the one that passed the decision and a legal instruction on the use of the appeal. At the end of a decision, there is a confirmation of its receipt by the suspect and the conclusion of the judge in charge of the preliminary proceedings that the appeal was received, stating the date and hour.

On the basis of the lawful exhaustively determined elements of the decision on detention, it can be noticed that there is a lack in legal regulation of this measure. Namely, once again (as in the previous regulation) the instruction on legal remedy is not incorporated within the framework of essential elements of the decision, i.e. the possibility for an appeal.[18] The Code authorizes a suspect and his lawyer to file an appeal against the decision on detention within six hours of its reception. The appeal shall be submit-

13 Clarification of this issue is important because of differences in the legal entity authorized to undertake interrogation of a suspect and an arrested person. The legislator places the interrogation of a suspect under the jurisdiction of the public prosecutor, who may delegate this action to the police or to attend the hearing. O On the other hand, the interrogation of an arrested person can be done only by the public prosecutor. About the manner in which this issue of interrogation was settled under the Criminal Procedure Code from 2006 see more in: Banović, B., Lajić, O., *Constitutionally guaranteed rights of the defendant and criminal procedural legislation,* Collection of papers "Constitution of the Republic of Serbia, criminal legislation and organization of justice system". XLIV Regular annual advisory meeting of the Serbian Association for Criminal Law Theory and Practice, Zlatibor, September 2007, pages 300-321

14 See: Ilić, G.P. *et al., op.cit.,* page 56

15 McBride, G., *Human rights in criminal proceedings, Practice of European court for human rights,* Council of Europe, Office in Belgrade, Belgrade, 2009, pages 39-44

16 Official Gazette SRJ, no. 70/2001 and 68/2002 This Code went through several changes and amendments: Official Gazette RS, no. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010

17 Another option for calculating the detention period is much more logical, given that the first certainly would mean the impossibility for the competent authority to fulfil its obligation. Calculating the period from the time of arrest or responding to a summons would be that there is a complete certainty of the police in the need for determination of detention from the moment of arrest or responding to the summons of the initially suspected person, which is not and should not be the norm. The situation could be further complicated by detaining a subsequent suspect, with whom the police can make an interview within the four hours period (unless the person agrees with the extension of the interview) and, say, in the second half of the interview concludes that a person can be treated as a suspect, so he determines a detention. In these circumstances it would be impossible to fulfil the obligation to respect the deadline for the delivery of the decision on detention, if it would be counted from the moment of responding to a summons.

18 Kesić, T., *International standards in the conduct of the police in criminal matters* (Monographs Edition, Book 18), Academy of Criminalistic and Police Studies, Belgrade, 2014, page 130

ted to the judge for previous proceedings, who is than passing the decision about the appeal within four hours of receiving it. The appeal does not have suspension effect (Article 294 paragraph 3 CPC).

A significant shortcoming in the legal regulation of the detention of a suspect that existed in the previous law represents the omission of the reasons for detention. The assertion that it is undertaken for the interrogation of a suspect is not sufficient to determine this coercive measure. In practice, detention is usually determined because the authority that made the process needs more time to gather material necessary for the initiation of criminal proceedings, which cannot be considered as a sufficiently justified reason for the deprivation of rights to liberty. Similar solutions in comparative legislation and in former Criminal Procedure Code from 1976, which envisaged the possibility of police custody for three days,[19] of detention should be conditioned with on the existence of some legally specified grounds for detention, which the police have done so far in practice. Namely, the detention of a suspect is always built on the probability that in a criminal proceeding, whose initiation seems very realistic, that person could be placed into custody. Similar sentiments are represented by the individual processualists who believe that detention assumes certain cases of custody.[20]

LEGAL STATUS OF A DETAINED SUSPECT

The legal position of detained suspects includes a set of rights that belong to him, and that the legislator identifies with the rights of the arrested person (Article 69 paragraph 1 CPC). That includes rights guaranteed to the defendant, such as: the right to free choice of the mode of defence, the protection of self-accusations; the right to have a defence lawyer and the right to attend the hearing and the right to be informed about the criminal charges, report about the crime scene investigation and findings and opinion of an expert, about which the institute in charge of the procedure shall instruct him about before the first hearing (Article 69, paragraph 1 CPC). In addition, a detained suspect is guaranteed to have the following rights: to be informed about the reason for the arrest in a language that he understands; to have a confidential conversation with his lawyer prior to the first interrogation monitored only by sight; to request that some of his family members or other person close to him is without a delay informed about his arrest, as well as diplomatic and consular representative of the state of which he is a citizen, or authorized representative of an international organization of public and legal character if the arrested person is a refugee or stateless, and to request to be examined by a doctor of his own choice or by the choice of the public prosecutor or the court (Article 69 paragraph 1 points 1-4 CPC).

It is certain that the key right is the right to a defence, which since the French Revolution has been treated as a natural right of a citizen and which cannot be taken away by the law. On these bases the Constitution of the Republic of Serbia was built, which provides that anyone who is charged with an offence has the right to defence and the right to engage a lawyer of his choice, to speak freely with that person and to have adequate time and facilities to prepare a defence (Article 33 paragraph 2). Furthermore, the highest legal act guarantees the right to have a free defence lawyer if the accused cannot pay for a lawyer, if the interests of justice so require, and in accordance with the law (Article 33, paragraph 3). The Constitution does not foresee the possibilities and reasons for the restrictions of the rights of defence and a defence lawyer, so the laws that regulate this matter can only prescribe the manner of exercising these rights.

The right to defence, i.e. the right to a defence lawyer is guaranteed by the most important international documents on human rights. Among them the one that stands out is the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to a fair trial, whose integral part is a set of minimum rights belonging to a defendant, including the right to defend himself or through legal assistance of his own choice, or, if he does not have sufficient funds to pay for legal assistance, to have it free when the interests of justice so require (Article 6 paragraph 3 point 3).[21]

With the analysis of the provisions of the Criminal Procedure Code we can conclude that they guarantee the right to self-defence (material) and the right to a defence lawyer (formal). Material defence is the one that is performed by a defendant himself or through other persons except a lawyer (e.g. persons who are

19 Criminal Procedure Code SFRJ from 1976 envisaged the detention as the measure that provided the presence of a suspect in pre-trial proceedings, provided that there was a need to establish the identity of the perpetrator, checking alibis or for the collection of data necessary for the conduct of the proceedings against the suspect. In addition, the requirement was to fulfill general reasons for detention during the investigation, except for reasons which require the existence of particular circumstances indicating that the perpetrator could hinder the investigation by influencing witnesses, accomplices or disguiser. The Institutions of Internal Affairs were able to determine the detention during the investigation if the investigative judge entrusted the execution of certain investigative actions to the institutions of internal affairs, and if there were reasons for detention (Article 196 paragraphs 1 and 2, Criminal Procedure Code, Official Gazette SFRJ, no. 4/77, 36/77, 60/77, 14/85, 26/86 – revised text, 74/87, 57/89 and 3/90 and Official Gazette SRJ no. 27/92 and 24/94). Police detention was applicable till the decision passed by the Federal Constitutional Court dated on the 07th December 2000, when it was determined that the provisions from the Article 196 were not in line with the SRJ Constitution.

20 Krapac, D., *op.cit.*, p. 282-283

21 European Convention on the Protection of Human Rights and Fundamental Freedoms with Protocols 1-14, Official Gazette SCG - International agreements no. 9/2003, 5/2005, 7/2005-correction and Official Gazette RS - International agreements no. 12/2010

close to the accused). Formal or professional defence is the defence that the defendant performs through his defence lawyer. This kind of defence can be classified into three subtypes: optional, mandatory and defence of the poor. Optional defence is a kind of formal defence according to which a defendant is allowed to decide whether and whom to hire as a defence lawyer in the proceedings (executive defence lawyer, Article 75 CPC). Mandatory Defence (defence *ex officio*) is a form of formal defence, according to which, in cases prescribed by the law, a defendant is assigned by the court with a duty defence lawyer, if he fails to do so himself (Article 74 CPC). Finally, the defence of the poor is a form of formal defence that is applied in cases where defence is not mandatory, but a defendant requests the court to assign a defence lawyer, because according to his financial status he cannot bear the costs of his engagement. This kind of defence is allowed in criminal proceedings conducted for offences punishable by imprisonment not exceeding three years or if required for reasons of fairness. The costs of defence in this case fall within the budget (Article 77 paragraph 1 CPC).

A detained suspect, in addition to the right to have a lawyer of choice, is guaranteed to have a mandatory defence. In fact, as soon as the authority of the procedure issue a decision on detention, a suspect must have a lawyer, and if he does not select one within four hours, the public prosecutor shall provide a duty defence lawyer in accordance with the order on the list of lawyers that is submitted by the competent Bar Association (Article 294 paragraph 5 CPC). The law does not envisage the possibility of transferring this responsibility to the police.

In accordance with the above obligation the public prosecutor's office and the Bar Association have the obligation to write the date of entry of the lawyers in that register and when making the list they shall ensure that practical and professional work of the lawyers in the field of criminal law gives grounds for assuming that the defence will be effective. The list of lawyers shall be posted on the website and notice board of the relevant Bar Association (Article 76 paragraphs 2 and 4 CPC).

The problem is the provision according to which a detained suspect's right to a lawyer is guaranteed from the moment in which the decision on detention is passed. As we have pointed out, the decision on detention may not be immediately issued, but within two hours, so in that time frame the suspect, though in fact arrested and probably he was informed that he will be detained, will not enjoy the right to mandatory defence, which is contrary to the intentions of the legislator. Here, we have particularly in mind a subsequently accused person, i.e. the person who was as a citizen summoned for questioning for gathering of information, since such persons do not have to enter police premises in the company of a lawyer, given that this is not explicitly thought in the invitation for questioning, but also a person deprived of liberty, who in this period does not have to realize his right to a lawyer or he can realize it partially (to contact a lawyer), and that his defence lawyer in fact is not yet available.[22] Similar situation is with a person who is summoned for questioning as a suspect, given that he can, but does not have to engage a lawyer (defence is not mandatory).

The problem is that the realization of this right is by the law connected to the issuance of the decision on detention, which does not have to be issued immediately after the person has been notified that he will be detained, but not later than two hours from when he has been told that he will be detained. In order to achieve the full realization of the right to a lawyer, the deadline for his engagement would have to start from the moment when the person was informed that he will be detained, by allowing a certain period of time in which he could engage a layer by himself and if not able to provide a defence lawyer, that shall be done by a public prosecutor.[23] Subsequently, the police should issue a decision on detention in which it should be stated that the suspect was informed of the right to a defence lawyer of choice, i.e. that he was appointed with a duty defence lawyer. Only in this way a suspect is enabled to have an effective and efficient implementation of the guaranteed right.

Other legal solution that is susceptible to criticism relates to the determination of a duty defence lawyer. Namely, a public prosecutor is obliged to provide a duty defence lawyer, in accordance with the order on the list of lawyers that is submitted by the competent Bar Association, in cases in which a suspect has not done so within four hours of receiving the decision. The problem is the lack of legal options to take into account the opinion of a detained suspect even in that occasion, which would not only fully realize his right to a defence lawyer, but also it would prevent subsequent denial regarding the ability of a certain person to be a defence lawyer in a particular case. This would prevent situations in which in practice the testimony of a suspect given when summoned for questioning is challenged and denied, stating that the suspect was not

22 We are emphasizing that the arrested person is not guaranteed with mandatory defence, except in cases in which it is predicted within the criminal proceedings (Article 293 paragraphs 1 and 2 CPC), which is not logical bearing in mind the implementation of this measure we are suspending the right to liberty.

23 CPC/2011 prescribes precisely this kind of obligation to the public prosecutor or the police but, unfortunately, retains the current solution according to which a suspect must have a defence lawyer at the time of the decision on detention or at the latest within four hours, while it does not specify when that time period starts. It is unclear whether the period of four hours starts from the moment when the suspect was informed that he is detained, or from the moment in which the decision on detention is issued (Article 294 paragraphs 2 and 5). In both cases the suspect will not have a defence lawyer for at least four hours, regardless of when the deadline is counted, and the measure of detention is implemented against him. This solution is contrary to the rule that states that a suspect must have a lawyer when he is issued with a decision on detention.

adequately represented. In support of this view there are some decisions of the UN Committee for Human Rights.[24] On the other hand, the position of the European Court of Human Rights is that when a defence lawyer is engaged the wishes of a suspect must be respected, and that only in exceptional cases this may be waived. As permitted, the exception is the abuse of that right by a suspect, while in other cases its denial would result with the violation of the right to a fair trial.[25]

In addition, the new Criminal Procedure Code does not contain a provision that would regulate the situation in which, for any reason, a duty defence lawyer does not respond to provide the defence to a detained suspect, and in the meantime the scheduled time for detention has run out. Indirectly, it could be concluded that the detained suspect in these circumstances should be brought before a judge for previous proceedings (if there is sufficient evidence to initiate criminal proceedings) or he must be released. Such provision is predicted in the Article 69 paragraph 2 of the CPC, which regulates the rights of an arrested person (not the person deprived of liberty), but in this provision on detention the legislator does not call for its implementation.

Finally, it is important to mention that the structure of the rights belonging to the suspect does not contain the right for him to be informed about the contestation of criminal offence, which is a prerequisite for the realization of the rights to defence. Although this right is listed as the first within the rights of the accused persons, we are missing its quotation within the rights of the arrested, and thus also of a detained suspect.

FINAL REMARKS

The legal position of a detained person is characterized by the set of rights which include the right to defence, the implementation of which is unthinkable without the possibility of the suspect's freedom to choose a defence lawyer and to be allowed to take part in the election of a duty defence lawyer (with which the realization of the demands for effective defence is enabled), to be introduced with the offence which he is charged with, with the right to appeal and other rights. No less significant is to precisely and lawfully regulate the institute of detention of a suspect and to remove all ambiguities and imprecision in its regulation. Therefore, it is important to accurately define the material requirement for detention (and that should be a reasonable suspicion), the constituent elements of the decision on detention and the reasons for which it can be determined (by bringing it in direct contact with some of the reasons for detention).

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REVIEWING OF POSSIBILITIES FOR USE OF METHOD OF EXTRACTING INFORMATION FROM DIFFERENT INVESTIGATION MATERIALS

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Abstract: There are several different ways and methods for dealing with multiple statements, multiple documents produced regarding an event with possible criminal significance. Some of them are more ergonomically oriented but some are not. It depends on the eye of beholder, or it depends on the fact who is selling the method. There are those which are commercial and expensive, and there are those which were developed through practice. All of them have not been tested in real practice in Serbia, but we think that this is the time to test one of them in practice, especially because few people from Serbian criminal police were trained in one of them. We are going to elaborate on the method entitled S-E-3-R, which is a mnemonic, specifying the steps of a method of obtaining information from multiple statements and other documents, and recording verbal information. Mnemonic presents acronym extracted from first letters of: **S**urvey, **E**xtract, **R**ead, **R**eview, **R**espond=**S.E.3 x R.** Those are methods and tools for practical extraction of important information contained in all documents and statements and other material related to the event. Extraction of information is a very demanding and complex process which is abstracted and simplified through usage of those tools and methods. We are explaining procedure and significance of those tools and methods in interviewing and process of investigative analysis which normally leans on those. Ultimate result (practical results in Serbian practice) is not elaborated here, that is still to come, but grounds on which they are standing are explained and postulated with strong significance.

Keywords: SE3R, interviewing investigative tools, investigative analysis, statement analysis, PEACE model of interviewing.

INTRODUCTION[1]

In considering working with multiple people as sources of information, various systems and techniques of analyzing, disseminating, categorizing etc. the obtained data may occur to the person in charge of conducting the interviews. It is, however, certain, that it should be concise, punctual, systematic, methodical and clear. There could be different approaches to this[2], and it could almost be said that there are as many as approaches as law enforcement officers, because they could be different, every single one of them. But there are some methods already tested in real investigations, which did give good results[3]. One of them is presented here with our hope that it could help to anyone in investigation to improve their efforts in analyzing and extracting relevant information from the sea of information.

The Method

SERRR(SE3 X R)

S-E-3-R[4] is a mnemonic, specifying the steps of a method of extracting information from various statements, police records and other documents, and recording verbal information. It comes from the first letters of following words:

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1 This work has been created as a result of the project Criminality in Serbia and legal resources for reacting on it, from Academy of criminalistics and police studies.

2 Krstić, O. Otkrivanje laži kroz gestove i ponašanja – simptomatska slika, Banja Luka 2007, pp.76-100, Milic, N. Policijsko saslušavanje osumnjičenog, Beograd, 2006, p. 88. Compare with Simonović, B. Kriminalistika, 2004, Kragujevac pp.204-213.

3 Žarković, M. Ivanović, Z. Kriminalistička taktika, KPA, Beograd, 2014, pp.128-155, and other multiple different locations.

4 SE3R was devised by Eric Shepherd. It is a technique that gives the practitioner a sound grasp of - and immediately stores in memory without any conscious effort - the fine-grain detail contained within documents - such as statements - and in verbal exchanges - typically interviews - conducted face-to-face or on the telephone, or recorded electronically. More to read: http://www.forensicsolutions.co.uk/SE3R.htm last accessed 20/01/2015

– **S**urvey
– **E**xtract
– **R**ead
– **R**eview
– **R**espond =**S.E.3 x R**

Key features of this method are: Visual representation in the form of an **event line:** Linear representation of the 'passage of time', enabling events both to be grasped as an unfolding chronological sequence and to be located relative to one other. Also the use of **identity bins:** 'Index card' like representations of detail, verbal and visual, upon people, entitles and locations. It helps in converting the text of statements into present tense and direct speech, making the narrative real and revealing anomalies which would otherwise not have been detected. When applied to what is said across the course of multiple statements, it enables the detection of similarities and differences. This method can be applied to both documents and spoken narrative during witness or suspect interviews. Also it could be implemented by both the court and prosecutors office during the trials. Wherever there are multiple narratives, multiple statements and many people it facilitates easier read-through. It is recommended that whilst learning the process, it is applied to documents initially, until the process has been learned and confidence gained in using this method. Every single theorist agrees that it is needed to apply the method to one document at a time. For all of those it is needed to create one sheet matrix, on which it would be worked on. One example would be given towards the end of this article. In the top right hand corner of the sheet record core reference information:

- Details of the document, to include witness name &or name of the suspect or citizen.
- Date the SE3R is prepared.

S-Survey

Survey as the first part of this method application is very important step. It is recommended that initially law enforcement officer should read the document through at an even, steady pace without any of the outer influences, preferably sound proof place. This reading should be quicker than normal reading speed. Also, while reading there should be borne in mind to resist the following temptations:

- To glance forwards.
- Stopping the flow to dwell on details
- Looking back to check details

It is very important to consider this phase or a step of method application as scanning of material, which means that content of statements and documents, is quickly run and framed. It represents a sort of abstract reading, which should be more lateral but point taking and rounding.

E- Extract

After the first step it is essentially important to go through the document systematically. We should turn our pad or paper on its side so that it forms a long rectangular tablet. After this we should draw a line about two thirds up the page, extending all the way from left to right across its entire width. This represents **event line**. It signifies the passage of time from left to right. Now we should work our way through the document. When we identify an event we should draw a short vertical line through event line. Each cutting line is an event. It is needed to create some space between one cut and the next, because of creation of certain amount of space for filling in with details. Practice will enable everybody to find what spacing suits them, but in the initial stages, we should experiment with a gap of just a bit over 3 cm. Write location, date & time (if known) above the first point in the event line. We should be consistent in the order of detail, the most sensible order is day, date, time, geographical location, and, where appropriate, a more specific location (e.g. room) Thurs-13/11/99, 10-05am14 Gibson Square (conservatory). We do not need to replicate day, date and location for subsequent events, but remember to add details above the line when the day, date, and time or change of location. Indicate any duration known by a bracket extending eastwards towards the relevant event, and indicate successive events occurring in the same location with a "ditto" symbol. Fri 14/11/14 (about 10 minutes) 8pm Place "Monument" Dejan & George are there Dejan says to George drinking at the bar "Outside - now", Paul joins them. In this case it is very important to enter the event, and any circumstances relating the event such as speech (exactly as stated) etc, under the south point of the vertical line.

Conversion Rules

1) It is of great importance to convert text to present tense, e.g., in a statement by Maggie: Text in following MG (Short from Name but still recognizable and distinctable) *I saw Patty sitting on Alf's lap* SE3R entry should read **MG (Maggie) sees PM (Patty) sitting on AM (Alf's) lap**[5]

2) Also convert the passive voice into active voice: Text in following by Debbie-Sue *was comforted by me and Steve*SE3R entry should read **DM (Debbie) and SM (Steve) comfort SS (Sue)**

3) Indirect (reported) speech should be translated into direct speech, e.g. the text in the following extract by Richard - Tracy was very upset and said to me Uncle Paul had done something awful to her. The SE3R entry should read: Tracy is very upset and says to Richard **"UP (Uncle Paul) has done something awful to me"** The conversion from **past** tense to **present** is crucial. It enables us to transform a verbal image of a past event to a current, visual image, which makes the narrative more real and memorable, and assists in comparison between different versions of the occurrence.

Identity bins

In creating this form it is suggested by most authors in Great Britain to use the lower third of form paper to record detail which supports detail which supports the narrative using an 'index card' system or any kind of recording and classifying mode or method. Bins should be opened to collate details of each individual mentioned in the text (include nicknames, date of birth, employment status, address, description, relationship to the person making the statement, other associates, etc.) and they should be precise and shortest possible. Bins should also be used for vehicles, positions or maps (sketches), routines, (i.e. cashing up till at the end of the day and route to the bank or grocery store, or journeys etc).

R-Read

Read through the statement on completion of our SE3R, at our normal reading speed, and check the material in the text with our event line. Correct any errors or omissions that you find. Determine inconsistencies, and predict possible routes for reviewing. Identify points of interest and those in a need of revealing or clearing with interviewing people and determining which person should it be cleared with and when, and in which order. This is first action after reading and preparing for review which is following.

R-Review

Put the real document to one side. Reviewing involves methodical examination and evaluation of the SE3R form. It is very important to be systematic in this review. There are various advantages of creating noteworthy detail just that by using highlighter pens, or coloured pens etc. to mark specific areas. Also there is the ultimate need to scan the event line, repeatedly. In that way one can look for breaks in narrative continuity. This can show the existing loopholes in whole or in parts of the story, which could be intentional or unintentional. Also we should examine each event and compare it to other event lines if applicable. There could be highlighted inconsistencies, indicated statements which are to be taken, existing contradictions, etc. One should ask him or herself the question: Are the events logical? Make notes, including further enquiries to be made, on separate paper. This also could include initialization of plans for further activities on investigation of the event, already mentioned in the end of Reading part and they are natural following actions.

R-Respond

It is possible that law enforcement officers will find that at this stage they will be very familiar with the detailed content of their SE3R form and overall characteristics and circumstances of the event. This also could lead to creation of a good memory for the content of the event even though they have not consciously sought to memorise it. This comes as the result of the combination of skim reading, systematic, critical extraction, and methodical review. It is very possible to test recall of the events by turning SE3R sheet over and attempting to reproduce it from memory. This rehearsal could show great results and also will be a great

5 All abbreviations should be in the legend and those legends should be written on the end of the sheet so those brackets are not really in the knowledge bins - (*Maggie) (Patty) (Alf's)* would then be in the left corner of the sheet or wherever we think it is suitable. It should look like this MG (Maggie Gains), PM (Patty March). Other things like cars or objects should also be distinctive so BMW Series 3 Registration number AUH 2 OK3 should be Car **B**, and if there are more of this distinctive cars, then car **B1, B2…**

example of a good tool for investigation as support. But this kind of knowing of the event or actions within it provides to officer in charge power to steer the conversation and to know all possible and disposable points gathered through different people involved. This also provides possibility to observe the event from all possible angles, not only through interviewee`s eyes. The power to respond in this stage is more strengthened with overall knowledge and points taken from different interviews and other documents.

APPLICATION

A unit or a group[6] plans, conducts and evaluates interviews with victims and witnesses, for serious and complex investigations. Planning and preparing of interviews with victims and witnesses as well as with suspects should meet certain criteria[7]. It can be defined as Performance Criteria. To meet the standard they should[8]:

1) Ensure that they understand and comprehend the nature of the incident to be investigated and the circumstances in which interviews can be conducted.
2) Make sure that they are able to identify the category of interviewee to inform their approach to the interview.
3) Assess the current physical and emotional condition of the interviewee to establish their fitness for interview and necessity for others to be present, and in that manner to meet criteria prescribed by the laws (minors, victims of sexual assault etc.).
4) Review the available material, and consult with relevant others to plan the interview strategy (public prosecutor, medical doctors and psychiatrists, centres for social care).

Interviewer group should: Review all the available material and then establish an interview leading strategy (of course that this overall strategy can be altered during the course of interviewing – depending on the interviewee behaviour and responses). Also this group should consult with relevant others (public prosecutor, criminal psychologist – as a part of the group of applied psychology, for profiling the suspect, or a victim and special NGO – for example in the case of trafficking of human beings – victim support) to establish the interview strategy. Assessment of the condition (psychological, but also overall physical or physiological) of the suspect is of utmost significance in order for interviewer to establish fitness for interview of the interviewee. One of the last (but not the least) moments to consider is to establish the appropriate time, location and resources conditions for the interview.

All of presented is very important as vital base for creating different activities deriving from interviews. Knowledge and understanding should include:

1) Current, relevant legislation, policies, and procedures, codes of practice, doctrine and guidelines for conducting interviews with victims and witnesses as part of a dedicated investigation.
2) Current, relevant legislation and organisational requirements in relation to race, religion, ethnic origin, diversity and human rights.
3) Current, relevant legislation and organisational requirements in relation to health and safety.

Range should include category of interviewee and it can be: a. vulnerable interviewee, b. intimidated interviewee, and c. significant interviewee. To some categories could be applied special articles of Criminal procedure code (CPC) and to some (such as to minors and children) special law – Law on minors as perpetrators and criminal protection of minors. For some cases it involves other relevant legislative efforts, for instance in hi – tech crimes we have to bear in mind that there are legislative sources which bring us more powers than CPC, or in procedural sense implementation of the Law on Seizure and Confiscation of the Proceeds from Crime, which is specific in moving burden of evidence for possession of assets to suspect. It also has to be in mind that keeping records on interviews on minors has to be in restricted status, that there are security clearances for accessing those.

The process of acting on investigation of certain crime in the light of SE3R form and method application consists of following:

Reading and evaluating statements, in a manner and by using techniques described above of all subjects involved. It also should involve visiting of the crime scene, checking incident logs and following actions and results of subjects of law enforcement, specially including checking intelligence. After establishing base

6 In Guide to Evidencing Competency in Interviewing Suspects for Serious and Complex Investigations Scratching the surface, a competent investigator knows the questions that cut deeper. Ask the right questions - get the right answers. Professionalising investigation programme National Policing Improvement Agency 2007. There is stated that special unit is authorised to work with this kind of investigations, while in Serbia there is just possibility of a group work for it.

7 Ivanović, Z. Urošević, V. Uljanov, S. Revija za kriminalistiko in kriminologijo, Ljubljana 64/2013/3, s. 275-286, Interview and Interrogation Tactics and Techniques in Serbia, p.277.

8 Simonović, B. Pribavljanje i ocena iskaza pred policijom i na sudu,Kragujevac, 1997. pp.211-221

layer of documents and following actions there should be performed reviewing of the exhibits (or leads) collected, and address checks following with Intelligence cross checks. From this actions there should be, by this time, identified existing gaps in the information provided. Those gaps in the information gathered should be evaluated, and there should be assessment of their value and need to clear certain gaps. Law enforcement officers must correctly identify offence(s) and define points to prove and also tactics of defences, and points of solid defence. It is great responsibility for members of law enforcement to identify appropriate person to conduct interview, but this actions which precede it are helping to this process, through facilitating it. In this course it is in the western theory encouraged discussing case with colleagues, supervisors, specialists, CPS legal advisors etc, which is always better than shutting down everybody, because it creates open atmosphere and provides flow of new and creative ideas, from which could emerge new information and tactics and techniques. Based upon all mentioned law enforcement officers (LEOs) are then considering options available, through systematic and classified display of information relevant to investigation. After consideration comes activity on deciding on the approach/interview strategy not limiting on it, but as overall direction. Following that approach LEOs are conducting assessment of the suspect against relevant factors - age, health, and demeanour. In continuation of previously mentioned LEOs are arranging attendances of relevant persons – defence layers, social workers, psychologists, parents etc[9]. Also this group is to ensure legal requirements and to facilitate that implementation of codes of practice and guidance have been met. This also includes checking the incident log, obtaining initial accounts, reading statements, and visiting the scene. Also of great importance is the assessment of the information available through implementation of PEACE method of interviewing and SE3R form and technique of extracting information. On these grounds LEOs are preparing a plan based on information and advice[10] (group, relevant factors such as psychologists, social workers, and of course public prosecutor). This plan should consider and contain knowledge of impact of timing on interview process, so those questions and relevant peaks and points should include possible timing boundaries.

SE3R form and technique gives us special possibilities, unique to others, not by its speciality but by facilitation of easier implementation of usual tactics and techniques used in investigation. For instance professional discussion of approaches should be considered, and systematically and concisely displayed and sorted information can be very helpful in that. Feedback and reports from competent colleagues and supervisors based on that kind of discussion can also be sorted in similar way. From that emerges a written plan detailing proposed strategy and some authors are proposing to keep records of discussions prior to interview, because it can be very inspiring for future interview conducting (or police questioning). Some of those match older Serbian criminalistics theory leaning on Russian and Eastern German methodology, from which examples would follow on the end of presentation of methodologies. It is very interesting to have and to address custody record entries recording information relevant to fitness and eligibility of suspect, followed also by medical assessments recorded. Interview planning materials should contain correctly detailing offences identified and points to prove, already detected through SE3R. Normally SE3R/ Notetaker or other planning materials should always be in material for interviewing and should often be consulted including note taker or timeline produced from materials gathered. It is of great importance to have previous history of suspect checked, similar fact evidence or Evidence of Bad Character related to the offence highlighted. Through implementation of SE3R and following police actions there should be special warnings identified, such as not to reveal crucial evidence. In preparing a plan for the interview SE3R helps in many ways, as example we could give: Establishing of police agenda i.e. aims objectives of interview, where it should lead, and what it should reveal, also it should outline topics to explore and through that we should prepare for the challenges that may arise. It gives us chance to decide on approach to be single or phased and to outline known and unknown facts – and therefore focus on revealing of them. Ultimately it provides opportunity to prepare a written interview plan that is clear, appropriate and meets the needs of the investigation, and also to determine the extent of, and supply, relevant pre-interview briefing to legal advisors in accordance with current policy and legislation. This method helps in preparation of the briefing strategy to legal advisor, what to reveal and in what time and precise moment in order to gauge impact of disclosing facts to the legal advisor. It also helps in deciding on extent and format of the briefing, and ultimately in delivering effective briefing to legal advisors.

SE3R gives advice on using Interview notes, by all involved in interview (minimum two investigators), also gives guidelines on observing legal advisor briefings, not listening but observing visually. Interview plan also should show considerations and some issues to clear. [11]

9 Milić N. Ivanović, Z. Lajić, O. Enhancing the police interrogation skills using computer simulations of the suspects' behavior, pp. 115-129. Međunarodni naučniskup „Dani Arčibalda Rajsa", Beograd, 3-4. mart 2014. Tematski zbornik radova međunarodnog značaja, Ur. Dragana Kolarić, KPA i Nemačka fondacija za međunarodnu pravnu saradnju (IRZ) Beograd, 2014.

10 Compare with Milic, N. Policijsko saslušavanje osumnjičenog, Beograd, 2006, p.88.

11 Ivanovic, Z. Analysis of the investigative interview and interrogation in Serbian praxis Criminology in the 21st Century: a Necessary Balance Between Freedom and Security Book of abstracts, The 12th Annual Conference of the European Society of Criminology, Bilbao, 12 to 15 September 2012, pp.231-232

Recommended materials for SE3R are: Note pad, or blank paper, at least A4 size. Many experienced users of SE3R use A3 pads or paper; Separate notepaper-to note any question or queries raised by your SE3R analysis; Coloured pens and highlighter pens. Of use in highlighting detail, absence of detail, inconsistency, further statements required etc. They are not, of course, essential, but if you use them you will find that you can refer to and manage your information much more efficiently and rapidly. Also there are possibilities of using computer programs such as MS Office Word or Excel (not only limited to it – consider Open or Libre office also) for those more computer savvy and in addition to that there should be mentioned that this approach of facilitating easier extraction of information also gains on simplicity and speed through computer software application.

The SE3R gives opportunity for LEOs to engage appropriately with the suspect according to their behaviour and using the appropriate interviewing techniques and communication methods. It also helps in conducting the interview in accordance with the written interview plan, whilst maintaining flexibility in response to the suspect's behaviour, though providing possibility to check the meaning and accuracy of information and ensure that any inaccuracies or misunderstandings are clarified with the suspect. It gives opportunity to appropriately challenge any inconsistencies in the suspect's account.

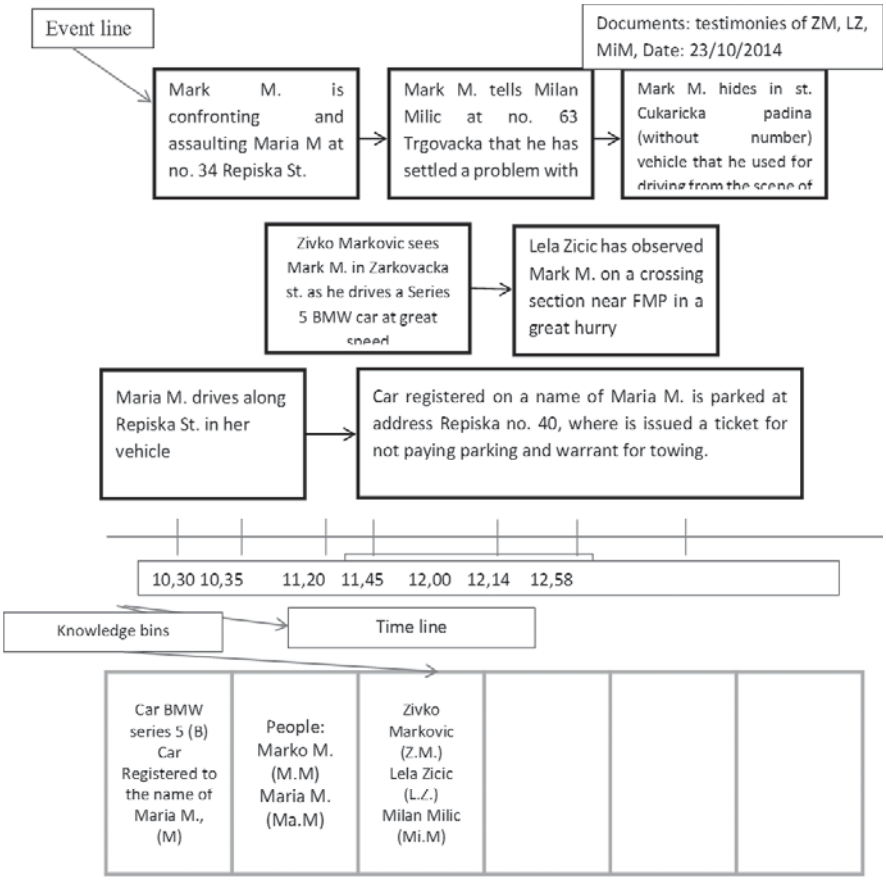
It is of utmost significance to ensure during any interview and especially during suspect interview to: deliver all the cautions correctly (also to explain caution in plain language to aide understanding) to all entitled to those. Also it is very important to confirm understanding. Since SE3R form and method is in a special relation to PEACE model it provides evidence of consistent and appropriate application of the PEACE model:

Both usages of PEACE model and SE3R form help in obtaining an uninterrupted account in a "user friendly" manner. These joint implementations of different techniques and models or methods also help in expanding and exploring the suspect agenda. Correct and clear interview can give more points to work on while creating SE3R form during the interviewing, because it is possible to find points to prove or to focus on while doing the interview. It also helps in displaying effective listening, questioning and summarising skills as a point from the PEACE model. Covering points to prove, covering possible defences, covering motive, covering mitigation are easier and more effective through joint implementation of PEACE model and SE3R form creating. Covering police agenda[12] and exploring topics is easier through SE3R form because it could be tracked from any angle, and there is no limit in creating form and overlaying layers of different points to prove, challenges to explore and similar. Challenging inconsistencies are more possible when they are displayed graphically, and more visually present because they virtually popup to LEOs. Those also give more opportunities to explore potential of commission of further offences. This also can produce more evidence of a structured approach in interview as per plan, and it is demonstrating flexibility and adapting to the interviewee's responses. This also is stressed when elaborating on SE3R form and ties with PEACE model of interviewing, since two of those interconnect in this matter, and dynamics and flexibility are core of it. It also could give answer how to deal with silence and no comment from the interviewee, because then could be identified gaps and they could be spoken into the air with interviewee listening, which at the end could bring confusion, regrets or some other psychological complex in his (or her) mind. It is very important to plan breaks in interview to review or revise plan, or to give more space to adapt to defence or alibi or other dynamical response of interviewee. There is a need for always checking meaning and use of language with suspect, because of different slangs or pat talk. One of most important parts of PEACE model is always doing summarising information regularly to confirm the suspect's account, and also it should be born in mind to do so in SE3R form creation, but to summarize known facts, and to recheck them. It also naturally goes with reviewing notes during breaks in interviews, because it has to be firmly established what we have, which is checkable and provable, and especially checkable facts and provable lies. Of great value is to often review the tape during breaks in interviews if the interview was recorded. Planning when to challenge is next step, which comes as a part of PEACE doctrine, but SE3R form gives enormous opportunities for challenging. SE3R form provides use of pre-interview planning to identify inconsistencies, also gives possibility in challenging inconsistencies. We already addressed effective use of special warning, recognized in SE3R form, but in effective planning of interview it could be of crucial significance. Accompanied to previous is the appropriate use of similar fact in interview identified in SE3R, but also the appropriate use of bad character evidence and it gives opportunity for observing interview or downstream monitoring.

Special warnings should be prepared in plan, and delivered on time predicted by the law. Interview tapes –Audio or video give obligation for law enforcement officers to create transcripts (stenographs) on content, but also possibility for contemporaneous producing of the notes. Use of assessment and evaluation checklists also helps in implementation of PEACE model, and SE3R form gives structure to it. We can stress here that new technologies provide possibilities for downstream monitoring, furthermore in evaluating interview tapes and consequently feedback and reports from competent colleagues and supervisors. It also provides observing witness interviews, and give time and opportunity to prepare materials on planning, but also the use of assessment documents, and evaluating content

12 Police agenda presents issues and things to do by police unit or a group but not to reveal to anyone outside police service.

In addition there is presented form of SE3R for usage in practice. This form includes several different documents from which there were extracted information regarding different sides and angles of the same event. For this purposes there were 7 pages of reports, depositions, witness testimonies etc. There could be observed different aspects of the same event through graphical representation of the same – of which event



Graphical representation of SE3R form[13]

Existing knowledge, intelligence	Connections between MM and ML are hypothesized, alleged, there are traces of finger prints from suspect found at the crime scene, there are objects missing from the crime scene (golden wedding ring, golden necklace, two golden cups) and there is eyewitness who saw the perpetrator while passing by.			
versions	Perpetrator insider	Perpetrator– multiple recidivist / just did the act and left	Perpetrator who has used opportunity to commit the crime Opportunist	
Fact to be checked (determine)	Find the connections for all from the firm with the time of commitment of the crime act – determine of the alibi	Check usual suspects in surrounding	Who was at the crime scene and near surrounding	

13 Compare with: Žarković, M Ivanović, Z. Radenković D. Praktikum iz kriminalističke taktike, Beograd, Kriminalističko – policijska akademija, pp.42-43

Acting	Check public video surveillance records, Checking of the base stations of cellular networks and active mobile phones surrounding the scene in critical time, gathering of the information and criminalistics checks	Check public video surveillance records, Checking of the base stations of cellular networks and active mobile phones surrounding the scene in critical time, gathering of the information and criminalistics checks	Check public video surveillance records, Checking of the base stations of cellular networks and active mobile phones surrounding the scene in critical time, gathering of the information and criminalistics checks	
Time limits	5-7 days	5-7 days	5-7 days	
Carrier of the duty	Operative group (OG) 1	OG2	OG3	
Determined	One of workers in the firm doesn't have adequate alibi	MM just has been released from prison, MO fits the profile	In 03:00 Am MI was passing by the area with cell phone no. 091930921930	
Documented	Report and official notes	Notes	Listing and base stations	

An example on planning from Serbian authors influenced by Russian (Soviet) theory[14]

Questions/issues to be cleared / working problems	Presence of certain persons on certain locations			
Determined and confirmed facts	Nine persons present at the certain location	Two persons are workers of STR Liki, MM и ŽS	At least one of them knew the perpetrator	
Actions and measures	Search location, find witnesses, conduct interviews	Find video records of public surveillance and private security footages, conduct interviews	Search base stations for tel. Numbers in surrounding conduct interviews	
Results	It is determined that in the exact time at that place were: MM, ŽS, MI...	Determined that MM that and that	Tel. No. 09029430909203 which is used by MM was at the place of crime at critical time	
Documentation	Official records on gathered information,	Official records on gathered information,video footage	Official records on gathered information,listings and base station triangulations	

An example derived from Serbian theory and practice influenced by former Eastern Germany[15]

14 Compare with ibid. pp.44-45
15 Ibid.

CONCLUSION

In considering welfare and possibilities of existing law scopes, techniques and tactics in our country this combination of methods and techniques in the extraction of crucial information is very applicable and extremely needed as an approach to dealing with huge amounts of information. Everlasting problem of flow of non-measurable number of information could not be solved in a blink. There is a long lasting need for solving of this problem, and we think that this combination of techniques, tactics, forms and procedures could be on the right track. As shown, the reasons for future successful usage of this mixture of methods are very true, and they show a range of very significant points to learn and use within different parts of procedural and non-procedural actions and measures. Clear and practical advice presented by PEACE model of interviewing technique enriched by clever usage of information flow and extraction from the ever upcoming stream of new and more or less important information facilitates procedures with sophisticated and safeguarded sifting system for use. In this article SE3R form presents some form of upper installation for construction that is founded and based by PEACE model of interviewing and by which they create very firm and stabile system. We have explored implementation of this system in our law, criminalistics and criminological environment and we definitely recommend it for practical use. Moreover this technique and this form are already in training plans of different partners of the Ministry of Interior of the Republic of Serbia – OSCE and Twinning projects program for different areas. In that light it can be comprehended that these combinations are going to be future of policing, but also future of police trainings.

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PROVING THE CRIME OF ANIMAL CRUELTY – KEY CHARACTERISTICS AND PRACTICAL DIFFICULTIES

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Abstract: Judicial practice and available official statistics indicate that discovering, proving and sanctioning the crime of animal cruelty, i.e. criminal offence of killing and torture of animals prescribed by Paragraph 269 of Criminal Code of the Republic of Serbia seems to be connected with numerous obstacles and complications. This could be considered as one of the circumstances that contribute to the fact that the number of persons accused of or convicted for this criminal offence in Serbia appears to be rather small in comparison to the actual number of committed and reported cases of animal cruelty. Additional concern is caused by the fact that similar misbalance, showing the presence of so-called "dark figure of crime" follows other criminal offences against environment. In attempt to contribute to more efficient suppression of this type of criminality, the author of this paper discusses fundamental features of criminal offence of killing and torture of animals, draws attention to its most frequent forms (including killing of animals by using firearms or other weapons, animal poisoning, animal neglect, animal hoarding, sexual abuse of animals and causing unnecessary fear and distress to animals) and points out the most acceptable ways to provide valid, relevant and complete evidence against their perpetrators. Moreover, the author highlights the most common practical difficulties that might occur while attempting to provide evidence for each of the aforementioned types of animal cruelty and offers possible solutions that would improve the speed, quality and efficiency of evidentiary proceedings in such cases.

Keywords: animal cruelty, criminal offence, criminal proceedings, evidence, proving.

CRIMINAL OFFENCE OF KILLING AND TORTURE OF ANIMALS IN CRIMINAL CODE OF THE REPUBLIC OF SERBIA

Criminal offence of killing and torture of animals was introduced to criminal legislation of the Republic of Serbia for the first time in 2006, when current Criminal Code came into force. A more severe punishment for basic form of this criminal offence was prescribed in 2009, when amendments and alterations of Criminal Code were adopted. On that same occasion, another form of this criminal offence, incriminating animal fighting, was provided. This criminal offence is placed in Chapter 24 of the Criminal Code, among criminal offences against environment. According to Paragraph 269 of the Criminal Code of the Republic of Serbia,[2] killing and torture of animals is committed by a person who illegally kills, hurts, tortures or abuses an animal in any other way. The punishment for this criminal offence consists either of a fine or of imprisonment up to one year. A more serious form of this criminal offence exists if the basic form of the offence resulted in death, torture or hurting of a larger number of animals or of the basic form of the offence has been committed against an animal that belongs to especially protected species. For this form, a fine or imprisonment up to three years can be imposed. A specific form of this criminal offence refers to animal fights. It is committed by a person who, with the intention to obtain financial benefit, organizes, finances or acts as a host of animal fight between animals of the same or different species. The same offence can also be committed by a person who organizes betting or participates in betting on these fights. The law provides a cumulative punishment for this form of animal cruelty, including imprisonment between three months and three years and a fine.

Animal cruelty can be committed either by active commission of certain activities such as stabbing, shooting, kicking, beating, strangling, breaking limbs of an animal, animal poisoning, or by failing to act,[3] i.e. to fulfil certain duties and responsibilities. This criminal offence exists only if the perpetrator has been acting with premeditation as the form of guilt (either direct or indirect). Animal cruelty or abuse committed with negligence shall not be treated as a criminal offence but as a misdemeanour in accordance with the Law on Animal Cruelty. Anyone can appear as the perpetrator of this criminal offence. It can be the owner

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2 Paragraph 269, Criminal Code of the Republic of Serbia, „Official Gazette of the Republic of Serbia" No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014
3 Storey, T., Lindbury, A.: Criminal Law, Fifth Edition, Willan Publishing, Devon, UK, 2009., pp. 26-27.

of the animal, but also a "third party". The precondition for the existence of this criminal offence is the illegal character of perpetrator's activities by which he caused animal's pain, suffering, injury or death. This means that the legislator has provided punishment only for those who cause animal's death or suffering in an illegal, prohibited manner, i.e. in a way that, at the same time, represents the violation of other legal provisions dealing with animal treatment or welfare such as, for example: Law on Animal Welfare,[4] Law on Gem and Hunting,[5] Law on the Protection and Sustainable Use of Fish Fund[6] and Law on Veterinary Medicine.[7] Another condition for criminal responsibility for animal cruelty refers to the intensity of the pain and suffering caused to the animal. The level of pain, suffering, discomfort, fear or other conditions that can be considered torture has to be extremely high. The intensity of these sensations on the behalf of the victim is supposed to be estimated on the basis of expert analysis made by veterinarians.

A more serious form of this criminal offence is present if several animals have been killed or tortured. The law is not specific about the number of animals neither it offers criteria for its estimation. So, it is up to the court to decide when this condition is met. When it comes to its second form, referring to the cases of killing and torture of specimens of rare and protected animal species, the legislator is actually setting a blank provision and redirecting to the Law on Nature Protection[8] and some administrative legal acts where protected and strictly protected animal species are defined. The most serious form of this criminal offence comprises the cases of animal fighting, and can be committed by performing one or more activities, including the organization, financing, being a host of these events, organizing or participating in betting. The prerequisite for the existence of this criminal offence is perpetrator's intention to obtain financial benefit through performing some of the aforementioned activities, which means that the lack of this condition would exclude his criminal responsibility. Hence, not only premeditation but a specific subjective element – the intention on the behalf of the perpetrator to use animal fights as a means to gain material (financial) benefits is required. It is up to the court to estimate whether this precondition is met in each individual case in the light of all other relevant circumstances.[9]

JUDICIAL STATISTICS ON ANIMAL CRUELTY IN THE REPUBLIC OF SERBIA

Judicial statistics related to the number of persons who have been reported, accused and convicted for killing and torture of animals in the Republic of Serbia between 2006 and 2012 might be helpful when it comes to drawing conclusions on the attitude of state bodies and general public towards animal cruelty in our country. An obvious disproportion between the number of animal cruelty cases, the number of reported ones and the number of persons who have been accused of and punished for this criminal offence might indicate that animal cruelty is or is considered rather difficult to prove. Lack of evidence or presumption that this crime can hardly be proven should not be treated as the only reason for the "dark figure of crime".[10] But, it could be taken into consideration as one of the factors, which, together with some other circumstances leads to rather a small number of discovered cases of animal cruelty and accused and punished perpetrators of this criminal offence.

According to Statistical Bulletin for 2006, 32 persons were reported for animal cruelty, and only one was punished – with conditional sentence. In 2007, there were 80 reported cruelty cases, and 13 persons were sentenced: 3 to fine, 9 to conditional sentence and 1 was given judicial admonition. During 2008, there were 115 reported cases, and 27 persons were sentenced – 4 to imprisonment, 10 to fine, 6 to conditional sentence, 1 to community service, 3 were given judicial admonition and 3 declared as guilty but deliberated. In 2009, 116 persons were reported for animal cruelty and 28 were sentenced –1 to prison, 11 to fine, 15 to conditional sentence and 1 was given judicial admonition. In 2010, there were 123 reported cases and 22 persons were convicted – 9 to fine, 12 to conditional sentence, whereas 1 was declared guilty but deliberated. The number of reports for animal cruelty in 2011 was 196, and the number of convictions 27 – 1 was prison, 7 fines, 18 conditional sentences and 1 judicial admonition. The number of reported persons in 2012 was 178 and the number of convicted was 23. Imprisonment was imposed on 1perpetrator, fine on 7, conditional sentence on 11 and judicial admonition on 1. Some juvenile offenders have also been reported for and accused of animal cruelty in this period, but none of them has been sentenced.[11]

4 Law on Animal Welfare, "Official Gazette of the Republic of Serbia", No. 41/2009.
5 Law on Gem and Hunting, "Official Gazette of the Republic of Serbia", No. 18/2010.
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THE MOST COMMON TYPES OF ANIMAL CRUELTY

Animal cruelty is defined as any premeditated or negligent acting or failure to act by which an animal is exposed to pain, suffering, stress, injury or which causes the violation of genetic integrity of an animal or its death. The most common types of animal cruelty consist of: physical abuse, neglect, animal hoarding, sexual abuse and psychological abuse. If other conditions prescribed by the Criminal Code are met, each of them can lead to criminal liability for criminal offence of killing and torture of animals. Physical abuse of animals represents violation of animal's physical integrity. It usually consists of damaging animal's tissues or organs by hitting, kicking, whipping, sexual abuse, forcing to labour or training that surpass animal's physical endurance, applying inappropriate methods of catching and constraining, performing illegal medical interventions and intentional reproduction of specimens that suffer from inherited diseases unless the latter is done with experimental purpose and in accordance with the law.[12]

Neglect is the most common form of animal abuse. Neglect consists of failure to act, which constitutes a specific form of criminal liability for omission.[13] It consists of the failure to provide adequate food, water, and shelter, i.e. the failure to provide for an animal's needs including proper medical care, adequate space, and appropriate food, maintaining the animal's hair coat and nails, and providing sanitary conditions. Neglect can also apply to any situation that has a negative impact on the animal, such as embedded collars, short tie-outs, and heavy chains.[14] This form of animal cruelty can be committed only by a person who is considered responsible for taking care of the animal, which is usually its owner or the person that the animal has been entrusted to.[15]

Animal hoarding is a serious form of animal cruelty and often comprises acting and failure to act. It is followed by social isolation, self-neglect, addictive behaviour, clandestine lifestyle, tendency to deny reality, recidivism and numerous psychological and health problems.[16] Hoarding of Animals Research Consortium defines an animal hoarder as "an individual who accumulates a large number of animals, who fails to provide the animals with adequate food, water, sanitation, and veterinary care, and who is in denial about this inability to provide adequate care".[17] It is important to mention that "the phenomenon of animal hoarding transcends the number of animals in a household".[18] Namely, possessing a large number of animals becomes a concern "when the number overwhelms the ability of the hoarder to provide acceptable care".[19]

Psychological abuse involves the violation of animal's psychological integrity, which may cause behavioural disorders. It can be done by not allowing an animal to satisfy its basic behavioural needs or to use space for rest and shelter, by teasing an animal by using force, other animals or other unusual sensations, by causing fear, suffering, boredom or insecurity or by preventing an animal from interacting with animals of the same species.[20] It usually includes one or more of the following types of emotional abuse: rejecting: an active refusal to provide emotional support; terrorizing: the creation of a "climate of fear" or an unpredictable threat or hostility, preventing the victim from experiencing a sense of security; taunting: teasing, provoking, harassing; isolating: active prevention of social interactions and companionship; abandonment: desertion and termination of care; over-pressuring: placing excessive demands or pressure to perform and achieve. When caring for an animal is concerned, the question how exactly to determine "emotional abuse" is tricky and often open to disagreement.[21]

THE MOST RELEVANT EVIDENCE OF ANIMAL CRUELTY

When it comes to the provisions of Criminal Procedure Code of the Republic of Serbia regulating crime scene investigation,[22] gathering of evidence, evidentiary procedure, evaluation of evidence, testimony of expert witnesses[23] there is no difference between criminal offence of killing and torture of animals and other criminal offences. Evidence is often defined as "information – whether in the form of personal testimony,

12 Paragraph 5, Subparagraph 18, Law on Animal Welfare, "Official Gazette of the Republic of Serbia", No. 41/2009.
13 Storey, T., Lindbury, A.: Criminal Law,Op.cit., pp. 26-27.
14 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Blackwell Publishing, Oxford, UK, 2007., p. 201.
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16 Animal Hoarders, a NYSHA Fact Sheet, http://www.nyshumane.org/manual/factSheets/hoarder.htm, 01.12.2014.
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22 Škulić, M., Krivično procesno pravo, Pravni fakultet Univerziteta u Beogradu, Beograd, 2009. pp. 236-237.
23 Škulić, M., Krivično procesno pravo,Op.cit., p.242.

the language of documents, or the production of material objects – that is given in a legal investigation to make a fact or proposition more or less likely".[24] During the investigation, the following evidence are gathered and examined: the evidence and information necessary for making a decision on raising criminal charges or stopping the criminal procedure evidence necessary for identifying the perpetrator, evidence that for some reasons might not be presented during the trial and other evidence that could be useful for criminal procedure.[25] The facts that are to be proved throughout the course of criminal procedure include those circumstances that are considered key characteristics of a criminal offence as well as the facts upon which depends the application of some other provision of criminal law.[26]

"Without a crime scene, nothing would happen in a forensic laboratory. The scene of the crime is the centre of the forensic world, where everything starts, and the foundation upon which all subsequent analyses are based."[27] Some authors even claim that the scene of crime may be the most important aspect of the investigation in crimes of violence.[28] Since most cases of animal cruelty include some form of violence, crime scene investigation should be treated as one of the most important steps. In order to make sure that vital information is not lost, the police officer and the investigator need to take the following preliminary actions: identify the person who reported the crime, attempt to determine the perpetrator if that can be done, detain everyone who is present at the scene, including eyewitness, secure the scene by issuing necessary orders and physical isolation of the area, separate the witnesses, secure and investigate any additional crime scene and refrain from moving or touching any object at the scene.[29] The veterinarian's role at a crime scene is to assist investigators and examine any animals at the scene. He should assist in the collection of evidence, examine the evidence, and assess the evidence and the crime scene. It is suggested that the veterinarian meets the lead investigator, discuss the situation, and develop a plan for investigating the scene.[30] Animal cruelty crime scenes, especially hoarding cases, can sometimes appear chaotic and the evidence is often overwhelming. Therefore, photographic preservation of evidence is important because it diminishes the possibility of overseeing relevant information. So the veterinarian may need to take additional photographs, especially close-ups, of evidence and individual animals and injuries. It is also significant to take pictures of the general area, the animals, the housing, all areas the animal could have access to, any insects on the animals, any fluids, weapons, and other objects and locations related to the case.[31]

Forensic Science is familiar with various types of evidence and their classifications. However, it appears that the majority of evidence could be described as real, i.e. "generated as a part of the crime and recovered at the scene or a place where the suspect or victim had been before or after the crime".[32] For example, hairs, fingerprints, paint, blood and shoeprints all represent real evidence. On the other hand, some items of evidence may be created with the purpose to augment or explain real evidence and are called demonstrative evidence because they actually help "to explain the significance of real evidence".[33]

Due to the fact that animal cruelty comprised of killing or severely injuring an animal may and often is committed by the use of firearms, ballistics expertise and firearms examination have particular importance in resolving these cases. Internal ballistics studies the forces that set the bullet in motion and help it to overcome the inertia as well as the movement of the bullet through the firearm. Exterior ballistics deals with the bullet's trajectory from the time it leaves the barrel until it impacts the target. Terminal ballistics is concerned with how the projectile interacts with the target, including striking energy, penetration and ricochet.[34] The science of firearms, on the other hand, is primarily concerned with the issues of identification in the sense of making a link between the bullets found in victim's body to the suspect in the crime.[35] This is most commonly achieved via bullet comparison, shell comparison, serial number restoration, gunshot residue analysis, and powder pattern deposits.[36]

As a violent crime, animal cruelty may often include injuries (either deadly or not) causing victim's blood spill, product of which are bloodstains that can be found at crime scene as well as on items in its near surroundings. That is the reason why bloodstain pattern analysis plays an especially important role in the reconstruction of animal cruelty cases. The examination of bloodstain and their physical characteristics

24 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Second Edition, Academic Press, Elsevier Ltd., Burlington, USA, 2010. , pp. 49-50.
25 For more detailed explanation see: Paragraph 295, Subparagraph 2., Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia", No.72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.
26 Paragraph 133, Subparagraphs 1 and 2., Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia", No.72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.
27 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Op.cit., p. 29.
28 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, University Press of Kentucky, Lexington, Kentucky, USA, 1999., p. 23.
29 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit.,p. 24.
30 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Blackwell Publishing, Oxford, UK, 2007., p. 20.
31 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., p. 21.
32 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Op.cit., p. 50.
33 *Ibid.*
34 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., p. 90.
35 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., p. 91.
36 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., pp. 92., 96, 98 and100.

provides information specific to the events that occurred during the incident. The dispersion, shape features, volume, pattern number and size of bloodstains as well as their relationship to the surroundings are valuable sources of information and may help the investigator to define an objective history of an event. Bloodstain pattern analysis dwells on a simple theory that blood as a fluid has to react to external forces in a predictable manner, which makes bloodstain patterns reproducible phenomena.[37] This suggests that each type of bloodstains corresponds to a specific set of events that could have caused them.

The conventional classification of bloodstains is based upon the correlation between the velocity of the force influencing the blood source to drop that governed the characteristics and size or diameters of the resulting bloodstains. It is familiar with three basic categories of bloodstains.[38] Low-Velocity Impact Spatters are created when the source of blood is subject to a force with a velocity that is more or less equal to the force of gravity. They tend to have a larger scope (around 3 mm) and usually come from open wounds or a surface that has been filled with blood as the consequence of blood dropping from a body. In case of these bloodstains, the blood is usually falling under the angle of 90 degrees forming a circular bloodstain at the moment when it hits a flat perpendicular surface.[39] Medium-velocity blood spatters are created when the source of blood is subjected to a force with velocity in the range between 5 and 25 ft/sec. The diameters of these stains are between 1 and 3 mm, but larger ones may also be present. They are usually formed as the consequence of beating or stabbing of the victim.[40] High Velocity Impact Spatter refers to bloodstains created when the source of blood is exposed to a force with a velocity that overpasses 100 ft/sec. They are small, with diameter that does not surpass 1 mm and are commonly associated with gunshot injuries.[41] For example, the walls and flooring of dog fighting pit are frequently covered in blood spatter. If the flooring is made of absorbent material, the amount of blood loss can easily be estimated. There is usually blood from several dogs on the surfaces. Hence, in order to decrease the chance of getting a mixed DNA profile, it is important to look for any discrete blood drops as well.[42]

The animal itself is also considered a part of the crime scene: as such, the body of an animal or a live animal has to be treated as evidence. It can be said that the animal's body actually "tells the story of what happened and it is the veterinarian's job to find it" .[43] Prior to examining a suspected victim of animal cruelty, the veterinarian has to gather all the available crime scene and investigation information - all the evidence from the animal in context with the history, crime scene, and investigation findings. The veterinarian should give his opinion on whether an injury of the animal was accidental or non-accidental, and try to reconstruct the animal's behaviour (defence reactions) in response to the assault to determine what evidence may be found on a suspect.[44]

If there is reasonable doubt that an animal has been poisoned, a forensic toxicologist (usually a veterinarian) is expected to give his opinion as expert witness.[45] Similarly to the cases in which the victim of poisoning is human, forensic toxicologist has to determine: the identity of all drugs and poisons found in the body, the quantities of all drugs and poisons[46] present at the time of death and what metabolites (secondary products of drugs as they are acted on by the liver) of these drugs can be found. The identification of the drugs and determination of their quantities are considered the hardest of the enumerated tasks.[47]

Hoarding cases are considered "procedurally cumbersome, time consuming, and costly to resolve".[48] The most disputable issue in these cases is proving the premeditation of the perpetrator, i.e. the intention of the hoarder to harm the animals. The reason for that is the fact that the majority of animal hoarders claim that they love their animals and are actually extremely emotionally attached to them. As Patronek states, "hoarders are by definition oblivious to the extreme suffering, obvious to the casual observer, of their animals" and although "they claim to have a special connection with animals, they are totally indifferent to their suffering".[49] The hoarders are even sometimes sincerely convinced that they are doing a great service for their animals.[50] There are several possible psychological models for animal hoarding: focal delusional

37 Bevel, T., Gardner, R. Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction Third Edition, Tylor and Francis Group, London, New York: CRC Press, 2008.,p. 1.
38 James, S., Kish, P., Sutton, P.: Principles of Bloodstain Pattern Analysis – Theory and Practice, Taylor and Francis Group, New York, USA, 2005., p. 7.
39 Akin, L.L.: Blood Spatter Interpretation at Crime Scenes. The Forensic Examiner, vol. 14 No.2/2005, pp. 6–10
40 James, S., Kish, P., Sutton, P.: Principles of Bloodstain Pattern Analysis – Theory and Practice, Op.cit., p. 7.
41 James, S., Kish, P., Sutton, P.: Principles of Bloodstain Pattern Analysis – Theory and Practice, Op.cit., p. 8.
42 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., p. 26.
43 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., p. 31.
44 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., p. 36.
45 See also: Aleksić J, Batrićević A, Jovašević D., Aleksić Z., Trovanje životinja –veterinarsko medicinski i krivično pravni aspekti, Veterinarski glasnik , vol. 68, No. 3-4/2014, pp. 251 - 263
46 Škulić, M., Krivično procesno pravo, Pravni fakultet Univerziteta u Beogradu, Beograd, 2009, p.245.
47 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Op.cit., p. 344.
48 Patronek, G.: The Problem of Animal Hoarding, Municipal Lawyer Magazine, May/June 2001., pp. 6-9.
49 Ibid.
50 "No Room to Spare" Ottawa's Community Response to Hoarding Plan Prepared for The Ottawa Community Response to Hoarding Coalition, National Homelessness Initiative, Government of Canada. May, 2006., p. 28. http://hoarding.ca/wp-content/uploads/2014/08/no-room-to-spare-report.pdf, 01.12.2014.

disorder, delusional levels of paranoia, an attachment disorder or obsessive-compulsive disorder (OCD). Some similarities have been discovered between hoarders, substance abusers, gamblers, and others with impulse control problems.[51] In view of that, it becomes obvious that psychiatric expertise is of crucial importance in these specific cases of animal cruelty. Namely, the expert witness, a psychiatrist is supposed to estimate whether the perpetrator suffers from some of the aforementioned disorders as well as to explain whether and how these disorders influenced his awareness of the consequence of his actions, his general behaviour and psychological attitude towards the commission of animal cruelty. Apart from psychiatric expertise of the accused, an opinion of expert witness of veterinarian profession is also very important for the outcome of animal hoarding cases. In these cases, the veterinarian is expected to give his expert opinion on general physical and mental condition of the animals, to estimate whether their living conditions could be treated as cruel and inhumane, to examine if the animals show symptoms of diseases, to discover the link between living conditions and deterioration of animal's health, etc. In a word, a veterinarian should estimate whether the conditions in the place where hoarder had been keeping his animals were appropriate or not to provide at least the necessary minimum of animal welfare.

When it comes to neglect, the issue of intent is a vital criterion in deciding on appropriate charges and sentences. As it has been described, neglect often represents a continuum of action or lack of action by the owner, i.e. a state that exists over a prolonged period of time. The most important question in these cases of animal cruelty is at what point in this continuum the owner must have become aware of the problem and regardless of that awareness failed to take appropriate action. This can be defined as implied malice. Another important question that has to be answered in these cases is the level of animal's suffering. This is where the role of the veterinarian as an expert witness is essential since court's decision will most probably depend on his assessment of the animal's condition and environmental findings.[52]

Psychological abuse of animals is generally considered difficult to prove. However, it has been confirmed that some emotional pains may induce more suffering than physical pain. As a result, the veterinary profession should stop viewing emotional pains as less important and less worthy of diligent treatment efforts. Although physical pain is high on the list of causes of suffering, it is not necessarily the highest. Hypoxia, for example, probably ranks higher, and some emotional pains also rank higher than physical pain. This implies that animals with unalleviated fear, anxiety, isolation distress, and boredom should be regarded as inadequately treated as we now view animals with inadequately treated physical pain.[53] Accordingly, psychological i.e. emotional pain should be given a sufficient amount of attention in the evidentiary procedure, which, primarily depends on the veterinarian who appears as an expert witness. To recognize stress, the veterinarian must have an understanding and appreciation of the physical, psychological, and behavioural needs of the animal. There are physiological and behavioural manifestations of suffering as well: increased corticosteroid levels (stress), respiratory rate, heart rate, or blood pressure; vocalizing; and the sudden release of urine or bowels (fear reaction). These findings have to be put in context with the situation, as some of these same responses can result from pleasurable experiences. Consideration should also be given to the distress and boredom of animals as a form of suffering, all of which can be recognized according to external signs and behavioural patterns.[54] All these signs should be noted by the veterinarian and included into his expert finding in order to be used as evidence.

CONCLUSION

Although criminal offence of killing and torture of animals has been present in Serbian criminal legislation for more than eight years and despite of the fact that our Law on Animal Welfare was adopted more than five years ago, obtaining relevant evidence and successful proving of animal cruelty is still followed by numerous difficulties. This could be considered as one of the reasons why the number of perpetrators who have been punished for this criminal offence is still rather insignificant in comparison to the number of reported and committed crimes of animal cruelty in Serbia. The fact that this kind of criminal offences is usually considered less serious, the lack of awareness of the connection between animal cruelty and inter human violence, the fact that the perpetrator of these offences is often the owner of the animal, the specific type of victim that is completely incapable of being a witness and protecting its interests, and week cooperation between state bodies and civil sector in the area of animal protection appear as key factors that contribute to such state in this field of criminal law. Apart from these general reasons, there seem to be some specific ones that are related only to evidentiary procedure for cases in which animal cruelty comprises sexual abuse of animals, animal abuse committed by veterinarians, animal abuse committed for experimental purposes and psychological abuse of animals. The problems that appear during evidentiary procedure in

51 Patronek, G.: The Problem of Animal Hoarding, Municipal Lawyer Magazine, May/June 2001., pp. 6-9.
52 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., p. 201.
53 McMillan, F.: A world of hurts—is pain special?, Journal of the American Veterinary Medical Association, Vol 223, No. 2/2003, p. 186.
54 Merck, M. (Ed.): Veterinary Forensics:Animal Cruelty Investigations, Op.cit., pp. 71-73.

cases of animal cruelty could be prevented or diminished through synchronized efforts of several entities including: the police (particularly the so called-communal police), the representatives of the judicial system (judges, prosecutors and attorneys), the members of non-governmental organizations dedicated to protection and promotion of animal welfare and veterinarians who deliver their expertise to the court.

The police officers should be given more information on how to recognize the cases of animal cruelty and how to act if such a case has been reported. When it comes to the representatives of the judiciary, their consciousness on etiology and phenomenology of animal cruelty and abuse should be increased. The same refers to their knowledge about some comparative legal solutions in this specific field of criminal law, especially when it comes to understanding the link between animal abuse and domestic violence and the potential social hazard of the perpetrators of this criminal offence, the minimum and maximum of punishment that is usually imposed for some specific cases of animal cruelty and the accurate interpretation of some legal provisions and expressions specific for these cases. They should also be familiar with the provisions of environmental laws, since they contain the definitions of some terms that are essential for accurate interpretation and application of the incrimination of animal cruelty prescribed by the Criminal Code. Furthermore, these professionals should also be familiar with some international documents relevant for animal protection that are implemented on both universal (adopted by the United Nations) and European level (adopted either by the Council of Europe[55] or by the bodies of the European Union).The Republic of Serbia has ratified the majority of international legal sources pertinent to animal welfare and protection and their application represents its obligation in accordance with the Constitution and basic principles of international law.

Another recommendation for state bodies would be to develop closer cooperation with non-governmental organizations dedicated to animal welfare protection. The representatives of these organizations often possess valuable information and sometimes even photo documentation, videos and witness statements, which can be used as or lead to relevant and useful means of evidence in criminal procedure. In that context, the representatives of humane associations should, therefore, not be perceived as external controllers or opponents but as associates.

Veterinarians' expert knowledge should be more appreciated and relied on while resolving the cases of animal cruelty. Their expertise is irreplaceable in cases of: animal poisoning (post mortem toxicology analysis), sexual abuse of animals (particularly for internal injuries that are not so obvious at first glance) and neglect of animals with deadly consequences due to starvation and dehydration. The role of veterinarians should also be considered of key importance in cases of psychological abuse of animals because they are the only experts capable of estimating whether the animal is showing signs of fear, discomfort or mental pain. However, the role of the veterinarian's expertise should be taken into consideration from another point of view. Similarly to the cases that are sometimes reported in human medicine, proving of inadequate providing of veterinary assistance or performing veterinary profession without possessing adequate academic knowledge and professional qualifications, is often difficult. In both, human and veterinary medicine, proving of these criminal offences requires that veterinarians (or doctors) appear as witnesses or experts who would provide evidence against their colleagues who have not been acting in accordance with the rules of their profession. Unfortunately, the practice has shown that there are very few professionals who are ready and willing to appear in front of the court and criticize the work of their colleagues in public, although they had reasonable arguments to do so.

In spite of the fact that there are numerous practical obstacles suggesting that prosecuting and proving animal cruelty is rather difficult, there are some enthusiastic foreign experts who defend a completely opposite standpoint. For example, Geoff Fleck, an attorney specialized in animal cruelty points out several prosecutorial advantages of these cases, including the following arguments: 1) the victims are particularly vulnerable and defenceless and are, therefore, sympathetic; 2) the victims are usually (a lot) smaller than the abuser and are never armed; 3) the victims do not recant their accusations (like some domestic violence victims are sometimes prone to do); 4) the victims do not have their own agendas and, finally, 5) the victims are blameless and will never be impeached.[56] What this author basically suggests is turning those characteristics of animal cruelty cases that are usually treated as obstacles into advantages for the prosecuting party. We should be aware of the fact that some of them are more relevant in common law systems, where the role of the jury is far more important than here, but, this should not prevent us from taking his standpoint as a role model.

55 Batrićević, A.: Uloga konvencija saveta Evrope u krivičnopravnoj zaštiti životinja, Zbornik Instituta za kriminološka i sociološka istraživanja, Vol. 30, No. 1 – 2 /2011, pp 137 – 158.

56 Fleck, G.: Prosecuting Animal Cruelty Cases is Not (That) Hard, Animal Legal Defenese Fund, 2014, p. 1., http://aldf.org/blog/prosecuting-animal-cruelty-cases-is-not-that-hard/, 25.11.2014.

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MODERN UNDERSTANDING OF VIOLENCE IN SPORT[1]

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Abstract: Starting from the definition of violence in sport, the authors have criticized the existing definitions. Specifically, as the reasons for the lack of a single definition of violence in sport we can cite: 1) the use of synonyms as words that have the same meaning, 2) the diversity of violence by athletes compared to the violence of fans by dynamics of manifestation, 3) inequality in certain sports in that aggressive behaviour is a method of gaining victories, and 4) the fact that some criminologists do not see a difference in the short-term and long-term negative effects of violence in sport. At the same time, special attention has been paid to the different typologies of violence in sport, citing the specific examples. The authors have particularly explained the shortcomings of certain types of violence in sport, arguing that the existing typologies should be structured differently. To construct the effective measures of prevention of violence in sport, it is necessary to determine what leads to the occurrence of this phenomenon. Therefore, the authors analyzed various theories on violence in sport, which are classified into two areas: 1) biological and psychological theories, and 2) social theory. Finally, the authors stated the basic contours of the measures of prevention of violence in sport, noting that Serbia still has plenty of work to prevent it.

Keywords: sport, violence in sports, types of violence in sports, etiology of violence in sports.

INTRODUCTION

Sport, except perhaps extreme, develops noble feelings in humans, contributes to their desire to win and their perseverance. However, on the other hand it creates the possibility that the desire to win converts to win at all costs, and that persistence turns into stubbornness and recklessness. This is true both for the active and passive athletes as well as for those who follow sports events on the sports fields - a word fans.[4]

One of the types of crime violence is violence in sport. Sports violence can be expressed through verbal attacks and insults on different grounds, and can be directed against the physical integrity or life of the individual and the group.

Many researchers start the phenomenon of violence in sport from certain violence in sport, given by criminologists Thery and Jackson. Namely the two of them considered that the violence in sport can be defined as any behaviour that causes damage, while being undertaken in violation of rules, while it had nothing to do with the competitive objectives.[5] Jamieson and Or define violence in sport as the behaviour that causes physical and psychological injuries, which are the direct or indirect effects of competition in the sport.[6] However, we can make certain criticisms to such determination of violence in sport. As an example to illustrate our criticism, we can take any contact sport. As a result of this competition there may arise different types of injuries, there has been a violation of the rules of a particular sport. In this way, Jamieson and Or too widely specify the notion of violence in sport. There are different types of violence in sport. A typology developed by a criminologist Smith differed between brutal body contact, borderline violence, quasi-criminal violence and criminal violence.[7] The first type, according to Smith, includes behaviour, which includes an accepted practice in certain sports (baseball), such as collision athletes, blocks, kicks, and other forms of physical contact, leading to injury. Although most people think that this type of violence in sport is extreme, many accept it and approve it. The violence on the border includes such behaviours of athletes violating the rules of a particular sport, which are accepted by many athletes. The athletes consider this type

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5 *Violence in sport*, Retrieved 23, June 2013, from http://www.ericdigests.org/pre-9214/sports.htm
6 Sports and Violence: A Critical Examination of Sport., Retrieved 23, July 2013, from http://www.thefreelibrary.com/Sports+and+Violence%3A+A+Critical+Examination+of+Sport.-a0263258665
7 McNamee, M. J., Parry, S. J., *Ethics and Sport*, E & FN Spon, 1998. Retrieved 24, July 2013, from http://books.google.rs/books?id=LFNP__QUNwC&pg=PT242&dq=violence+in+sport+types&hl=sr&sa=X&ei=-3fuUYmaAeKJ4gTUqIDQAw&redir_esc=y#v=onepage&q=violence%20in%20sport%20types&f=false

of violence in sport useful as a strategy aimed at winning. As an example we can mention the pushiness in football or basketball, pugilism hockey, etc. At the same time, it is possible that such tactics lead to the same behaviour in opponents. Although judges often sanction such behaviour, it is on the rise lately.[8] Quasi-criminal violence embodies not only in violation of the rules of a particular sport, but also in violation of public law and informal norms in a particular sport. Flagrant fouls can be counted as a quasi-criminal behaviour. Athletes who resort to such behaviour often suffer the player slates fines. Criminal violence is undoubtedly contrary to legal norms, which means that they can be attributed to the beings of certain offenses. As an illustration of this type of violence in sport we can cite the attacks during or after the match committed with premeditation, with the aim of severe injury or murder of an opponent. While these attacks are rare, there were cases of hockey stick hitting in the head.[9] Also, as an example of this type of violence we can specify a murder case at a hockey game from 1973, when a hockey player killed his opponent.[10]

Violence in sport by fans is increasing. This form of violence is not only linked to the modern era. In ancient Roman times it came to violence among fans, which resulted in mass murder. So there is the fact that during one chariot race due to violence by fans nearly 30,000 people were killed.[11] The roots of violence among fans in Serbia can be found before the Second World War. Thus, the daily newspaper Politika, dated October 23, 1936, found proof of violence among fans after a football match. The reporter wrote that after having attended the game and "*night get-together in the inn*" there was a "*bloody hail stones in the middle of the street, between fans of some sports clubs in Zemun. In that fight, which was attended by eight passionate fans, Vlajko Milosevic, cobbler, living and act in Dobanovačka Street, No. 35, in Zemun got heavy injures. Just yesterday, the doctors found that the injured Vlajko had a concussion, was transferred to the hospital and his death was expected at any moment.*" In Politika it was already in the issue of Sunday on October 25, 1936, where another article of the same event was published titled "*The victim beaten by sports fans, cobbler from Zemun died*". The situation is similar in Serbia today. We are facing an increase in the volume of fan violence and their group at each security risk sports event.[12]

THE ETIOLOGY OF VIOLENCE IN SPORT

Australian academic Vemplev Wray says that there is no single solution to violence in sport, because there is no single initial spark, because there are different causes of sport violence that are complex in nature.[13] In other words, there is no single etiology of violence in sport. Accordingly, it is possible to explain the phenomenon of violence in sport by different groups of theories. The biological and psychological theories include: instinct theory, frustration theory, the theory of hostile and instrumental aggression theory, theory of catharsis and theory of turns, while sociological theories include: theories of learning and imitation, the theory of neutralization, subculture of violence theory, the theory of sociology process and victimology theory.

The basis of the theory of instincts can still be found in the works of the ancient Greek philosopher Aristotle, as in the works of the English philosopher Thomas Hobbes, who believed that people are violent by nature. As our ancestors in prehistoric times were "naturally" aggressive, it is the same situation with the modern man. We believe that this theory has its origins in the works of the Italian criminologist Cesare Lombroso and his theories of the born criminal.[14] Konrad Lorenz also believed that aggression instinctive is human quality. Specifically, he supported the thesis that aggression is characterized by animals and humans, where it is expressed in the definition of stimuli from the environment. While animal aggressive behaviour is natural for humans it is less "logical".[15] The application of this theory to explain the phenomena of violence in sport causes serious controversy. It is impossible to explain the different ways of expressing violence in sport, some of which are in accordance with the rules of a particular sport, while some are against the rules. Also, the lack of this theory lies in the fact that some athletes in a particular situation behave aggressively, while the other athletes in the same situation do not exert violence.[16]

The explanation of violence in sport frustration theory requires first a definition of frustration, which is defined as the inability to satisfy certain motives, impulses, whereby the psychological state in which an individual is when you cannot meet the specific motives is called frustration situation.[17] Various obstacles,

8 Coakley, J., *Sports in society: Issues and controversies*, McGraw Hill, New York, 2004, p. 198.
9 Coakley, J., op. cit., p. 199.
10 Young, K., *Sport, Violence and Society*, Routledge, New York, 2012, p. 19.
11 Caplan , G., Smith, P., *Sport*, Heinemann Educational Publishers, Oxford, 2005, p. 164.
12 Kostić, M., *Sport, nasilje i društvo*, Viktimologija, Centar za publikacije Pravnog fakulteta Univerziteta u Nišu, Niš, 2012. godina, str. 414-416.
13 Dimovski, D., op. cit., str. 16
14 Young, K., op. cit., pp. 5-6.
15 Gadsdon, S., *Psychology and Sport*, Heinemann Educational Publishers, Oxford, 2001, p. 45.
16 Young, K., loc. cit.
17 Dimovski, D., op. cit., str. 174.

which can be objective, personal, physical and social, can induce frustration. Achieving instincts may be prevented by the existence of conflict, which is reflected in the conflict of different goals, where the achievement of a target automatically disables to meet the second objective.[18] Criminologist John Dollard, together with the colleagues from Yale University in 1939, presented a thesis on the relationship between frustration and aggression. Although, according to him, the frustration does not lead in all cases immediately to aggression, it always increases incitement to aggression. In this way it increases the probability of the manifestation of aggressive behaviour.[19]

The application of this theory to violence in sport has certain disadvantages. Thus, the individual athletes behave differently in certain situations. Some of them invest additional efforts in order to achieve victory in an alternative way, some exhibit aggressive behaviour. The fact is that for some athletes the frustration situation does not exert violence, the lack of frustration theory.

As the aggression behaviour, which refers to the achievement of specific objectives, the explanation of violence in sport theory hostile (reactive) and instrumental aggression refers to the so-called dichotomous effect. The target of hostile aggression is causing injury to another person, such as players, fans and so on, until the objective of instrumental aggression, although associated with the application of injury to another person, is primarily related to the significant objective, which is reflected in the benefit of the player or the team.[20] Instrumental aggression is planned and rational, as opposed to the hostile aggression, which is imbued with emotional charge and anger, where it is undertaken without much planning. As an example of hostile aggression we can specify the case of the player Roy Keane, who during a football match in 2001 intentionally hit an opponent with the goal to inflict injury. After the game, Keane said he had long been waiting for an opponent not to pay attention to the ball, where he knew that he "earned" a red card. Therefore, without waiting for the lady judge to show the red card, I walked from the pitch.[21] An example for instrumental aggression is the case of the rugby team British Lions Rugby Union, whose players during the tour in 1974, in a game applied aggression with the aim of achieving victory. When the team captain exclaimed "99", each player has to find the nearest opponent to attack him. Starting from the assumption that the judge will not be able to get them all off because of the attacks on the opponents, in the end they won convincingly.[22]

Although this explanation of the etiology of violence in sport may seem logical, some criminologists, such as Bushman and Anderson, find it too simple. Also, the basic settings of the dichotomous effect can be questioned, because the explanation of hostile aggression can be replaced with an explanation of instrumental aggression. So, instrumental aggression can distinguish anger, while hostile aggression can be prepared in advance without emotional charge.[23]

The theory of catharsis, which is another name for the theory of emotional cleansing, is based on the work of the Austrian criminologist Konrad Lorenz. The basic assumptions of the theory are related to four elements: 1) destructive energy is created spontaneously in every organism; 2) the execution of an aggressive act is a reduction of destructive energy to an acceptable level, whereby it creates a sense of satisfaction; 3) competition also leads to a feeling of satisfaction, and 4) even just watching the competition results leads to the same feeling. Criminologists believe that the theory gives rise to the perception that the more violent a sport is, the greater the satisfaction in both contestants and sports fans.[24]

Starting from the postulates of this theory, it can be expected that the scope of fan violence outside of sports facilities is less substantial in relation to a situation where competition is not only pervaded with violence. Res and Snapper justifiably asked the question: why does fan violence increase during the days when baseball games are held at US colleges. The explanation for this phenomenon can be found in the reinterpretation of the theory of catharsis. Specifically, for a group of fans, it is not enough to just look at violence in sport in order to reduce the destructive energy to an acceptable level. In other words, it is a personal "involvement" in the violence, with the aim of reducing the destructive energy.[25]

Some criminologists, such as Michael Oriarda, thought that the theory of catharsis is too simple. Criminologist Van indicates that there is no empirical evidence to substantiate the theory of catharsis. The same position is held by John Kerr.[26]

The last theory which can be classified as biological and psychological theory is the theory of turns. This theory was of a later date and empirically validated. It was developed by criminologists Smith and Aptera in mid-1970s. However, the contribution of its application to the explanation of the etiology of violence

18 *Frustracije i konflikti*, Retrieved 29, July 2013, from http://tagtag.com/psih/frustracije_i_konflikti
19 Schellenberg, J., *Conflict resolution: theory, research, and practice*, State University of New York Press, Albany, 1996, p. 174-175.
20 Hagger, M., Chatzisarantis, N., *Social Psychology of Exercise and Sport*, Open University Press, England, 2005, p. 196.
21 Ibidem
22 Konstantinović Vilić, S., Nikolić Ristanović, V., Kostić, M., *Kriminologija*, PELIKANT PRINT, Niš, 2009. godina, str. 152.
23 Young, K., op. cit., p. 6
24 Jewell, T., *Violence and Aggression in Sporting Contests: Economics, History and Policy*, Springer, New York, 2011, p. 16.
25 Ibidem
26 Bain-Selbo, B., *Game Day and God: Football, Faith, and Politics in the American South*, Mercer University Press, Georgia, 2009, p. 62.

in sport has been given by criminologist Ker.[27] This theory explains the relationship between excitement and emotions and how they affect the behaviour of certain people. The essence of the theory of upheaval is reflected in the fact that each person can watch their excitement as pleasant or unpleasant, where this condition is known as hedonic tone. Given that the excitement leads to feelings of pleasure or sense of discomfort, we can speak of four forms of hedonic tone. Specifically, it is possible that a high degree of excitement, which is considered to be pleasant, leads to an excited affective state and to the same degree of excitement, as in the previous case, is considered unpleasant, resulting in anxiety. Also, a consequence of the low degree of excitement, which is considered to be an enjoyable one, leads to a state of relaxation, while a low level of arousal, and is considered unpleasant, as a consequence there is boredom.[28] Excitement and emotions can be viewed as two curves, which intersect at some point, and which, depending on the particular circumstances, tend to change (reverse) affective state from one to another.[29] In other words, the theory turns believes that the meta-motivational state of an individual affects the relationship between hedonic tone and the level of excitement. To understand fully the theory of reversal it is necessary to define the term meta motivational condition. It can be understood as an interpretation of the motives or goals by one person at a certain time and under certain circumstances.[30] It is pointed out that there are four forms of meta motivational conditions: 1) the seriousness of-hilarity, referring to the situation when someone is motivated to achieve certain goals or enjoying certain moments; 2) the adjustment-negativity concerning when someone wants to behave according to certain rules or when someone wants to violate the same rules; 3) superiority-compassion, relating to whether someone is motivated by a sense of power and compassion toward others, and 4) egoism-altruism, referring to the situation whether a particular person is motivated only by self-interest or the interests of others.[31]

Depending on the circumstances of the motivational state of an athlete this is prone to change. Thus, some athletes borne by winding the fans can experience the thrill of positive, while in another moment the same winding can be interpreted as a negative arousal, leading to changes in target motivational state, which affects the performance of athletes.[32] The manifestation of violence in sport, as Kevin Young believes, can occur when there are fixed meta-motivational conditions, such as: hilarity, negativity, superiority and self-centeredness.[33]

Theory of turns has been criticized by criminologists, who are prone to explain violence in sport by some social factors. The main criticism refers to the fact that the proponents of reversal theory do not take into consideration the rational choices which can prevent the manifestation of violence even though an individual may be in certain meta-motivational situations.[34]

Sociological theories have emerged as a response to biological and psychological theories. The social learning theory can be used to explain why there is a manifestation of violence in sport. The essence of this theory, which is mainly associated with the American psychologist Albert Bandura, is reflected in the fact that every type of behaviour comes through the learning process, either through direct experience or through the viewing process. However, the theory was first established by the French criminologist Gabriel Tarde in 1912, who believed that the crime primarily occurs as a trend which then turns into a habit; in that context, the lower layers of society imitate the higher ones, whereby crime spreads from higher to lower social strata.[35] Already mentioned Albert Bandura is considered the successor of Tarde theory. His views on aggression presented in 1963 can be used to understand the violence of the sport. Starting from the fact that the individual is not born with the ability to behave aggressively, he suggested that such behaviour is learned through the so-called process models of behaviour. In other words, children learn to behave aggressively imitating others. This behaviour is due to family interactions, experiences from the environment and the impact of mass media.[36] The studies of family life show that children use aggressive tactics when their parents have similar behaviour towards other people. Also, parents wanting their children to succeed in sport often express through various forms of violence towards their own children, but also to other persons. In this way, children begin to apply, following them, the same conduct themselves during sports competitions. The manifestation of violence by young athletes (children) can occur not only in imitation of their parents, but in imitation of their sports idols, which are often in conflict with the law because of their aggressive behaviour. At the same time the mass media, by some unwritten rule, devote special attention to these same athletes, while in an indirect manner promoting violence in sport.

27 Bartlett, R., Gratton, C., Rolf, C., *Encyclopedia of International Sports Studies*, Routledge, Oxon, 2010, p. 1154.
28 Hagger, M., Chatzisarantis, N., op. cit., p. 156.
29 Bartlett, R., Gratton, C., Rolf, C., op. cit., p. 1155.
30 Hagger, M., Chatzisarantis, N., loc. cit.
31 Kerr, J., *Motivation and Emotion in Sport: Reversal Theory*, Institute of Health and Sports Science, University of Tsukuba, Tsukuba, 1997, p. 13.
32 Kerr, J., *Reversal theory*, Retrieved 12, August 2013, from http://www.answers.com/topic/reversal-theory
33 Young, K., op. cit., p. 8.
34 Ibidem
35 Dimovski, D., *Krivično odredjenje ubistva – doktorska disertacija*, Pravni fakultet, Niš, 2012. godina, str. 179-180.
36 Miller, M., *21st Century Criminology: A Reference Handbook*, Sage Publications, London, Volume 1, 2009, p. 274.

A critique of the theory of social learning may be indicated by the fact that all the athletes, who in various ways are surrounded by violence, do not behave aggressively. In other words, there is always the possibility of their own choice, regardless of the negative influence of the family, the environment or the mass media.

The representatives of the theory of neutralization considered the criminologists Gresham Sykes and David Matza, who as far back as 1957 focused less on exogenous criminogenic factors, and more on the ways in which structural conditions are translated into action by a single person, which allows them to complete certain tasks.[37] Although Sykes and Matza built their theory by examining the phenomenon of juvenile delinquency, the neutralization theory is applicable in sport violence as well. They believed that people are always aware of the moral obligation to obey the law. Also, they watched becoming delinquent as a learning process in which potential offenders master the techniques of neutralization of moral obligation.[38] Neutralization can be defined as a technique that allows an individual to justify their criminal behaviour. There are five techniques of neutralization: denial of responsibility, denial of inflicted injury, denying the existence of the victim, the conviction of those who condemn, calling to a higher loyalty.[39] Denial of responsibility exists when the offender denies that his behaviour was contrary to the law, saying it was not his fault. Applied to violence in sport, we can say that it refers to a situation when an athlete, although he knows that some of his conduct is in contravention of the rules of the sport, accepts to behave like that, because he wants to take revenge on an opponent or doing it for the sake of final victory. Denial of inflicted injuries is embodied in the fact that the athletes are aware that they violate the rule, and point out that consequently they do not cause major damage. So hooligans can claim that their vandalism is just a little mischief.[40] Denying the existence of victims exists when it comes to the replacement of the positions of the offender and the victim, so that the offender believes he is the victim, and the victim was in the mind of the offender, the attacker. An example may be the case of fans that attack an opponent of homosexual orientation. Delinquent, with techniques of neutralization as the condemnation of those who condemn, switches guilt on others, claiming that they are hypocrites. The attack on referee during or after the match by the individual players, because of a misdemeanour, is a typical example of this type of neutralization. Last neutralization technique is known as a reference to a higher loyalty. It is reflected in that the offender is in two minds whether to respect the norms of society or to respect the norms of the group to which he belongs. Therefore, if a fan group applies violence at sporting events, an individual can be found in a dilemma whether to behave violently, and at the same time wants to be a "full" member of the fan group, or that there is a statutory obligation.

Subculture of violence theory is based, as criminologist Parker believes, on the understanding that there is a particular subculture in which the use of violence is a legitimate means to solve problems and interact with people.[41] The existence of subcultures is conditioned by a narrow group of people, which is characterized by a distinct set of attitudes, values and norms of behaviour.[42] Male sports led to the creation of a special subculture of violence. Through the mass media the troubled athletes' influence on the development of children is huge. As held by Benedict, professional sport is one of the few industries in which it is possible that employees (athletes) receive the highest salaries, even though they have the least experience. Athletes are different from other people by natural gift for engagement in a certain sport. With the subculture of violence theory there is an attempt to explain certain athletes' aggressive behaviour during sports competitions. The basis of the thesis of the mentioned theory is that athletes during their upbringing and career are increasingly indoctrinated into separate subgroups, in which there are certain rules of conduct and specific objectives that must be met. As the group of athletes to their primary group, they will do anything to other members of the same group even not respect the norms of the wider community. Due to the fact that their special position of the company can give a feeling of preference, athletes feel that violent behaviour is allowed.[43]

As an example, we can cite the survey conducted by Smith in 1979. He compared the level of aggressiveness of old hockey players in the professional league and the young players from lower leagues. The result of research is reflected in the fact that senior hockey players were far more prone to violence than younger people, where they received much more punishment.[44] Similar results were obtained by Smith and Blum

37 Young, K., op. cit., p. 9.
38 Siegel, L., *Criminology: Theories, Patterns and Typologies*, Thomson Learning, USA, 2007, p. 226.
39 David Matza, Retrieved 14, August, 2013, from http://www.criminology.fsu.edu/crimtheory/matza.htm
40 Siegel, L., loc. cit.
41 Jamieson, L., Orr, T., *Sport and Violence*, Elsevier, USA, 2009. Retrieved 15, August, 2013, from: http://books.google.rs/books?id=hotIs6OLNroC&pg=PT50&dq=violent+subculture+theory+sport&hl=sr&sa=X&ei=kYEMUuqoFIPEtQaT7oHAAQ&redir_esc=y#v=onepage&q=violent%20subculture%20theory%20sport&f=false
42 Konstantinović Vilić, S., Nikolić Ristanović, V., Kostić, M., op. cit., str. 313.
43 Singh Sandhu, D., *Faces of Violence: Psychological Correlates, Concepts, and Intervention Strategies*, Nova Science Publishers, New York, 2001, pp. 96-98.
44 Bloom, G., Smith, M., *Hockey Violence: A Test of Cultural Spillover Theory*, Sociology of Sport Journal, Human Kinetics Publishers, volume 13, 1996, p. 67. Retrieved 15, August, 2013, from http://sportpsych.mcgill.ca/pdf/publications/Hockey_Violence_CST_1996.pdf

at the same delinquent and control groups. The explanation for this behaviour of older hockey players is reflected in the fact that they have already undergone a process of indoctrination of a subgroup in which violence is a means of achieving victory, as they progress in their careers.[45]

The theory of sociology process has its roots in the work of Norbert Elias. In this theory, the basic tendency is the explanation of a complex chain of interdependencies that exist in human society. In other words, it rejects the dichotomous approach to understanding individuals and societies that exist independently of each other. The representatives of this school have tried to divide the micro and macro criminogenic factors, observing the behaviour of the individual as a set of actions that are widely associated with other people.[46] Elias believed that the Western societies during the process of pacification become less exciting. Upon completion of the pacification, there was a collective need for building some of the activities which will establish a balance between the constraints of individuals and their satisfaction. As the expression of emotions in the process of pacification becomes less acceptable, there is a range of activities where it is possible to express emotions under strictly controlled conditions.[47] Besides Elias, criminologist Daning examined how aggression and violence are important for viewers. They believed that sport involves a moderate level of violence, which is allowed and acceptable, in contrast to the same level of violence acceptable in other social spheres. Sports competition is a "scenario" in which it is possible to manifest itself in the controlled conditions of uncontrolled emotions.[48] In other words, sport looks like a war, but differs from it because it is not as harmful as war, but on the social and emotional side of significant individuals it provides the thrill of controlled violence. Criminologist Atkinson is using basic assumptions of the theory of sociology processes to study the level of satisfaction of viewers of American wrestling.[49]

From this stems the conclusion that people are related to each other and that people seek the company of others. The interdependence between people is the basis of understanding of the behaviour of certain people. In order to explain the interdependence, Elias uses the so-called model of the game. Applying this model to the sport, we can conclude that in the course of a game to understand the behaviour of individual athletes it should not analyze their private life, but their relationship with the other players.[50]

As a critique of the theory of sociology process we can cite the lack of a much smaller number of empirical studies relating to the psychological conditioning of violence in sport, in relation to sociological research conditionality of violence in sport.[51]

In 1948, in his book "A criminal and his victim" Hans von Hentig created a branch of criminology - victimology which is oriented towards the victim and its role in the occurrence of the crime.[52] Numerous investigations have been conducted where there are victims of various forms of crime of violence, especially sexual abuse and street crime. Victimological form of research can be applied to the cases of violence in sport. It is possible to study the dynamics of the criminal-victim relationship in this form of violence. How Jang and Rizons believed, anyone involved in a potentially dangerous situation has the institutional right to protect his integrity. From this stems the conclusion that the athlete should be considered as any other worker and therefore has a right to protect the country from various forms of victimization. Jang and Rizons have also argued that the exploitation of athletes should be viewed as a form of white collar crime. As an example of this attitude there are the cases forcing athletes to play the game while injured.[53]

Research has been conducted on violence in sport, in which this phenomenon is observed through victimological form. Thus, the criminologist Moran explored racism in football, with the position of the victim. He concluded that the victims of racism in sport originally are accused that their threshold for tolerance of racism is very low. Criminologist King stressed that athlete's dark complexion can be found in a situation where it is difficult to identify racism directed against them by the whites, because the language that is used when reporting is already full of racism.[54]

CONCLUSION

After the tragedy at Heysel Stadium in Brussels, there were considerable efforts by the international community in the form of mutual cooperation between the countries where it came to cooperation between the police and judicial authorities. There were improvements of sports infrastructure, increased control of fans

45 Singh Sandhu, D., op. cit., p. 98.
46 Young, K., op. cit., p. 10.
47 Young, K., op. cit., p. 11.
48 Ibidem
49 Atkinson, M., *Tattooed: The Sociogenesis of a Body Art*, University of Toronto Press, Toronto, 2003, pp. 179-180.
50 Faster, Higher, Krieger, *Figurational Sociology*, Retrieved 16, August, 2013, from http://fasterhigherkrieger.wordpress.com/the-sociology-of-sport/theories/figurational-sociology/
51 Young, K., loc. cit.
52 Dimovski, D. (2012), op. cit., str. 190.
53 Young, K., op. cit., p. 12.
54 Burdsey, D., *British Asians and Football: Culture, Identity, Exclusion*, Routledge, Oxon, 2007, p. 50.

and fan groups, the introduction of video surveillance at sporting facilities, preventing the counterfeiting of tickets and so on. Also, the preventive measures were implemented of sports violence through education and the media.[55] However, it should be noted that the construction of effective measures of prevention requires identifying first the factors that lead to violence in sport.

At the same time the tragedy at Heysel stadium forced the European institutions to bring the normative framework for prevention of violence in sport, especially at football matches. Thus, the Council of Europe on 19 August 1985 brought the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at football matches. The Republic of Serbia has ratified this Convention. Also, the Republic of Serbia in 2003 passed the Law on the prevention of violence and misbehaviour at sporting events, which has repeatedly changed. The law has measures to prevent violence and misbehaviour divided into four groups: preventive measures; measures taken at sports events; measures taken at sports events of increased risk and measures taken by the competent authorities. As the legal norms governing measures to prevent violence in sport are more than clear, we will point out to some informal ways of preventing this form of violence.

One of these measures of prevention, which has long-term effects, is the introduction of such sentences for violent behaviour at sporting events, the imposition of which would "cost" the perpetrator more than it would have benefits that can be expected due to their violent behaviour. Many criminologists emphasize the importance of proper selection of the team, even in their younger days, and athletes learn the rules of fair play. Although it can be said that adequate sports facilities may not constitute a measure of prevention of violence in sport, it is enough to mention the case of falling labour stands at Heysel stadium, which killed 39 people, and thus realize the importance of good sporting infrastructure. Therefore, it is necessary to improve the safety at sports stadiums. The mass media should not publish sensational headlines about violence in sport, and pay special attention to the bullies in the sport, but they should place them in the appropriate negative social context. Also, the media should be actively involved in the promotion of reduced violence at sporting events. Athletes, coaches, managers, media representatives, civil servants must undergo appropriate seminars on aggression and the way in which it is avoided. Fan leaders can be sent to the same seminars, with the aim of trying to control the fan groups.[56] As the supporters often trigger violence in sport, it is possible to organize special lectures about the harmful consequences of violence in sport within the civic education. In this way we prevent the recruitment of minors in extreme fan groups.

However, it cannot be argued that the legal framework preventing violence in sport is completed. The Republic of Serbia has adopted the Private Security Act, which among other things regulates the provision of services to protect people and property at sporting events. This does not mean that the adoption of this law would stop the need for normative regulation of the prevention of violence in sport. Adequate implementation of the law will depend on the adoption of appropriate bylaws.

It should be noted that, due to the connection of the bullies in sport with the political establishment, the convictions for inciting violence in sport are rarely brought. As an illustration of this claim of ours there is the fact that only 2.4% of cases come to a decision. It follows a proposal to improve the prosecution of perpetrators of violence in sport, because their special prevention indirectly performs general prevention.

As violence in sport often "overflows" outside the borders of one country, it is necessary to work on the construction of the prevention measures of regional character. The cooperation between governmental authorities of the former Yugoslavia is done ad hoc, whereby information is exchanged on the eve of the matches of high safety risk. The necessity of building a successful regional cooperation is the basis of reduced-scale violence in sport in each country.

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INTUITION IN CRIMINAL INVESTIGATION: CRITICAL OBSERVATIONS

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Purpose: Intuition represents one of the most controversial but in criminal justice science marginally studied area of decision-making within the criminal investigation. By definition, intuition as the ability of immediate cognition, a perceptive insight is contradictory to a rational cognitive process and as such can be always questioned. However, certain works on this topic points that intuitive judgment can have impact on specific aspects of criminal investigation and as well on judicial process and making court judgment. Having in mind previously stated, the purpose of this paper is to critically examine the question of intuitions possible impact on criminal investigation.

Design/Methods/Approach: In this paper the approach used is the analysis of the available theoretical knowledge and results of research studies conducted on the topic of intuition with the focus on examining its meaning, implications in real life and finally the possible implications of it in the process of detection and investigation of crimes and their perpetrators.

Findings: Intuitive reasoning in terms of specific segments of criminal investigation undoubtedly exists. Often this kind of judgment is an element of the "crime investigation reasoning process".

Practical Implications: The practical implications of the paper are better understanding of role of intuitive judgments in the framework of "crime investigation reasoning process" through identification of forms in which such reasoning can appear in criminal investigation.

Keywords: Intuition, cognitive process, criminal investigation, decision-making.

INTRODUCTION

Rare are those who at one point in life did not made a decision on the basis of some kind of inner feeling or sudden knowing that was not result of rational, logical process of reasoning or that was even in contradiction with it. We made this decision with more or less hesitation and did not regret it. This kind of thinking and decision making is called intuitive. Today, intuitive thinking is indisputable part of decision-making in everyday human life. However the question is can we rely on such kind of reasoning? Given the free will that we have, in personal life we do not have to follow rational reasons and analytical approach in process of making our decisions. In fact, humans do this permanently. But, not every non-rational thinking is intuitive thinking. It can be just irrational or the result of some other processes of human mind like for example reflexes or instinct. Intuitive reasoning on the other hand is a way of non-rational reasoning only when it is the result of immediate cognition or knowing, which is not preceded by any previous analytical process of thinking. In essence, we know something, but we do not know why or how we know that. In that sense misuse of rules of logical reasoning cannot be identified with the intuition. Nevertheless, in this paper we are not specifically interested in logics and its misuse but in intuition and its possible use for decision-making. In the focus of this paper is dilemma whether such thinking is allowed and acceptable in institutionalized, strictly formalized, processes and procedures, which by their nature and resulting consequences require decisions based on rational judgment. One of such procedures is a criminal investigation whose objectives are detection of crimes and their perpetrators, i.e. finding, collecting and interpreting evidence in order to ultimately reach a decision on an indictment. A criminal investigation should be distinguished from the trial. From the standpoint of criminal justice and the rule of law, these are two quite distinct stages of establishing the existence of the crime and the existence of criminal responsibility of the person suspected of or charged with its execution, as per its legal content and in its legal effects. But both procedures have one common feature and that is that every decision must be based on the relevant facts.

Discovering the relevant facts during a criminal investigation cannot be equated neither in form nor substance with the way of their determination and the degree of confidence in their existence at the trial.

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However, the fact-finding in the course of an investigation is not deprived of the basic categories of logical reasoning and it immanent methodology. But can we out of the categories of logical reasoning and scientific methodology gain knowledge of the existence of the relevant facts *via* the intuitive judgment and reasoning? The subject of this paper is precisely such form of knowledge, which is of interest for the criminal justice system in the part related to the investigation of crimes. The results of many recent studies show that intuitive reasoning is present in decision-making processes which are preceded by very detailed and rigorous process of acceptance, implementation and evaluation of factual knowledge as is the case with the judicial process. If this is true in the case of judicial process then we can reasonably believe that this kind of reasoning also exists on some lower "legal" levels of judgment such as criminal investigation that has to create a basis for the conducting lawful, fair, objective and impartial court process that will result with decisions on someone's guilt or innocence. Through the analysis of theoretical knowledge, but also the results of various empirical studies, authors will try to answer some of following questions: is intuitive reasoning really part of crime investigation process and if it is what its actual influence on decision-making is at this stage of the criminal proceedings? Given this, authors will also present their critical observations that are the result of analysis of the possibilities of intuitive thinking usage in the investigation of crimes and their perpetrators.

INTUITION AS A SUBJECT OF PHILOSOPHICAL, SCIENTIFIC AND SPIRITUAL OBSERVATIONS

Analysis of pretty plentiful literature in this area shows that intuition as a form of knowing has always occupied the attention of philosophers and scientists and was the subject of their studies. So Bennett (1916: 45) in his considerations of "Doctrine of intuition" of the famous French philosopher Henry Louis Bergson (1859-1941) talks about his distinction of "*two profoundly different ways of knowing a thing - the way of analysis and the way of intuition*". Betsch makes a difference between philosophical and somewhat mystical concept of intuition as a competence, distinguishing it from a psychological and more scientific conception of intuition as automatic or implicit process of thinking or consideration of intuition as something what we know without knowing how we learned it (Betsch, 2008: 3 - 4). Within psychology, where intuition by its nature belongs at least from the point of view presented in the relevant research, observation of intuition as phenomenon was, as observed by Hodginson et al. (2008: 19) scientifically weak and marginal until the recent years where this concept became a legitimate subject of scientific testing with important ramifications for education, personal, medical and organizational decision making, personnel selection and assessment, team dynamics, training and organizational development. Beside the philosophical and scientific approach there are also a great number of spiritual understandings of intuition as a kind of specific sense, inner voice or inner feeling, which is beyond our cognitive ability to comprehend it.

The question what is the intuition today represents one of the fundamental issues in the field of study of this phenomenon not only from the point of view of psychology but also from a large number of other disciplines. Many of them however still cannot give the exact answer what is the intuition and on what kind of cognitive process is based. One of the examples is neuroscience, which trying to give us some of the answers but as it is been noted by Volz & von Cramon (2008: 82) neurobiologicaly oriented researches on intuition are at its beginnings. This actually tells us how contemporary science seriously considers this issue.

Besides the question what intuition is, there are also questions can we trust it and under what conditions. Such questions already imply a conclusion about the existence of this still scientifically completely unexplained mechanism of knowledge, which is present by its consequences in objective reality. Certainly a phenomenon that cannot be fully explained by science will cause that different people will have different understandings of it, such as somewhat science-based, philosophical or even spiritual in the above mentioned forms connected to the mystical sources. Here we do not want to go further in differentiation of philosophical, scientific or spiritual meanings of intuition, we just want to point out the different understandings of this phenomenon. But, one still agrees that difficulty to scientifically explain the sources and mechanisms of this kind of human thinking does not necessarily mean that it does not exist. As we will see later in this paper, this statement seems to be truth.

SOME DEFINITIONS

In the introduction of his book titled "*Intuition its office, its laws, its psychology, its triumphs and its divinity*" Weston called this phenomenon as a: "*sense or faculty in the human mind by which man knows (or may know) facts of which otherwise he would not be cognizant, facts which might not be apparent to him through the process of reason or so-called scientific proof* ". Not without reason same author also notes that: "*it is easier to tell what intuition does than what it is*." (Weston, 1920: 54). Modern authors have somewhat

different and more analytical approach. Betsch on the base of fundamental theoretical concepts in his study defines intuition as a "*... process of thinking. The input to this process is mostly provided by knowledge stored in long-term memory that has been primarily acquired via associative learning. The input is processed automatically and without conscious awareness. The output of the process is a feeling that can serve as a basis for judgments and decisions.*" (Betsch, 2008: 4). In their comprehensive analysis Dane & Pratt defining intuition as: "*affectively charged judgments that arise through rapid, nonconscious and holistic associations*" basing it on the integration of its four main characteristics a) nonconscious information processing; b) holistic associations; c) affect and d) speed. The same authors with regard to different approaches of various researchers to functions of intuition as a means of problem - solving, as input for making moral decisions, and as an instrument facilitating creativity, identifying different types of intuitions (problem solving, moral and creative intuition) state that except by function these types of intuition may vary by three previously listed their features: holistic associations, affect and speed (Dane & Pratt, 2009: 4-5).

In connection with all the aforementioned definitions it is very important to stress the distinction between intuition and some other psychological processes with which it could be wrongly identified. In this sense Betsch (2008: 5) from the frame of intuition excludes reflexes and instinctive patterns of behavior, noting that not every kind of elicitation of feelings can be attributed to intuition.

Above we cited only a few definitions of intuition but we have the opportunity to see that literature abounds with a large number of approaches in the study of this phenomenon which results in a large number of definitions based on the same or different methodologies but whose common basis is distinguishing intuition from decision making process to which precedes the analytical, rational way of thinking. Our intention in this paper is not to deal with the review of all available approaches. We believe that we have presented enough serious considerations of this issue and its understanding, perhaps not in terms of how it is considered by Bastick (1982: 2) as: " … *a powerful human faculty, perhaps the most universal natural ability we possess*", but certainly in the sense that intuition should not be ignored as a way of thinking and decision-making in everyday life with all the consequences that may arise from it. Some of the concepts mentioned above like problem solving, moral and creative intuition are deliberately avoided here and will be approached later.

INTUITIVE THINKING AND COMPLEXITY OF CRIME SOLVING

A criminal investigation, depending on the legal model of criminal justice that belongs to, can be a formal part of the criminal proceedings as is the case in the civil law traditions or part of the so-called pretrial procedure as is the case in the common law. However, regardless of its legal nature, the main purpose of criminal investigation is to gather evidence to press charges and in this sense as we mentioned in introduction it must be distinguished from that part of the procedure that is called trial and in which fair, lawful and evidence based court decision should be delivered. From the legal point of view, trial is the most important part of the criminal proceedings that entails a very rigorous decision-making process to which precedes very detailed and tightly controlled process of acceptance, implementation and evaluation of factual knowledge. The investigation and trial belong to different legal decision-making levels, as per the criteria of subjects (for example prosecutor and police agencies in investigation, court and / or jury at trial), and by criteria of decision (the first will result in a possible indictment, the other with judgment except few cases for example where prosecutor dismiss the indictment, etc.), where the final legal effects still have more weight at trial. But often the results of the investigation and the decisions taken in its framework will play a major role at the epilogue in the court proceedings. In this paper we are not dealing with trials but we wanted to warn about the impact that investigation can actually have on the trial. Here it is worth mentioning regarding the intuitive decision-making that some of the studies that we have consulted indicate that intuitively driven reasoning is not unknown in court proceedings as well, and in criminal law in general, such as the study of Guthries et al. Within this study, the authors consider anchoring phenomenon, representativeness heuristic and hindsight as the forms of intuitive judging conclude that the judges despite their best efforts, as well as other people use two cognitive systems in decision-making deliberative and intuitive and that actually intuition has a very strong effect on their decision-making (Guthries et al., 2007: 43). Similar study of Robinson & Darley (2007: 66) in its concluding observations on the implications which intuition has on the criminal law and justice policy in general contains opinion that morality intuitions have a considerable claim to be incorporated in criminal codes.

Based on the foregoing it is easy to conclude that criminal investigation as well as the other parts of the human living is not relieved of intuitive reasoning. In that sense, Pavišić & Modly (1999: 79) consider intuition in criminal investigation as direct internal observation, understanding that occurs at a certain point without the participation of reason as a final result of speculation or skip of the chain of logical judgment making conclusion that it occupies a very important place in the cognitive process of the criminal proceedings.

Hypothetically it is easy to assume a large number of situations in which such form of decision-making comes to the fore. In fact, the very substance of a criminal investigation is research of the circumstances surrounding the offense, such as: motive, possible suspects, changes in objective reality caused by criminal act (for example material evidence), witnesses, accomplices, etc. Frequently, investigation of all these factors is limited by a lack of relevant information that is reflected in impossibility to make appropriate decisions based on the rules of logical reasoning. Searches for such information, it is expected that investigators will have to make decisions that could be qualified as intuitive.

INTUITION AS A PART OF DECISION-MAKING IN CRIMINAL INVESTIGATION

In principle, every investigation unless it is a rare case that all the relevant facts are known and practically there is nothing to investigate, starts with assumptions, hypotheses about the way in which criminal event has occurred. The main rule in situations like these is: the less we know, the more hypotheses we set. This teaching is in domestic criminal law and criminal investigation literature known as the doctrine of the versions. Pavišić & Modly observe versions as a specific types of hypotheses that explains the formation, properties, reciprocal links, relationships and circumstances of the crime, the features, status and relationship of perpetrator and victim, etc. At the same time they point out that the starting point for setting the versions are collected (previous) knowledge and intuition (Pavišić & Modly, 1999: 66). Without going deeper into the consideration of these instruments as a part of so called „crime investigation reasoning process", we will highlight only that they should be in accordance with the rules of logical judgment implementing analogy, induction and deduction as it was correctly stated by Vodinelić (1985: 186). However, in situations where there is little or no information which can direct investigation or when there is no time (in criminal investigations time is always of the essence) or no resources for detailed analytical approach to those information or when the information is ambiguous or when there is need to prioritize several possible choices or options, intuition appears to be one of the tools for decision-making.

In this sense in the context of a criminal investigation intuitive decision-making can be viewed as multidimensional. In the first place it can be used for making initial decisions regarding further investigation (e.g. in the case of the first encounter with the crime scene when we still do not know the details, but it is very important to make fast decision) and to prioritize options if we are unable to explore all possibilities (e.g. in the case of more suspects) or when we do not have enough time for a comprehensive rational approach for resolving the case. The latter actually follows almost every investigation. In terms of investigation, what gives special weight to intuitive thinking is the so called burden of proof standards. In the framework of the investigation they range from reasonable suspicion as a first degree doubt that tell us about the possible commission of a crime to the probable cause as a higher degree of suspicion that justifies us to take appropriate legal measures in search for evidence. The space that exists between these two standards leaves unimagined possibilities for intuitive reasoning. Therefore, intuitive decision-making can be used in a context of criminal investigation in various ways. Practically there is no investigative mechanism or procedures within which it would be impossible to make decisions based on this tool. It could be used from the levels of street policing to the levels of solving serious crime. Completely different question is how much it is permissible and ultimately good especially when out of circumstances mentioned earlier. So intuition can be used in deciding who to suspect and also whether someone should be arrested and during the interrogation of suspects or witnesses and in great numbers of other investigation procedures. Pavišić & Modly emphasize the importance of intuition in approach to suspect during interrogation using the so called "touching", a method that is applied when the examiner is short with evidence or when the evidence is not strong. As a part of this method fine psychological mechanisms such as the transfer of responsibility, sense of honor, sense of guilt, conflict with super ego and others are used on the base of prominent experience and intellectual intuition of examiners (Pavišić & Modly, 1999: 167). Also, intuition could have widespread use in crime profiling which is pretty specific way in approach to investigation of crime but unfortunately fully neglected in our criminal justice practice and literature.

An important factor in criminal investigation decision making on the basis of intuition is certainly the previous experience of investigators. This leads to the next and very important issue and that is the ability of intuitive reasoning of those conducting the investigation. We can assume that each person has the ability of intuitive reasoning to a certain level. Some people are characterized by it more others less but this is universal natural ability as Bastick pointed out. To a large extent we think that this ability will depend on previous experience. And investigators' prior experience will really play a role in the accuracy of their intuition. Although there are opinions according to which the criminal investigation experience is strong predictor of intuition, it is also emphasized that individual perceptiveness is not solely determined by experience (Martin, 2010: 146). In connection with the presented is the fact that processing of prior knowledge is not a sufficient condition to identify a mental activity as intuitive (Betsch, 2008: 5).

Finally, we have to return to the terms of problem-solving, moral and creative intuition. Every one of these intuitions has been studied and described by many authors. It presents a specific form of intuitive thinking. Problem-solving intuition is the most common form of conceptualization and intuition used when individuals are faced with problem-solving or decision-making dilemma (Dane & Pratt, 2009: 5). Other two concepts include intuition as a basis for moral reasoning and intuition which leads to creative outcomes (Dane & Pratt, 2009: 7 – 9). We are not far from the conclusion that problem-solving intuition makes a great part of intuitively driven judgments in criminal investigation. In that course intuition used in investigation we can freely call crime investigation decision-making intuition. On the side of moral intuition it is practically without significance what a source of investigative ethics is as long as acting of investigators is according to the rules of this profession. Although we certainly believe that creative intuition has a stake in making decisions during the investigation because of its specific nature and because it is probably limited to a small number of people it would be difficult at this time to present some special attitude about it.

CRITICAL OBSERVATIONS, FOR AND AGAINST INTUITIVE THINKING IN CRIMINAL INVESTIGATION

In connection with the fact that there is intuitive thinking in investigation arose a question about the accuracy of this kind of thinking and in general about the acceptability of intuitive based decisions in criminal investigation. A large number of authors do not have a benevolent attitude when it comes to the consideration of intuitive reasoning in the criminal investigation. Rossmo so concludes that different situations can basically require different types of decision-making. While intuitive decision-making which is often error prone, can be justified when we have an unreliable and incomplete data or in specific chaotic situations, such a conclusion should not be placed as long as we have adequate and reliable data and time for proper analysis (Rossmo, 2006: 3).

Also, in their considerations of memory factors and procedures recommendations in context of eyewitness Turtle & Want conclude that the best practices for eyewitness evidence procedures are actually those based on logic and research, not on the apparent intuition and past practice. Among the examples is the lineup constructing where intuition and common sense appear to suggest that the photos chosen as foils lineup should look like the suspect, and that view does in fact drive the procedures in many, if not, most police services. The result is "clone lineup" where even a witness who got a good look at the offender has difficulty to pick him or her out, and as the final consequence this results in difficulties in identifying the real perpetrators (Turtle & Want, 2008: 1255).

In the field of criminal profiling there are also warnings that intuition and gut instincts no matter how seductive, represent an extreme danger to the investigation and always should be bypassed in the investigative strategy, proposals and final profiles, unless there are reasonable grounds for their inclusion (Turvey, 2011: 129). It does not say, however, what the reasonable grounds would be for their inclusion, and in the case of reasonable grounds as the basis for the decision, whether there ever comes to intuition.

On the other side there are also authors who see intuition as highly prized tool in the management of serious crime (See Martin, 2010: 146). It has also been noted by Bennet & Hess (2007: 11) though some deny the existence or worth of intuition, hundreds of experienced investigators attest to its value.

It seems pretty difficult to form any judgment on intuitive decision-making in general or as a part of criminal investigation in specific. Whatever we conclude there is always danger to be evaluated subjectively and disputed because we did not conduct any kind of appropriate empirical research on that topic. At this stage of the consideration our thinking can only be at the level of hypothesis. Perhaps for that reason we are not burdened by the potential danger that somebody characterized as frivolous if we opt for the hypothesis that intuitive decision making exists in criminal investigations, and not only there, and as well is welcome and useful in the process of discovering, collecting and interpretation of evidence. But it has to be noted that there are traps like representativeness heuristics, which can lead investigators to the so-called cognitive illusions excellently described by Guthries at al. (2007) with the final consequence expressed in form of wrong conclusions. We should always be aware of that.

Good example of it is situation when suspect use right to silence. Law forbids us to qualify „remain silent" as a sign of suspects guilty. So today we have a constitutional right to silence and elsewhere this is one of fundamental legal rules. But will this kind of suspects behavior tickle our investigative minds and intuitively will we think about the possible involvement of the suspect in the crime in full conformity with the old Roman expression "*qui tacet consertire videtur*" - he who is silent is consider to agree. And not only investigators, perhaps we could forgive them such kind of thinking, but what with other subjects in procedure. However, this seems to be more important question for the trier of fact in the court proceedings in circumstances where the defendant decides to use right to silence.

If we look at the whole problem from another standpoint, perhaps there is a lot more intuitive thinking in criminal proceedings than we can imagine. How can we describe making conclusions based on circumstantial evidence? Is it intuitive or rational? Certainly more intuitive than rational, but at least both. The fact that the suspect has prior convictions for rape does not give us the right to conclude on the basis of the logic about his involvement in the rape we are investigating. Our intuition still tells us otherwise. But if there is more circumstantial evidence in presented example, more our thinking will be logically based. We can therefore very easily conclude that between circumstantial and intuition exist direct connection. In essence, we would be free to conclude that any decision based on the circumstantial evidence is actually intuitive. The only issue here is how much intuitive. And there is such a decision many in the investigations, and not only in the investigation.

After all the above stated, we can establish that the possibility of intuitive reasoning in the investigation is enormous, especially bearing in mind that specific "crime investigation reasoning process" often in the initial stages suffers from a large number of factual gaps. We of course do not claim that any decision in the investigation should be based on intuition but when we have no or have very few information and in an imaginary situation as described by Maver (2000: 115) where theoretically all the inhabitants of our planet could be suspects, intuitive thinking under our opinion could possibly take us in the right direction.

It is important at the end of our short and certainly insufficient exposure of intuition in a criminal investigation, in which we opened more questions then we answered, to say something about one very important aspect of the investigation. That is its legal framework. In principle, it does not matter how you get to the information, it is important that you come to it in accordance with the law, in the manner and procedure laid down in the relevant procedural provisions. So, no matter what our decisions are logical or intuitive of crucial importance is legal norm and we have to comply with it. In other words, in criminal procedure everything that happened objectively and as such was accessible to our senses is practically meaningless if is not in accordance with the relevant formal procedures.

Ultimately, the only truth that comes in a criminal proceeding, firstly in the part of the investigation and secondly at trial, is the legal truth and often as we have many times witnessed it is not objective one.

CONCLUSION

In this paper, our intention was not to make possible differences between philosophical, scientifically or perhaps spiritual meaning of intuition. We just wanted to point out the different understandings of this phenomenon and its possible presence in our daily lives specifically regarding the crime investigation. In that sense we had the opportunity to review some of the basic philosophical and more importantly scientific views on intuition and intuitive thinking. We must admit that we were amazed with number of recent and legitimate research on this topic, which convinced us that intuitive thinking should be seriously understood as a specific process of human perception and reasoning about the world around him. Therefore, there is no doubt that intuition as a specific mode of reasoning and decision-making has a science-based value and we were wrong to underestimate it.

To make things more interesting, our analysis of few studies and papers showed that phenomenon of intuitive reasoning is not only evident in the investigation but at trial as well. And this part of criminal proceedings from the standpoint of legal rigorousness and demands for justice should not been in any way characterized as intuitively driven.

Accordingly, intuitive decision-making in criminal investigation not just only exists, but it basically should be considered as one of the specific forms of "crime investigation reasoning process". This specific form often contributes to the knowledge of certain facts which would due to the application of sometimes rigid rules of logical reasoning remain hidden, and therefore unavailable to the bodies of criminal proceedings: in the earlier stages to the prosecutor and investigators and in the later stages of the proceedings to the court / jury and parties. In principle intuitive thinking within crime investigation, could be justified in a number of situations where investigators do not have information and evidence, or they are incomplete, or ambiguous, or simply when there is not enough time to conduct decision-making process based entirely on rational categories.

In addition to the aforementioned, without specifically customized real-time research based on scientific methodology, conducted for this purpose we certainly do not want to claim that intuition should take place in the framework of crime investigation. Therefore the value of this study needs to be viewed primarily through the attempt of actualization of this unconventional phenomenon in investigative and judicial practice to which was not given more attention in the literature, at least in this region.

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POST-OFFENCE STRESS AND COPING IN HOMICIDAL PERPETRATORS

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Abstract: We know a large amount of typologies, classifications and theories which all concern sociological, criminological factors, personality dimensions and psychopatological processes, interpersonal incidents leading to a homicidal act. We have less knowledge about the emotions and stress experienced, and coping stategies applied by the perpetrators during and after the crime, though most recent writers on criminal psychology aknowledge the importance of the subject in investigative work. These topics are not without significance either in the area of applying psychology in investigative processes or in correctional context. In our study we conducted an empirical research among the convicted homicide offenders (N=150) investigating these factors: general proneness to anxiety, anxiety and stress experienced after the crime, post-offence coping strategies and correlations between these factors. We are going to look into the correlation of these variables and basic offence characteristics as well, which can be the next step toward future application of these results in criminal profiling. Our results have significance in correctional settings too, because emotional reactions of the perpetrators to their own homicidal act has a central role both in indication and executing threapeutic work concerning identity-forming and prevention of repeated offense.

Keywords: homicide, psychology, post-offence stress, post-offence coping.

INTRODUCTION

There are a large amount of theories, classifications, and motivation typologies in literature about homicide which all concern the sociological, criminological, personality factors, psychopathological processes and interpersonal experiences that lead to a homicidal act. We know a lot less about the perpetartors' experiences during and after the homicide, the stress and the emotions, psychological processes and changes they go through in the post-offense period, and their own attitude towards their crimes.

Related literature frequently mentions the importance of knowledge about the post-offensive phase of homicidal crimes but the psychologically relevant explanation of the subject is usually lacking,[2] empirical studies are very rare or the studies usually do not reach this area of the phenomenon.[3]

Stress, anxiety and coping

Based on case studies[4] and practical experience homicide is thought to be an extreme emotional situation.[5] It is followed by a variable amount of stress, pressure or anxiety during and after the act itself. Stress can be triggered by the murder itself, the guilt or shame over the murder[6] or the fear of getting caught, or mostly all of them. The homicidal act itself can have so severe an impact that it results in post-traumatic symptoms in the perpetrators themselves.[7], [8]

Stress and anxiety are closely related to the area of coping strategies. The experienced stress can be influenced by many factors: appraisal and personality, proneness to anxiety, coping capacities and preferences. It is influenced by situational factors as well, specifically by the novelty, predicability, the uncertainty, ambiguity of an event. Coping with stress can happen in many ways but these strategies are usually divided into two

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types: problem focused coping and emotion focused coping.[9] If we see the circumstances as changeable, it is the time to operate with problem-focused coping strategies and we are constructive. But if we see the circumstances as unchangable and governed by external factors, we become passive and apply emotion-focused coping just to alleviate our emotions.[10] It is an interesting but rarely discussed subject that the perpetrators who do experience their homicidal crime, if they react with distress or anxiety to it and if so how they cope with these emotions. For example: do they apply the different coping strategies generally and after their homicidal act?

Cassar, Ward and Thakker[11] belong to the few who in their study of homicide respected not only the post-offense phase but anxiety provoked by the homicidal act and coping with this anxiety as well. In their model they desribe two paths of the homicidal process, significantly focusing on the stress and the coping preferences: first the offender with proneness to losing control and secondly, the offender with intact self-control. The individual with intact self-controll tends to apply active situation-management and problem-focused coping and problem-solving behaviour. They do not experience severe distress - they can even live the crime with positive emotions. In addition to this irritability, paranoid symptoms caused by the fear of apprehension can appear. Apprehension usually happens because the perpetrartor tells someone about the crime. The other type, the offender with loss of control does not plan the crime explicitly. They experience negative emotions (e.g. guilt, shame) related to the crime and great amount of stress and anxiety. Attributions of the crime are negative. They show passive and emotion-focused coping and usually they report themselves to the police.

In the model of Cassar et al.[10] there emerges the concept and significance of guilt and shame. Although these emotions are similar in appearance, there are very important differences between them. Both of them are moral emotions and emerge in relation to non-moral deeds but they differ in the focus of evaluation. While guilt involves the negative evaluation of an act, shame involves the negative evaluation of the self. Guilt arises in relation to a specific act and the harm is caused to others and this way it triggers tension and desire for reparation of the damage and seeking forgiveness. In case of shame the negative comparison of the self with others highlights the detrimental change of one's social status and results in feelings of humiliation, worthlessness, powerlessness and inferiority. This triggers tenedencies of concealment, hiding of the pain, and it involves dominant and threatening behaviour to restore the position in the social hierarchy or to bypass the painful experience of shame. This way shame is an important pathway to violent behaviour including homicide and to violent recidivism.[12]

Current study

In our current study we intended to study crime-related anxiety and coping with this pressure. We studied general anxiety proneness and general coping strategies and its correlations to anxiety experienced after the homicidal crime and the coping with this stress and success in avoiding apprehension. We studied crime related guilt and shame and their correlation to post-offense stress and coping.

METHOD

Participants

The sample consisted of 130 people all incarcarated for homicide (n=117; 94.4%) or attempted homicide (n=13; 5.6%). All prisoners were drawn from three Hungarian high-security correctional institutes. In the sample 111 men (85.4%) and 19 women (14.6%) participated. Mean age of the participants at the perpetration of the homicide was 29.06 years (SD=9.547; Min=15; Max=51) and 36.77 years (SD=10.108; Min=18; Max=61) at the participation in the study.

Most of the participants (n=49; 55.1%) plead guilty as charged or in part (n=20; 22.5%), 5 individuals (5.6%) admitted to the crime and then withdrew it, and 1 person (1.1%) stated no memories of the crime. In 41 cases we did not have viable data of the admittance. 80 (63.5%) of the participant perpatrators were caught within one week after the crime, and 46 individuals (36.5%) after one week.

9 Lazarus, R. S. & Folkman, S., 1984. *Stress, appraisal, and coping.* New York: Springer Publishing.
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11 Cassar, E., Ward, T. & Thakker, J., 2003. A descriptive model of the homicidal process. *Behaviour Change,* 20(2), pp. 76-93.
12 Wright, K. & Gudjonsson, G. H., 2007. The development of a scale for measuring offence-related feelings of shame and guilt. *The Journal of Forensic Psychiatry & Psychology,* 18(3), pp. 307-316.

Instruments

For the assessment of general proneness to anxiety and state anxiety after the perpetration of the crime we used the *State-Trait Anxiety Inventory (STAI).*[13] Both scales of the self-report questionnaire consist of 20-20 items. We applied the State scale with modified instructions changing the aimed time-frame from the last week to the time after the perpetration of the crime. Items are measured on four-point Likert scale. Though STAI is a widely used and accepted as a reliable instrument[12] in this population reliability measures of the test were weak (STAI Trait Scale Cronbachα=0.43; STAI (modified post-offence) State Scale Cronbachα=0.645).

For the assessment of preferences in coping strategies we used *Coping Preferences Questionnaire (CPQ).*[14] The test consists of 80 items which measure coping preferences in anxiety-provoking situations on a scale of 1-8. We applied this instrument twice with different instructions: once with the standard instructions and once with changing the general time-frame in the instruction to the time after the perpetration of the crime and before being apprehanded.

The first scale of the CPQ is *Problem-centric reaction*, where the goal of the individual is changing the situation and prevention of the threat. The scale consist of 11 items, and reliability was good both in the general version (Cronbachα=0.786) and in the modified post-offence version (Cronbachα= 0.842).

The scale of *Social support seeking* refers to a coping strategy where the individual tries to change the situation and prevent the threat as well, but needs cooperators in the process. The scale consists of 8 items, and reliability was good both in the general version (Cronbachα=0.837) and in the modified post-offence version (Cronbachα= 0.822).

The next scale is *Pressure control* which refers to efforts the individual makes to stabilize personality and does not give up the possibility of changing the situation. During this process the focus is diverted from the threat to the self. The scale consist of 17 items, and reliability was good both in the general version (Cronbachα=0.732) and in the modified post-offence version (Cronbachα= 0.808).

The fourth scale of the instruments is *Distraction* which is a protective strategy where the individual exits from the situation and procrastinates the intervention. The scale consists of 14 items, and reliability was good in the general version (Cronbachα=0.809) and weak in the modified post-offence version (Cronbachα= 0.500).

Emotion focus is the strategy where the efforts of the individual solely aim to throw off the negative affections caused by the stressful situation. The scale consist of 12 items, and reliability was good in the general version (Cronbachα=0.710) and weak in the modified post-offence version (Cronbachα= 0.500).

Emotion discharge scale shows a coping strategy where the individual discharges the pressure caused by the threatening situation by uncontrolled and aimless reactions and acting-out, anger out behaviours. The scale consists of 8 items, and reliability was acceptable in the general version (Cronbachα=0.694) and weak in the modified post-offence version (Cronbachα= 0.682).

Self-punishment scale shows a tendency of the individual to interpret the negative situations as righteous responses to his or her mistakes and undesirable behaviour. The scale consists of 5 items, and reliability was acceptable in the general version (Cronbachα=0.698) and good in the modified post-offence version (Cronbachα= 0.762).

The last scale is *Deference* where the individual uses external locus of control and tries to coexist with the negative situation without any effort to change it.The scale consists of 5 items, and reliability was acceptable in the general version (Cronbachα=0.657) and weak in the modified post-offence version (Cronbachα= 0.591).

Finally, we used the *Offence-Related Shame and Guilt Scale (ORSGQ)*[15] to measure feelings of guilt and shame related to the homicidal act. A very important difference between the two emotions is that guilt does not affect negatively the identity only the deed but when shame is present and strong it results in negative feelings of the self and triggers the drive to hide. The Guilt scale consists of 5 items, and reliability was good (Cronbachα=0.893), and the Shame scale consists of 5 items with goood reliability as well (Cronbachα= 0.878).

13 Sipos, K., Sipos, M. & Spielberger, C. D., 1988. A Stait-Trait Anxiety Inventory magyar változata. In: *Pszichodiagnosztikai vademecum*. Budapest: Tankönyvkiadó, pp. 123-136.
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15 Wright, K. & Gudjonsson, G. H., 2007. The development of a scale for measuring offence-related feelings of shame and guilt. *The Journal of Forensic Psychiatry & Psychology,* 18(3), pp. 307-316.

Procedure

Participants completed the questionnaires implemented in a larger research in two separate occasions: first STAI trait, CPQ original version, and in the second part STAI state post-offence, CPQ post offence version, modified PTSD, ORSGQ.

The first correlation coefficients were computed to assess the relationship between gender, age at perpetration, time since perpetration, and time of apprehesion, general anxiety-proneness and anxiety experienced after the crime to study relations between anxiety and stress-proneness, coping with this stress and time spent at large after perpetration.

Then we conducted independent sample t-test to compare gender, age at perpetration, general anxiety-proneness and general coping preferences in perpetrators caught in a week (early apprehension group) and perpetrators avoided apprehension for at least or more than a week (late apprehension group) to study differences between these two groups.

In the end we focused on post-offense coping and we assessed in the late apprehension group relationship of gender, age at perpetration, time spent at large after the crime, post-offense anxiety, shame and guilt experienced after the crime to post-offense coping strategies.We conducted a paired-sample t-test to compare preferences in general coping and post-offense coping in the late apprehension group to study if post-offense coping differs significantly from general coping. The reason why only the late apprehension group was included in this part is because they spent considerable amount of time at large after the crime.

RESULTS

Pre-offense correlations

In order to study the relations between proneness to anxiety, anxiety experienced after the perpetration and general coping styles we computed correlation coefficients. Hereinafter we only describe the significant correlations. It has to be noted that most of the correlations are weak but significant often on $p<0.01$ level.

Time spent since the perpetration is only correlated with problem-centric coping, which means time spent in prison probably did not influence the results.

The age of the offender at the time of perpetration did not correlate significantly with any of the measured variables. The data showed that male offenders prefer problem centric coping, and show less tendency to self-punishment. Furthermore, the more the offender preferred problem centric coping the more time he or she spent at large after the homicide and took effort to keep their stability.

The other decisive factor seems to be proneness to anxiety. The more the offender was prone to anxiety (STAI trait) the more he or she preferred emotion-focused coping strategies, namely distraction, and emotion focus in their general coping strategies while they do not give up the possibility of changing the situation with social support seeking, and making efforts to stabilize the personality. Furthermore, when distraction is relevant in coping self-punishment and deference can be experienced as well, which suggests the possbility of depression-like symptoms.

Pressure control is an interesting area of coping because it correlated both with proneness to anxiety and with problem-centric coping suggesting that pressure control is a great effort of anxious offenders to keep their stability and cope with the situation.

Anxiety experienced after and in connection to the homicidal act correlated with social support seeking and self-punishment in the general coping, which means that the more the offender had tendency toward self-punishment and the more he or she needed social support in problem-solving the more stressful he or she experienced the crime committed.

Table 1 - *Correlation coefficients of pre-offense variables*

	Gender	Age at perpetration	Time of apprehension	Time since pepetration	STAI trait	CPQ Problem-centric reaction	CPQ Social support seeking	CPQ Pressure control	CPQ Distraction	CPQ Emotion focus	CPQ Emotion discharge	CPQ Self-punishment	CPQ Deference	PO STAI state
Gender	1													
Age at perpetration	,071	1												
Time of apprehension	-,098	,005	1											
Tme sincs perpetration	,183	,067	,141	1										
STAI trait	,009	-,014	,005	,059	1									
CPQ Problem-centric reaction	-,246*	,015	,213*	,247*	,128	1								
CPQ Social support seeking	,088	,128	,087	,000	,222*	,107	1							
CPQ Pressure control	-,086	,027	,114	,175	,213*	,727**	,182	1						
CPQ Distraction	,010	,010	-,102	-,101	,260*	,096	,185	,494**	1					
CPQ Emotion focus	,140	,043	-,035	-,155	,290**	,189	,328**	,524**	,749**	1				
CPQ Emotion discharge	-,102	,099	-,018	-,081	-,063	,129	-,063	,264**	,134	,163	1			
CPQ Self-punishment	,201*	,146	-,116	-,138	-,088	-,123	,123	,063	,250*	,324**	,049	1		
CPQ Deference	,164	,028	-,125	-,030	,109	-,146	,021	,221*	,499**	,392**	,126	,457**	1	
PO STAI state	,148	,138	-,123	-,107	,027	-,015	,211*	-,047	,058	-,002	-,205	,232*	,011	1

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).

Independent Sample T-test

An independent-samples t-test was conducted to compare pepetrators caught in a week (early apprehension group) and perpetrators that avoided apprehension for at least or more than a week (late apprehension group).

There were not significant differences in age at perpetration, gender, prone to anxiety, anxiety experienced after the crime, and in most of the generally applied coping strategies. There were significant differences though in one area.

The data show that the participants in the early apprehension group tend to apply emotion focus coping mechanism signifanctly more often than in the late apprehension group.

Table 2 - *Differences between early apprehension and late apprehension group with independent sample t-test*

	Time of apprehension	N	Mean	SD	Sig.	t
Gender	< 1 week	80	1,16	,371		
	≥ 1 week	46	1,11	,315	,091	,827
Age at perpetration	< 1 week	80	30,00	9,821		
	≥ 1 week	46	27,63	9,156	,579	1,336
STAI trait	< 1 week	74	44,2703	3,62373		
	≥ 1 week	37	44,8919	2,93242	,207	-,905
PO STAI state	< 1 week	67	65,9701	11,62673		
	≥ 1 week	39	62,9487	12,40956	,386	1,259
CPQ Problem-centric reaction	< 1 week	65	31,5385	5,08698		
	≥ 1 week	38	34,5263	4,89201	,649	-2,917
CPQ Social support seeking	< 1 week	66	18,7424	5,12703		
	≥ 1 week	39	16,7692	5,70070	,199	1,828
CPQ Pressure control	< 1 week	63	44,6349	6,27926		
	≥ 1 week	37	47,7297	6,65269	,811	-2,328
CPQ Distraction	< 1 week	57	34,1754	6,97476		
	≥ 1 week	34	33,6176	7,75775	,631	,354
CPQ Emotion focus	< 1 week	59	26,8475	4,76269		
	≥ 1 week	37	26,7297	6,34932	,010	,103
CPQ Emotion discharge	< 1 week	60	15,2000	3,63971		
	≥ 1 week	38	15,5526	4,32902	,296	-,434
CPQ Self-punishment	< 1 week	66	12,2576	3,01438		
	≥ 1 week	39	12,4872	3,56793	,134	-,352
CPQ Deference	< 1 week	64	10,9844	3,41561		
	≥ 1 week	37	10,8378	2,99549	,267	,217

Post-offense correlations and paired-samples t-test of pre-offense and post-offense coping

In order to research post-offense stress and coping mechanisms we conducted correlation studies and paired sample t-test in the late apprehension group.

Female offenders tend to perpetrate homicide at an elder age.

Guilt seemed to be a decisive factor in apprehension, as the less guilt the offender felt, the more time he or she spent at large after the homicide. Offense related guilt, beside shame, self punishment in post-offense coping and anxiety experienced after and in connection to the homicidal crime, determined the emotional state after the perpetration as well. Interestingly, shame correlated with emotion discharge which reflects on the higher tension associated with shame and may support the role of shame in violent recidivism.

Preference of pressure control coping seems to show a very stressful state after the homicide and coping which requires great effort and mobilize the coping sources of the offender in order to keep the stability, deal with the problem while decreasing the pressure by distraction, deference and emotion focus. Correlation with emotion discharge may show setbacks of these efforts. The wide correlations of emotion discharge may reflect on the increased and occasionally failed coping efforts.

Social support seeking on post-offense coping has much less correlation than in the general context which reflects on the decreased possibility of sharing and increased isolation in the post-offense phase due to the self-protective needs of the offender.

Table 3 - *Correlation coefficients of post-offense variables*

	Gender	Age at perpetration	Time of apprehension	PO STAI state	PO CPQ Problem-centric reaction	PO CPQ Social support seeking	PO CPQ Pressure control	PO CPQ Distraction	PO CPQ Emotion focus	PO CPQ Emotion discharge	PO CPQ Self-punishment	PO CPQ Deference	Offense related guilt	Offense related shame
Gender	1													
Age at perpetration	,315*	1												
Time of apprehension	-,121	,060	1											
PO STAI state	,181	,112	-,094	1										
PO CPQ Problem-centric reaction	-,170	-,069	,265	-,101	1									
PO CPQ Social support seeking	-,163	-,217	,164	,148	,294	1								
PO CPQ Pressure control	,025	-,177	,182	-,268	,793**	,130	1							
PO CPQ Distraction	-,220	-,303	-,227	-,259	,181	,253	,516**	1						
PO CPQ Emotion focus	,037	-,101	,029	-,235	,313	,244	,637**	,690**	1					
PO CPQ Emotion discharge	,188	,038	-,093	,042	,351*	,320*	,515**	,419**	,630**	1				
PO CPQ Self-punishment	,064	-,029	-,298	,505**	,051	,189	,036	,086	,167	,133	1			
PO CPQ Deference	,044	-,039	-,115	-,186	,154	,001	,385*	,323	,272	,290	,035	1		
Offense related guilt	,137	-,072	-,446**	,569**	,142	,073	,272	,363*	,303	,232	,734**	,232	1	
Offense related shame	,275	,070	-,200	,386*	-,075	,100	,129	,155	,193	,333*	,624**	,208	,665**	1

*. Correlation is significant at the 0.05 level (2-tailed).
**. Correlation is significant at the 0.01 level (2-tailed).

A paired-samples t-test was conducted to compare preferences is general coping and post-offense coping. Compared to general coping significantly lower scores were found in post-offense condition for problem-centric reaction, social support seeking, and pressure control. This may reflect on the aggravating circumstances after the crime which may paralyze the coping efforts.

Compared to general coping significantly higher scores were found in post-offense condition for self-punishmentand deference.

Table 4 - *Differences between general and post-offense coping in late apprehension group with paired samples t-test*

	Mean	N	SD	Sig	t
CPQ Problem-centric reaction	34,310	29	5,022		
PO CPQ Problem-centric reaction	30,517	29	7,234	0,004	3,091
CPQ Social support seeking	16,676	34	5,564		
PO CPQ Social support seeking	12,794	34	5,044	0,000	4,400
CPQ Pressure control	47,333	30	7,092		
PO CPQ Pressure control	44,100	30	8,580	0,033	2,242
CPQ Distraction	33,276	29	7,328		
PO CPQ Distraction	32,000	29	6,222	0,305	1,045
CPQ Emotion focus	27,061	33	6,528		
PO CPQ Emotion focus	27,000	33	8,367	,962	,048
CPQ Emotion discharge	15,686	35	4,490		
PO CPQ Emotion discharge	14,171	35	4,643	,057	1,971
CPQ Self-punishment	12,500	36	3,637		
PO CPQ Self-punishment	13,972	36	4,109	,003	-3,151
CPQ Deference	11,212	33	2,881		
PO CPQ Deference	12,788	33	5,219	,034	-2,212

DISCUSSION

First we studied if general proneness to anxiety (trait anxiety) and generally applied coping strategies have correlations with each other, with anxiety experienced in relation to the homicidal act and the amount of time the perpetrator spent at large after the perpetration of the crime.

The general proneness to anxiety correlated with social support seeking, pressure control, distraction and emotion focus, that is emotion centered preferences in coping strategies, which concurs with the former findings. That is, the more the individual is prone to anxiety the more likely they apply emotion-centered coping mechanisms. On the other side, the time the offender spent at large after the crime correlated with problem-centric coping that is, the more problem-focused the preferred coping of the perpetrator was, the longer it took to apprehend him or her. This concurs with the former results of Cassar, Ward and Thakker[16] and it seems logical that the individual coping problem-focused will prepare to the homicidal act systematically and with focusing on the solution of situation as well. This can result in organized behaviour and less forensic traces, which aggravates the investigation and reduces the chances of apprehension.

Anxiety experienced after the homicide correlated with tendencies to self-punishment and social support seeking in general coping.

It is likely that perpetrators prone to anxiety besides other emotion-centered coping strategies mostly tend to apply seek support from others to change their problematic situation thus reduce anxiety and maintain self-image. After the act though it is against the perpetrators elementary interest to speak about the crime to others and even if they speak about it, they probably experience social isolation or maybe paranoid feelings. Thus perpetrators who tend to prefer social support seeking as coping strategy are deprived of their main anxiety-reducing instrument after the crime. This can lead to the longevity and perhaps increasing of anxiety. Besides this, correlations analysis revealed numerous intercorrelations of coping mechanisms but because it does not relate closely to our main subject we shall not unfold it here.

After this, we studied if we could reveal the differences of these variables between the perpetrators apprehended in a week (early apprehension) or more than a week (late apprehension) after the homicide. We found that there were not significant differences in age at perpetration, gender, trait anxiety, state anxiety experienced after the crime, and in most of the generally applied coping strategies. The only difference was

16 Cassar, E., Ward, T. & Thakker, J., 2003. A descriptive model of the homicidal process. *Behaviour Change,* 20(2), pp. 76-93.

that the participants in the early apprehension group tend to apply emotion focus coping mechanism signifanctly more often than in the late apprehension group. We saw earlier that apprehension time correlates with preference of problem-focused reactions and it is supported with our finding here that the participants in the early apprehension group tend to prefer emotion focus coping.

In the end, we focused on post-offense coping and we assessed in the late apprehension group its relationship to gender, age at perpetration, time spent at large after the crime, anxiety experienced after the crime, shame and guilt. Gender and age at perpetration correlated, women tended to be older at the time of the perpetration. Time of apprehension correlated with offense related guilt, the more guilt the offender felt the less time they spent at large after the perpetration. Anxiety experienced after and in connection to the homicidal crime correlated with offense-related guilt and offense-related shame, these feeling seem to create a coherent group, and to these emotions self-punishment in post-offense coping is connected.

Offense-related guilt correlated with distraction and self-punishment in post-offense coping and offense related shame. Offense related shame correlated and self-punishment in post offense coping as well and with emotion discharge in post offence coping. Besides this, correlations analysis revealed numerous intercorrelations of post-offense coping mechanisms but because it does not relate closely to our main subject we shall not unfold it here, though it should be noted that in post offense coping we saw an interraletd connection of problem-centric reactions, emotion dicharge and pressure control.

Comparison of general and post-offense coping strategies brought signficant differences. Problem-centric reaction and pressure control is lower in the post offense phase than is general, which can be explained with the increased amount of stress. Social support seeking is lower after the crime as well, because the perpetrartor cannot reveal the cause of his anxiety because that can lead to apprehension. On the other side, post-offense self-punishment and deference is higher than generally, probably due to the feelings of guilt and the decreased possibilities of problem-centric reactions.

CONCLUSIONS

In our study we found that trait anxiety as general proneness to anxiety correlated with emotion centered coping preferences (social support seeking, pressure control, distraction and emotion focus). We underline social support seeking which significantly correlated with both general proneness to anxiety and anxiety experienced after the homicide and besides that perpetrators who were apprehended in a week after the crime tend to prefer emotion focus in coping.

It is likely that perpetrators prone to anxiety besides other emotion-centered coping strategies mostly tend to seek support from others to change their problematic situation, and thus reduce anxiety and maintain self-image. After the act though it is against the perpetrators elementary interest to speak about the crime to others and even if they speak about it, they probably experience social isolation or maybe paranoid feelings. Thus perpetrators who tend to prefer social support seeking as coping strategy are deprived of their main anxiety reducing instrument after the crime. This can lead to the lasting and perhaps increasing anxiety and early apprehension. Supporting this tendency is our finding that longer apprehension time correlates with higher preference of problem-focused reactions. The individual with problem-focused coping preference will prepare for the homicidal act systematically and with focus on the solution of the situation as well. This can result in organized behaviour and less forensic traces, which aggravates the investigation and reduces the chances of apprehension.

Coping after the homicide was studied in the group of participants who spent more than a week at large after the crime. Among these perpetrators we saw that anxiety, guilt and shame and self-punishment coping created a coherent, probably interrelated emotional experience in post-offense phase. Beyond correlating with self-punishment coping guilt is related to distraction and shame is related to emotional discharge. So if anxiety of the perpetrator is more closely connected to guilt then besides self-punishment coping, where they interpret the negative situations as righteous responses to his or her mistakes and undesirable behaviour also tends to exit from the situation and procrastinate the intervention. But if anxiety of the perpetrator is more closely connected to shame and injured identity then besides self-punishment coping, they tend to discharge the pressure caused by the threatening situation by uncontrolled and aimless reactions and acting-out, anger out behaviours. This supports our former knowledge about the role of shame in violent recidivism.

Apart from the analysis revealing intercorrelations of coping strategies, here we only reflect on the interrelated connection of problem-centric reactions, emotion dicharge and pressure control in post-offense coping.

Comparison of general and post-offense coping strategies brought signficant differences. Problem-centric reaction and pressure control is lower in the post-offense phase than in general, which can be explained with the increased amount of stress. Social support seeking is lower after the crime as well because the

perpetrator cannot reveal the cause of his anxiety since that can lead to apprehension. As we saw earlier, the individuals with higher trait anxiety tend to prefer social support seeking coping in general context, and for them this deprivation is very stressful. On the other hand, post-offense self-punishment and deference is higher than in general, probably due to to the feelings of guilt and the decreased possibilities of problem-centric reactions.

Our study analyzed the psychological aspects of post-offense phase of homicidal act in perpetrators which is a highly neglected area of research. Our results have implications for investigative considerations like creative tactical methods, media communications, and interrogation strategies.The main area of using psychological data like our results is criminal profiling. Understanding the psychological contents and processes of homicide perpetrators in relation to their crime is important for the correctional field as well. The significance of the role of shame is in highlighting that processing of these feelings may be an important factor in recidivism-prevention.

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SYSTEM OF ECONOMIC SECURITY OF BELARUS: PECULIARITIES OF CRIMINOLOGICAL MODELING

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Abstract: The article deals with methodological foundations of economic security. The objects of economic security and objects of economic security system are defined. The subjects of economic security system are listed and their powers are described. The article touches upon the issue of modeling method specificity and possibility of using of criminological modeling in economic security system.

Keywords: economic security, criminogenic threats of economic security, object of economic security, subject of economic security, criminological modeling.

V.Vernadsky: «Scientists can influence the course of events in the world through the creation an objective «public understanding»»

At present, economic and legal sciences pay considerable attention to the issue of economic security. The complexity of economic security is in a wide concept under consideration and the diversity of threats in economic sphere. As a rule, the majority of scientists deal with economic security in terms of economics or management function of the state, so V. Senchagov and M. Myasnikovich believe that economic security is a state of the economy and government institutions, which provide guaranteed protection of national interests, social direction of the country, sufficient defense potential [1,2]. V. Puzikov considers economic security as a set of economic relations, conditions and factors that protect vital national interests, independence of the national economy, its stability and resistance, the ability to continuously update and improve [3].

Chosen by the Republic of Belarus, the way of building a legal state with a socially oriented market economy is open to foreign investors, as well as the entry into the various integration organizations that inevitably entails the need to establish an effective system of enforcement and protection of national interests. The protection of national interests is usually considered in the context of "national security". Herewith "national security" can be regarded as a complex system consisting of a set of interconnected subsystems.

There are a lot of criteria by which those or other kinds of security subsystems are identified. Based on the impact of natural, technical and social destructive forces they distinguish: geo-biophysical security, which is intended to ensure the security of both human society and production, equipment from the harmful effects of environmental factors; technical or technological security, which is intended to protect people and nature from the dangers posed by modern technical systems (nuclear power stations, harmful chemical productions, etc.); public or social security, providing protection against the threats and dangers that arise in society and are generated by inherent social contradictions [4]. In modern conditions of development of Belarusian society, considerable attention of public authorities and scientific community is paid to the economic security of the state. There is an active work to improve the legislation in the sphere of countering threats of economic security.

The scale of problems of developing an effective system to counter threats of economic security, a variety of processes and phenomena that affect the economy determine the necessity of unified conceptual approaches to the economic security of interstate formations, of the state, of entity and personality. There is a need of creating a system of economic security at all levels. Determination of current approaches to the system of economic security is impossible without a clear definition of "system of economic security" and its structural elements.

Each system is a certain number of elements united by mutual relations in order to provide a specific function. The main elements of the system of national (including economic) security are contained in strategic policy documents, both in the Russian Federation and the Republic of Belarus. The National Security Strategy of the Russian Federation to 2020 approved by Presidential Decree №537 dated May 12, 2009 (hereinafter Strategy) sets the concept of the national security system that consists of forces and means of national security ensuring, defined the content of national security, which is to maintain the legal and institutional mechanisms and resource capabilities of the state and society at a level corresponding to the national interests of the Russian Federation. Furthermore, there is a note about direct dependence of the national security of the Russian Federation on the economic potential of the country and the efficiency of

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the national security system [5]. The National Security Concept of the Republic of Belarus approved by Presidential Decree №575 dated November 9, 2010 (as amended by Decree of the President of the Republic of Belarus of 30 December 2011 N 621) (hereinafter Concept) defines "security system" as a set of interacting subjects of national security and the means used by them for the protection and realization of national interests of the Republic of Belarus and the security of individuals, society and the state. [6] It is noteworthy that approaches to the definition of the system of national (economic) security, both in the Russian Federation and the Republic of Belarus are similar, but at the same time elements of the system are considered in a different context. The concept contains clearly built vertical system of subjects of national (economic) security, which includes the State exercising its powers in this area through the legislative, executive and judicial branches; public and other organizations and citizens. The legal status and powers of ensuring system subjects are clearly defined. Importance is given to civil society organizations and citizens.

The State is the main subject of economic security in the Republic of Belarus in accordance with the concept. The highest state authorities determine main directions of activity of state authorities and administration in this area, form or transform bodies of economic security and monitoring mechanisms and oversight of their activities and allocate the required forces and resources. Thus, the overall guidance of the entire system of economic security of the Republic of Belarus is provided by the President through the exercise of its powers in this area through the Security Council of the Republic of Belarus. In its turn, the Security Council of the Republic of Belarus considers the issues of domestic and foreign policy of the Republic of Belarus concerning the interests of economic security, takes decisions on them, defines the state bodies responsible for ensuring of economic security in key areas of life of individuals, society and the state, defines the threshold values of the indicators (parameters) of the state of economic security, organizes the effective functioning of economic security. The development of specific measures to ensure economic security, organization and control of their implementation is assigned, within the limits established by law, to the Council of Ministers of the Republic of Belarus. The implementation of measures aimed at solving problems of economic security, maintenance of a state of readiness to use the available manpower and resources is assigned to other state bodies, as well as local government and self-government. The adoption of laws in the field of economic security of the Republic of Belarus is the responsibility of the National Assembly, and the right to exercise justice in the area of economic security is vested in the courts.

A special place among the subjects of economic security is held by nationals. The analysis of the current legislation in the Republic of Belarus allows us to talk about different forms of citizens' participation in ensuring economic security. The first form is the realization of rights and duties is manifested in the line of duty to defend the Republic of Belarus, by participating in elections, referendums and other forms of direct democracy, as well as through state agencies and local governments. The second form – activities, directly involved in ensuring economic security – is accomplished by: informing the public of the presence (occurrence) of sources and factors that endanger the economic security; immediate protection with the help of legitimate methods and means of the rights and freedoms of citizens and the interests of society; development and introduction to the state bodies of the proposals for improving the normative legal acts regulating social relations in various fields of economic security; participation in public opinion shaping on issues of economic security; enhancement of political culture and responsibility of citizens, civic consciousness, education of patriotism; facilitation of public authorities in ensuring national security, achieving public consent and stability. Active participation of significant number of subjects in ensuring security entails issues related to the internal interaction of subjects. Thus, business entities, aimed at making a profit, and restrictions, imposed by governmental authorities to protect the national interests, do not always find understanding and approval. It is the presence of an effective mechanism of interaction, the feedback between the subjects of economic security that will allow achievement of the objectives set out in the Concept.

The strategy does not define the concept of subjects of national (economic) security. Therefore, we should note that the implementation is provided by consolidation of the efforts and resources of public authorities, civil society organizations, aimed at defending the national interests of the Russian Federation through the integrated use of political, organizational, socio-economic, legal, special and other measures developed in the framework of strategic planning in the Russian Federation. A special place in the field of national security is discharged by the President and the Security Council. Thus, state authorities and governance basic functions to ensure economic security are conferred by themselves in the Russian Federation, but we believe that the delegation of certain powers directly to the subject of protection will allow the efficiency of the entire system to increase.

Subjects of security in order to implement the functions assigned to them should have specifically provided forces. Both in the Republic of Belarus and the Russian Federation "forces" act as independent elements of the system of national (economic) security. Speaking about the Republic of Belarus, it is necessary to note that the concept includes an expanded powers of national (economic) security: the Armed Forces, the Border Service, Internal Troops of the Ministry of Internal Affairs, Security Service President of the Republic of Belarus, Operations and Analysis Center under the President of the Republic of Belarus, other troops and military formations of the Republic of Belarus, the bodies of internal affairs, bodies and units of

emergency, bodies of financial investigations, the customs authorities, the Financial Monitoring Authority, subdivision (service) other government agencies to ensure the safe conduct of work in industry, energy, transport, security of communication and information, as well as protection of the environment, etc. Despite the fact that the Russian Federation forces of economic security are only an organization carrying out military and law enforcement, the President's powers and the federal authorities powers allow them to expand the list.

Together with the forces of national security, the strategy reinforces the concept of the "means" of national security which include: technology, as well as hardware, software, linguistic, legal, organizational tools, including telecommunications channels used in the system of national security for the collection, formation, processing, transmitting or receiving information on the state of national security and measures to strengthen it. It seems that the lack of legislative recognition of the concept of "means of ensuring national security" in the Republic of Belarus, because the actors and forces of national security, has the statutory list of tools that can be used in order to ensure national security.

Talking about the system of economic security, it seems necessary to pay attention to the object of this activity. Objects and subjects mutually determine each other, and the differences between them arise from the course of legal relations associated with economic security. According to I. Kardashov there is a fundamental difference between objects and subjects: the nature and type of public relations; the nature, types and technology activities for each activity requires certain knowledge, training; social roles, which are a combination of individual and social issues. It is of importance to note the fact that from the point of view of public administration objects have a priority over the subjects, as the reproduction of the material and spiritual products and social conditions is the primary and most important thing for human activity [7]. The concept clearly defines the objects of national security: identity – its constitutional rights, freedoms and legitimate interests; society - its material and spiritual values, the system of social relations, protected by the law; state - its independence, territorial integrity, sovereignty, constitutional order. With regard to economic security, it seems necessary to distinguish between two related concepts: the object of economic security and economic security object. Public relations emerging in the process of realizing the interests of the individual, society and the state in economic relations as the object of economic security should be considered. Thus, attention is drawn to that as the object of economic security is not considered as an economic system of the state. This is due to the fact that not all relationships promote the interests of entities regulated by the state and accounted for. Although not recorded, unsettled relations, along with illegal actions, are traditionally referred to as "shadow economy", but the provision of mutual services in the domestic sphere, ancillary services and other lawful actions have a positive impact on the realization of the vital interests of citizens. At the same time, participants of economic relations and economic system will act as the object of economic security.

Namely, forecasting the development of various social phenomena and their influence on objects of economic security is a challenge for legal science. In this article, we want to consider the possibility of criminological simulation as a form of prediction of the genesis of crime, such as anti-social phenomena, as well as identify areas of society, the most vulnerable in the future. Currently, various branches of knowledge for the prediction of phenomena and processes widely use a modeling method. From the technical construction of similarity mechanism to verify the parameters of modeling has evolved over the twentieth century, to one of the main methods of forecasting the socio-economic processes.

In 1949, Doctor of Technical Sciences L. Eigenson in his work "Modeling" considered the possibility of using modeling techniques only in the study of physical phenomena and processes, ignoring the fact that the physical phenomenon that is the subject of a pilot study can be considered as a model for a whole group of such phenomena [9]. However, already in 1952, the author points out the possibility of expanding the understanding of the modeling process, and notes the possibility of building theoretical models, when the sample does not exist or its construction in that kind is not possible [10]. Thus, in the middle of the twentieth century, it was recognized that a physical being, and not physical models have equal rights (rationale) for your application - each in its own field: physical models for cognitive purposes, non-physical, for projections.

At present most scientists accept a "model" not as an aid, as a kind of replacement of real objects, but as a general concept, which includes an abstract vision of the phenomenon or process goes beyond the mathematical laws. Note, however, that the development of any phenomenon is associated with a set of heterogeneous or identical elements, united with the establishment of an integrated system. N. Amosov said: "To manage, you need to know. In terms of technology, the fullness of machine control is the ability to create them anew and to improve the properties. In the functioning of social systems is not so clear "[6; C.3]. Thus, the author would like to emphasize that social systems are more complex and their structure is more complex than can be expressed in mathematical formulas. Most social systems, including the security system in various fields, are complex in nature, differ in the number and variety of the elements of their relationship, together defining feature. Thus, it seems that having a set of elements, united by mutual relations and aimed at realizing a common goal, is characterized by a complex social system.

"Information" takes a special place in the modeling of complex systems. We endorse N. Amosov who noted that the activities of complex systems are determined by the processing of information to a greater extent than the transformation of matter and energy. [11] The availability of reliable sources of information makes it possible to simulate the dynamics of various social processes.

Speaking about criminological modeling in general and criminological simulation system of economic security in particular, it is necessary to turn to the experience of using the method of modeling in economics and jurisprudence.

In Russian economics modeling was used quite actively in the 60s of the twentieth century, and during that time transformed from queuing systems, in the modeling of complex management systems and automation of business processes [12]. Economic study of the impact of criminogenic factors takes a special place in the modeling process, so in his thesis for obtaining the doctorate in economics K.Somika, considered criminogenic modeling processes in the field of taxation. [13] Scientists have also considered the issues of modeling protection of the economy from corruption and lobbying [14, 15].

The most widely used method of modeling in jurisprudence was in criminology. In this case, we can talk about the use of direct forensics physical models and mathematical laws, as well as non-physical models in order to identify patterns and properties of processes. Mathematical modeling is mainly used in the investigation of traffic accidents [16]. A physical model in criminology is concerned with plaster casts. A striking example of the use of non-physical models in forensic science can serve as a simulation of the individual offender and his criminal behavior. In the scientific and practical guide edited by G. Mukhina, it is noted that under the model of an unknown offender it must be understood that the process of collecting, organizing and use in the formal scheme of the identity and characteristics of the criminal conduct of unknown offender enables a push-based version of its psycho-physiological characteristics which significantly narrows down the audited entities and predicts the behavior of post-criminal [17]. Thus, the authors emphasize the need for an integrated approach to criminogenic modeling and use in the process of modeling a wide range of knowledge about the person. It is important to note that in both economic and forensic modeling, covering various aspects of criminology, scientists will attempt to analyze the impact of criminogenic factors on the studied processes.

We are now witnesses of the emergence of self-direction in criminological science - criminological modeling. The complexity of using criminological simulation as activities aimed at the analysis, assessment and mitigation of threats criminogenic various spheres of public life, the development of society and the individual, is the need to build multi-level models, depending on the application. Establishing an effective system of economic security is the basis for the functioning of all elements of national security. Given that any deliberate action must be directed toward a specific purpose, subject, at the end of labor is to get a result that already had a first introduction. Questions on the purposes are an important organizing element modeling of criminology. The purpose of the system is to achieve economic security of the state of the economy in which the protection of national interests of the state against internal and external threats is guaranteed. Given that one of the groups of internal threats present criminogenic threat, it seems necessary to use criminological simulation system of economic security.

We believe that criminological simulation system of economic security can perform several complementary functions, on the one hand, as noted above, the function on the purposes of activities, creating an image of a desired future, i.e. construction of the model state. Another feature of criminological modeling is to develop direct algorithm to combat criminal attacks on the way to achieving this goal.

In the implementation of criminological modeling it is necessary to take into account changes in the structure of criminogenic threats to economic security. In this regard, it is necessary to allow the possibility of change in the algorithm for constructing models and methods to improve its efficiency. This possibility arises, in a phased development of the model, with an interim analysis of the results achieved and the subsequent correction of system activity. We believe that modeling by its nature is a must in any imminent action purposeful activity, permeates and organizes it, representing not part and aspect of this activity.

In the course of constructing a model of a phenomenon it should be defined not only for the purpose of constructing a model and an algorithm for its actions, but the type of the model should be chosen as well. There are various types of models, but in the modeling of criminological system of economic security it is necessary to address the pragmatic model. The mentioned kind of model is normative, plays the role of a bridgehead "adjusted" to the activity and its result. It should be noted that the pragmatic models reflect the desired result. The pragmatic model is a management tool, an element of the organization of practical actions, in an exemplary way to present the correct action or result, i.e. a working representation purposes. In this regard, the pragmatic model is used when there is a discrepancy between the model and reality direct efforts to change reality closer to reality model. For the effective functioning of the model, in order to make it suitable for their purpose, you must have certain conditions, the main one, the coordination model with the environment, in which it will operate, enter the same environment as a natural part of it. An important aspect of consistency with the environment is to ensure the functioning of the model resource, as well as

to provide operational work model. The system of economic security complexity of building a pragmatic model is always a dynamic process taking place within the state and outside it, which may have a significant impact on both individual elements and the model as a whole.

To summarize, it should be noted that the prediction of criminogenic phenomena in their relationship with socio-economic and political processes taking place in society, is an integral part of criminological science. Criminological modeling in the broadest sense is - activities aimed at the analysis, assessment and mitigation of threats criminogenic various spheres of public life, the development of society and the individual, which consists of the construction of multi-level pragmatic models of social systems. Measures to combat illegal actions are developed and fixed in normative legal acts, however, the effectiveness of these measures is difficult to assess in the medium and long term. It is the use of modeling in criminology which allows the analysis, development and performance of indicators of crime. Active use of the criminological simulation system of economic security, as a method of forecasting the development of phenomena of criminal nature that threaten the economy, will contribute to the development of timely and effective mechanisms to counter those threats in the criminal policy of the state.

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APPLICATION OF S.A.R.A. METHOD IN COMBATING CRIME

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Abstract: In order to suppress any form of criminal activity, various criminalistic methods and means are applied. Implementation of newer criminalistic methods is necessary in order to apply the appropriate measures and actions to successfully prevent and detect crime, especially with the emergence of more sophisticated forms of crime. Among the newer methods is the S.A.R.A. method - an abbreviation for (Scanning, Analysis, Response, Assessment) research, analysis, response and assessment. The process of problem solving can be applied to short-term and long-term problems.

The S.A.R.A. method is commonly used in police work and cooperation with citizens or within the community policing. By applying this method, cooperation is established and a systematic process of addressing issues of community safety and quality of life is implemented.

The authors of the paper make a review of the definition and explanation of the method, and also give an analysis of specific security problems and criminal hotspots, offering proposals for their successful resolution.

Keywords: research, analysis, response, assessment, crime etc.

INTRODUCTION

The S.A.R.A. method is used to establish effective and long-term solution, determining the cause, the problem and the basic factors that need to be accurately identified. First, a decision is made on the application of S.A.R.A. method, followed by the establishment of a working group with representatives of the interested parties. This group will be responsible for implementing the S.A.R.A. method[3]. The group is expected to develop original and innovative responses and thus send a strong message to the community that any problem can be solved by joint efforts of the interested parties.

The model S.A.R.A. is widely applicable to the problems faced by many municipalities and has produced excellent results in hundreds of communities across the United States. Through this method cooperation is established, and a systematic process of solving community issues, safety and quality of life is implemented[4].

CONCEPT AND STAGES OF S.A.R.A. METHOD

The model S.A.R.A. contains the following elements:

Scanning / research: The research involves identifying recurring problems that concern the public and the police, but for some problems the police cannot easily provide data. That is why the police-community relations are important, and the application of this method in solving problems related to safety[5], i.e. the community policing system[6]. After determining the problem, the survey includes verification that there is a problem, determining how often it happens and how long it lasts, and identifying the consequences of the problem.[7]

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3 More about S.A.R.A method see M. Malis Sazdovska "Manual on Security Management" Skopje, 2014, p. 66
4 The application of this method is studied at the Institute of community policing in Michigan, USA http://www.a2gov.org/government/safetyservices/Police/Documents/SARA problem solving sheet.pdf
5 More on the concept of security see in M. Mitrevska "Human Security" Skopje, 2012, p 22
6 More on community policing system see M. Angeleski "Criminal Tactics 1" Skopje, 2007, p 106
7 Criminal investigation by mapping crime, Rachel Boba, Nampres, 2010, p. 224

In the research work, the team members are to describe the symptoms of the problem and to present relevant information. Hereupon, the following questions should be addressed:

- Identifying the problems that are of interest to the public and the police.
- Identify the consequences of the problem for the community and the police.
- Giving priority to the problems.
- Developing goals.
- It is confirmed that there are problems.
- Determining how often the problem occurs and how long it lasts.
- Selecting problems for closer research.

Analysis: In the phase of the analysis the group members gather data and information about the factors that influence the problem. Based on this, trends and models are identified, including the involved parties. This phase is "the heart" of the process of solving the problem according the S.A.R.A. method. The information will have to be collected fundamentally from various sources. Data is not collected only from the police about the problem in the neighborhood. When all the parts of the problem are identified, a reaction or response can be developed that will be specifically tailored for a specific problem. We should ensure that with a complete analysis of the data we have identified the real nature of the problem. We should make sure that we understand the problem from the perspective of the key interested parties in the community.[8] In this process, the analyst analyses important information available to the police, but does not answer the question of why the problem occurs. The role of the analysts is important at this stage, because they propose models and methods for assessing the effects of the response of the treated problem, trying to identify new strategies.[9] Therefore, in the second phase, an analysis is conducted by using the S.A.R.A. method, whereby answers should be given to the following questions:

- Identify and understanding of events and preceding conditions and supporting the problem;
- Identifying relevant data which need to be collected[10];
- Research on what is known about the problem;
- Identify the advantages and limitations of the answer;
- Narrowing the scope of the problem;
- Identify the various resources that can be helpful in developing an understanding of the problem, and
- Developing a working hypothesis, why this problem occurs.

In order to accurately identify the problem and its analysis, each issue should be grouped under two main features: the surroundings / environment where the problem occurs and the type of behavior associated with it. For most police general problems following settings can be defined:

- Residential - locations where people live. This includes houses, apartments and hotel rooms. Often they are at fixed locations, except trailers.
- Recreational - places where people have fun, bars, nightclubs, restaurants, cinemas, playgrounds, parks and ships.
- Offices - places for office work where there is little communication between the staff and the public. The most common locations of this kind are the Government and enterprises, and access to these sites is often restricted.
- Retail - places to enter or take in turnover from customers, including cash transactions, such as, for example, banks and shops.
- Industrial - locations of processing goods. Cash transactions aren't important activities in these areas and the public is rarely included. Examples are: factories, warehouses, premises for stacking packages etc.
- Educational - places for learning or teaching, including playhouses, schools, universities, libraries, etc.
- State institutions - (places where citizens are directed when they have a certain problem) courts, prisons, police stations, hospitals and addiction centers.
- Public roads - roads that connect other environments. For examples: roads and highways, trails and bike paths and garage driveways.
- Transport- locations of mass movement of people. These include buses, bus stations, airplanes and airports, trains and train stations, ships and ports, and line ships and ports.

8 Manual Training Course to upgrade the capacity of advisory groups of citizens, OSCE, 2004, p.37
9 Kekovic Z., Nikolic V., Upravljanje rizicima kao preduslov efektivnog kriznog menadzmenta, Krizni menadzment i prevencijakrize-Hrestomatija, Beograd, 2006, str. 326
10 More on the collection of data see in M. Malish Sazdovska "Manual investigations in environmental crimes" Skopje, 2013 p.141

- Open / transitive - areas without permanent or regular use. They differ from parks because they are not used for recreation, although people use them for that purpose. These include: abandoned properties and construction sites.
- Technological – "electronic", places where problems occur, such as: Internet, internal networks, computer networks, etc.[11]
- The second feature of the problem is the behavior, whereupon following aspects are being identified: the damage, the attempt and the relationships between the offender and the target. There are six types of behavior:
- Thefts - perpetrator clearly differs from the victim and the victim confronts the perpetrator's crimes. The crimes of this kind are common, and relate to: thefts, child abuse and intrusions.
- Concessive - both parties are involved knowingly and willfully. This refers to some form of transaction, such as: drug sales, prostitution and selling stolen goods.
- Conflicts - this category includes violent acts involving rough people who already have some existing relationships. For example, here you can specify some forms of domestic violence between adults (domestic violence on children and elderly people is considered as a theft because the parties involved are not equal), etc.
- Unkindness - offenders differ from the victims, the victims are huge number of individuals, and the damages are not serious. These include many riots that can be characterized as boring, horrid, loud or disturbing, but include serious damage to property or injuries. An example of this is loud parties. Thus, we set the question - Does the vandalism fit this category, which, actually depends on the details. Some forms of vandalism are thefts.
- Threatening - offender and victim is the same person or the offender did not want to hurt the victim, as, for example: attempted suicide, overdose or car accidents.
- An abuse of the police - in this category is provided unjustified requests from the police. Thus, for example: false reporting of crimes, repetitive calls for crimes that citizens can solve by themselves. This is a category of last shelter –when and the last harmful withholding of the behavior means and expanding of police resources when no other category fits. [12]

Despite these issues relating to safety in the community, there are other problems for which solution security services and bodies applying S.A.R.A. methods are engaged. [13]

Phase of the analysis is realized by analyzing the data thus developing assumptions and assumed why the problem occurs. Then, follows the collection of data for testing the assumptions and statistical analysis is done from which conclusions are obtained for the immediate causes of the problem[14].

EXAMPLES OF TESTING ASSUMPTIONS

Assumptions are statements about one problem that can be correct or incorrect.[15]

Example no. 1

In case of a large number of vehicle thefts committed in a certain area, compared with neighboring areas. In connection with this problem we can set the following question: Why are cars being stolen in this area? One of the assumptions can be: most cars are dismantled and the parts are sold. The analysis about the number of stolen vehicles (i.e. rate of returned vehicles) after they being stolen can give some overview. If the analysis shows that 85% of the vehicles that were found in almost original condition, the assumption will be inaccurate, because statistics show that most cars aren't dismantled for parts, because they are given back.[16]

Answer:

In this phase of the response, the members of the working group have two aims: to select the answer and implement it. Thereto, there is a need to promote creative and spontaneous flow of ideas. At this stage the basic causes of the problem are considered, and, at the same time, we can come up with new answers.

11 See more Criminal investigation of crime mapping, Rachel Boba, Nampres, 2010, p. 224
12 See more Criminal investigation of crime mapping, Rachel Boba, Nampres, 2010, p. 224
13 Appendix 1 - List of problems and their environmental characteristics and behavior that can help solving the problem
14 More on assumptions and setting versions see in M. Angeleski "Introduction to Criminology" Skopje, 2007, p 182
15 Criminal science uses the term "indications or reasonable doubt that represent facts indicating the existence or non-existence of a crime or closer or more distant relationship between the act and some people" Dzhukleski, G. "Introduction to Criminology", Skopje 2006, p. 145
16 The example is taken from the criminal investigation of crime mapping, Rachel Boba, Nampres, 2010, p. 228

The response phase should define strategies to achieve the objective. Also, it is necessary to determine the entities that can help in developing the strategies and to overcome possible obstacles. The proposed solutions should be innovative and creative, although it may not be consistent with traditional policing.[17]

- "Brainstorming" for possible interventions.
- Consideration of opportunities.
- Choice between alternative interventions.
- Developing a plan and identifying responsible persons.
- Indication of specific goals.
- Execution of planned activities.

Evaluation:

Then, the group will evaluate the proposed ideas, unreasonable ideas are dismissed and others are proposed for implementation.

Evaluation is the last step in the process of solving the problem. The goal is to determine whether with the response we successfully treated the problem.

How will we know that we have achieved the goal? It is very important after a certain period to turn to the problem again and evaluate whether we have achieved what we set as a goal.

The plan should include the following elements:

- Determining whether the plan is implemented (evaluation of the process).
- Collection of qualitative and quantitative data.
- Determining whether wide and specific goals are achieved.
- Identifying new strategies.
- Conduct ongoing evaluation to ensure continued efficiency.[18]

There are two important factors to consider when evaluating whether the reaction worked. The first factor is to determine how the reaction plan was applied, because sometimes the plan is rarely used, so it is important to determine which goals were achieved, and what activities were or were not conducted. This is called the evaluation process. Besides the evaluation process, also an evaluation is made of the influence as part of the assessment. The goal is to determine whether the applied reactions reduce or eliminate the problem. It should include a review of data received prior to the reaction, and later comparing them with the same measure.[19]

APLICATION OF S.A.R.A. METHOD IN THE ANALYSIS OF CRIME

Example 1: Riots in the neighborhood caused by the youth

Scanning	Analysis	Response	Assessment
Rioting and causing property damage in the neighborhood during the summer holidays.	Lack of effective informal social control and lack of opportunities for reaction.	Twice a week, two leagues, teams of 7 players, responsible managers, subtracting points if the players cause problems with the police when they don't play, and encouragement and pressure on the teammates for nice behavior.	150 children participate in regular football matches taking place during the summer holidays, up to 200 visitors at every game. Reduced level of reported riots and troubles during the summer holidays compared to the previous five years.

17 Manual Training Course to upgrade the capacity of advisory groups of citizens, OSCE, 2004, p.40
18 http://www.popcenter.org/about/?p=sara
19 Criminal investigation of crime mapping, Rachel Boba, Nampres, 2010, p. 229

Example 2: Riots in a park by the band "Motor head"

Scanning	Analysis	Response	Assessment
Rioting by members of the group "Motor head" exorbitance and harassment of people in the park (attacks, drunken minors, public urination, possible dealing of drug and caused property damage more than $ 15,000 in a few years)	Application of the method of observation by the police and interaction with some members of the group "Motor head"	Reducing the parking lot where the group gathers, introducing one-way traffic.	"Motor head" moved to another parking lot and the members took measures to control the activities.

Example 3: Violence on buses by minors - individuals and groups in the city of Skopje

Scanning	Analysis	Response	Assessment
Increased number of fights and other violence in buses by the minors after finishing their classes in school / or going to school cause troubles in buses	Application of the method of secret surveillance by special units for fast response - Alfi that are present in buses in plain clothes	Presence of uniformed policemen at bus stops where there were frequent cases of incidents, and also police officers from MOI who are present in buses in plain clothes	Evident reduction of incidents.

Example 4: Increased crime in summer tourist destination - Ohrid

Scanning	Analysis	Response	Assessment
Increased number of crimes during the tourist season in Ohrid, such as: fights and tussles, pick-pocketing, frauds and so on.	conduction of conversation with victims and witnesses, monitoring the activities of the perpetrators on the field, especially of the repeaters etc.	Reinforced controls of criminal crisis points and hot spots	Reduction of the number of crimes during the tourist season in Ohrid.

Example 5 - Increased number of robberies in apartments during the summer holidays in Skopje

Scanning	Analysis	Response	Assessment
Increased number of crimes during the summer holidays, especially robberies in apartments.	Taking measures and activities of secret surveillance and monitoring of criminal groups and individuals, analysis of previous robberies and their locations.	Increased control where the conduction of the crime is frequent, organizing ambushes, patrolling, getting data about robberies from the associates and etc.	Reducing of crimes, robberies in apartments in Skopje, during summer vacations.

CONCLUSION

The application of newer forensic methods for successfully preventing and combating crime should be an imperative for the security services and the authorities competent for this issue. Namely, the existing methods and application of operational-technical measures and investigative actions are not sufficient for preventing new sophisticated forms of crime and successful suppression of the existing types of crime.

In future, it will be necessary to develop and implement new criminological theories such as the ecological one, the theory of "broken windows", zero tolerance, CPTED-method and other, and apply them in criminalistics as a science. This segment reflects the direct connection of criminalistics with other sciences, especially with criminology. Namely, with the application of the new criminological theories in the concept of criminalistics in crime prevention, it is possible to address certain security issues by an effective action of the police and other authorities.

In the forthcoming period it is necessary to educate the staff in using the new theories in their everyday work. As an example, the S.A.R.A. method can greatly assist in defining specific security problems and finding adequate solutions to solve them. Applying this method will strengthen the analytical capacities of the staff in the practical field work, so they will have another tool that would act to reduce criminogenic hot spots and the emergence of new security problems.

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CRIMINALISTICS, CRIMINAL LAW AND CRIMINAL-PROCEDURAL LAW RELATION AND DETECTION OF A CRIMINAL OFFENSE

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To detect means, through investigation and studying, to come to new knowledge, discovery.
Vodinelić, 1971

Abstract: In terminological sense, detection of a criminal offense and the perpetrator of a criminal offense is not just semantically important, but it also implies much more: this is how the criminal-legal relation is detected and how the criminal-procedural relation is initiated. Detection in the criminal sense entails the understanding, heuristic activity. Therefore, the question of detection of a criminal offense, aside from the importance of efficient handling, is extremely complex. Nevertheless, the amount of attention to this issue still remains insufficient, but is construed as clear, regardless of the fact that this issue can be viewed in the conceptual-logical sense as a system. This is also brought about by specific legal regulations, which due to imprecise nomotechnic regulations give wrong conclusions. Lack of theoretical discussions on the matter make things even worse, so it should come as no surprise it is banalized. Certainly, when it comes to the term detection there is no consensus in the theoretical, conceptual-categorical sense: the knowledge of a criminal offense from the moment of its realization up to the point the offense is detected after the final judgment is made. The importance of defining the term detection lies in the fact that is connected with the criminal-legal and criminal-procedural relation. Namely, with the knowledge of a committed offense one becomes acquainted with the criminal-legal relation of criminal-legal acts and subjects. Hence, in the conceptual sense, detection of a criminal offense and the perpetrator manifests itself on two occasions: first, when there is knowledge of an offense and the perpetrator and second, when the criminal-procedural framework is established (i.e. investigation). The criminal relation manifests itself in the transformation of initial information into evidence, which leads not only to conducting pre-trail and prior pre-trial proceedings but also to the main criminal proceedings. The paper puts focus on the some of the above, including taking into consideration the criminal-legal relation and detection, criminal-procedural relation and criminal aspect of the heuristic activity.

Keywords: criminal law, criminal legal law, criminalistics, detection, clue, sources of knowledge, reasonable doubt.

INTRODUCTION

Detection of a criminal offense goes beyond the simple meaning of the verb "to detect", which can be defined as knowing something that was unknown. Detection of a criminal offense implies gathering and securing evidence in terms of both the perpetrator and the offense in order to give proper punishment. In fact, this is also the obligation of the state, which is entitled to punishment (*ius puniendi*), effective immediately after an offense was committed, and which is not necessarily bound by its detection. Therefore, the state can enforce such authority only if it detects a criminal offense and the perpetrator. Otherwise, the criminal-legal relation between the state and the perpetrator remains unresolved until the statute of limitations, which repeals it[2]. In this process, the criminal-legal relation, another two relations are established: criminalistics (operational) and criminal-procedural. The criminalistics one emerges when a criminal offense is committed, i.e. with the realization of initial knowledge (indications) in terms of the offense and the perpetrator, which is characterized by the deficit of information and a low level of probability. The criminal-procedural relation emerges when there are enough grounds for doubt (reasonable doubt) in terms of the committed offense and the perpetrator, and it manifests itself through the enforcement of criminal-procedural norms

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2 Vodinelić, V. (1990). *Što je otkrivanje, a što razotkrivanje krivičnog djela i razotkrivanje učinioca*, Studija, Zabreb: RSUP Hrvatske, p. 7.

ranging from initiating an investigation to giving the final court judgment (verdict or termination of the investigation). Therefore, first the criminalistics relation emerges, which entails establishing the presence of a criminal offense in general and second, detection of the perpetrator and his guilt. This leads to the conclusion that facts are based on a low level of probability, which should then through further investigation and proving activities (including special investigation activities), i.e. the criminal-procedural relation, turn into a higher level of probability (reasonable doubt), and finally into complete certainty. In that context, we advocate the logics of the divalent value attitudes[3]. This means that the progression of numbers and quality of indicating facts (including material and personal evidence), is followed by progression of the level of probability. The higher quality number of indicating facts (including material and personal evidence), the greater level of probability will be that a criminal offense was committed and by a specific person.[4]

Therefore, taking into consideration the aforementioned, we can talk about detection of crime in two ways: *the first*, heuristic, i.e. knowledge, when there is knowledge of a committed offense and *the second*, formal, where detection implies taking legally prescribed measures. The first one implies detection of a criminal offense in the criminalistics sense, while the second implies detection of a criminal offense and the criminal-procedural relation. In some cases, the criminalistics and criminal-legal relations overlap at the same time, while in other cases it can take some time from the heuristic, knowledge activity, to formal taking of specific measures and actions. In both cases, the criminal-legal relation is established, which does not depend on a criminal offense being detected or not, but the fact it was committed, for its perpetration entails detection of an offense and adequate punishment of the perpetrator. Accordingly, the criminal-legal relation encompasses the dark criminal zone[5] (committed, but not detected criminal offenses). On the other hand, the question whether criminalistics or criminal-legal relation can be established arises. In that sense, we fully support the attitude of Professor Vodinelić who thinks that the criminal-procedural relation can be established, without the criminal-legal relation: "When there are no grounds for reasonable doubt, the criminal proceedings continues or the verdict is given although there is no criminal offense. This means that detection of an offense and the perpetrator was conducted wrongfully which led to court error."[6] Although these cases are not common, they can have far-reaching consequences on the legal system, for they not only violate the principle of being convicted wrongfully (*in dubio pro reo*), or that someone is charged with something that is not seen as a criminal offense (*nullum crime, nulla poena sine lege*), but they also violate the trust in the judicial authority, and thus sovereign state in terms of punishment of the perpetrators of criminal offenses[7].

CRIMINAL RELATION AND DETECTION OF A CRIMINAL OFFENSE

Detection of a criminal offense in the true sense of the word (knowledge of a committed criminal offense for the first time), leads to the establishment of the criminal relation. Detection and clarification[8] of criminal offenses normally begins with observing indicating facts which point to a criminal offense, and a possible perpetrator. Detection of criminal offenses means deepening of knowledge into the unknown, in terms of the existence of criminal offenses and the perpetrators of criminal offenses. That is the heuristic activity, which begins with finding out of a criminal offense, usually with the realization of small and insufficient number of unreliable, still unconfirmed and manifold operational information in terms of a criminal offense and the perpetrator (criminal offenses whose perpetrators are known). Vodinelić defines detection of a criminal offense as finding out latent and potential information and their decoding – deciphering[9]. The activity of detection of criminal offenses and the perpetrators of criminal offenses is primarily an operational-tactical activity (criminal-operational activity) of police agencies, characterized by a low level of probability that a criminal offense was committed or that a given person committed the offense (reasonable doubt). Timely obtaining initial findings, their checking and designed, organized and systematically con-

3 Vodinelić, V. (1985). *Kriminalistika – otkrivanje i dokazivanje*, Skopje: Fakultet za bezbednost, pp. 87-88.
4 Šikman, M. (2010). Praktični problemi korišćenja indicija (osnova sumnje) u tužilačkoj istrazi – teorijsko razjašnjenje ključnih pojmova. Zbornik radova *"Pravo i forenzika u kriminalistici"*. Beograd: Kriminalističko-policijska akademija.
5 The dark criminal zone includes those criminal offenses that were committed, but remain unknown to the law enforcement agencies (the police prosecutor's office, courts), nor they are recorded.
6 Vodinelić, V. (1990). *Što je otkrivanje, a što razotkrivanje krivičnog djela i razotkrivanje učinioca*, Studija, Zabreb: RSUP Hrvatske, pp. 7-8.
7 Namely, there are cases where the facts were wrong or based on the false testimony of witnesses, and they laid the foundations of jurisprudence. These represent typical cases where the legal-procedural relation is established without the criminal-legal relation, for the suspect, and later the convicted person, is not the real perpetrator of a criminal offense.
8 Professor Vladimir Vodinelić did a study in which he analyzed the terms "detection" and "disclosure" of criminal offenses, which starts from the fact that the given terms are fundamental criminalistics terms which still not interpreted properly in both global and domestic criminalistics science. See more in: Vodinelić, V. (1990). Što je otkrivanje, a što razotkrivanje krivičnog djela i razotkrivanje učinioca, Studija, Zagreb: RSUP Hrvatske.
9 Vodinelić, V. (1990). *Što je otkrivanje, a što razotkrivanje krivičnog djela i razotkrivanje učinioca*, Studija, Zabreb: RSUP Hrvatske, p. 31

ducted informative intelligence activities, authorized officers of the police exercised an essential prerequisite for efficient operation of other entities ant criminal practice[10]. The criminal-operational activity is the basic activity of police agencies, when they act within their authority (e.g. Article 5 of the Law on Internal Affairs of the Republic of Srpska[11]). These operational (and not evidentiary) measures, according to the logic of things, imply identification, knowledge and discovery of facts in accordance with the doubt about a criminal offense, concrete perpetrator and possibilities of finding objective facts[12]. It manifests itself, primarily, through criminalistics control and processing[13], and it consists of knowledge, gathering and processing of facts (indications) which point to a committed offense and (or) person as the perpetrator of the offense. Namely, the knowledge of a criminal offense or the preparation for its execution is one of the most important operational-organizational tasks, given that the moment for making the decision on tactical actions and planning of operational activity is crucial, which at the start establishes the difference between the knowledge that points to a committed offense (but not the perpetrator) and a committed offense or cast doubt on the perpetrator. Reasonable suspicion is typical of criminalistics operational actions in order for criminal, offense or social-pathological manifestation to arise or for a particular person to commit a crime (criminal control) or that there is reasonable doubt for a concrete criminal offense and (or) the perpetrator of a criminal offense (criminal processing). These stages of doubt can be reached through gathering of information from the criminal field (reasonable suspicion) or by organizing criminalistics operational activity (reasonable doubt). Proactive approach to crime, i.e. recognizing problems in the local community which can lead to crime (and other forms of security endangerment), implies establishing different forms of immediate, planned and constant cooperation between the police and the citizens at all levels and categories with the purpose of recognizing problems which can lead to crime and try to eliminate them[14]. Organization of the criminal-operational activity implies the realization of necessary tactical measures and actions in the spirit of adequate operational combining in police work, including the possibility of it being used in criminal cases and *ad hoc* detection of criminal acts which were not the subject of operational processing, but were suddenly discovered[15]. Information gathering is conducted with operational-tactical methods and actions, including patrol activity, gathering intelligence, surveillance of roads, means of transportation, stops, sites (markets, public premises, gaming houses and alike), control over mass gathering of citizens, raids, observation, tracking (in operational-tactical sense), organization of criminalistics-informative activity, planning of criminalistics activity, knowledge of criminal acts from the media, reports (personal, anonymous and pseudonymous, reports from the harmed ones or other witnesses, reports from private and public bodies) as well as other sources of knowledge of a criminal offense and similar.

Ways to arrive at the knowledge of the crime and reliability the information obtained can be very different[16]. There is no dilemma that the clues[17] represent grounds for detection of criminal offenses and the perpetrators of criminal offenses. Criminalistics activity during criminalistics control and criminalistics processing in an investigation, as well as criminal proceedings, is inconceivable without the work with indications. Felonies as a rule are executed in secrecy and with no witnesses, for the perpetrators of criminal offenses want to "jump into the darkness", which implies secret preparation, execution and enjoying the fruits of the criminal offense[18], so the police agencies, prosecutor's offices and courts have to detect, clarify, and sometimes adjudicate criminal offenses based solely on indications. Consequently, a successful detection and clarification of criminal offenses implies expertise recognition of corresponding indicating facts and their knowledgeable use in order to timely detect specific forms of criminal behavior and thus gain knowledge on a committed offense (indications which point to the presence of a criminal offense) and the perpetrators of criminal offenses (indications that point to possible the perpetrators of criminal offenses). By their nature, criminal offenses can be detected based on material indications, i.e. criminalistics information reflected on material carriers (the subjects and traces of a criminal offense), psychological indications which represent changes in the behavior of the perpetrators of criminal offenses, as well as persons that

10 Žarković, M., Ivanović, Z. (2013). *Kriminalistička taktika*. Beograd: Kriminalističko policijska akademija, p. 35

11 Law on Internal Affairs of Republika Srpska, the Official Gazette of Republika Srpska, no 4/12.

12 Krivokapić, V. Krstić, O. (1999). *Kriminalistika taktika II*, Beograd: Policijska akademija, p. 6

13 Criminalistics control implies the system of all operational-tactical measures that the police use to keep informed about all socially dangerous (criminal) occurrences, while criminalistics processing implies the system of all operational-tactical measures directed at detection and identification of a concrete criminal offense and its perpetrator, and all of that based on prior learned indications. criminalistics control is a constant operational activity, while criminalistics processing is, as a rule, limited in time and scope. Krivokapić, V. Krstić, O. (1999). *Kriminalistika taktika II*, Beograd: Policijska akademija, pp. 6-8.

14 Simonović, B. (2004). *Kriminalistika*. Kragujevac: Pravni fakultet, p. 23.

15 Krivokapić, V. Krstić, O. (1999). *Kriminalistika taktika II*, Beograd: Policijska akademija, p. 12.

16 This is because of the nature of criminal activity can manifest itself in two ways: through the commission of offenses whose existence is obvious or those whose existence is latently. In. Žarković, M., Ivanović, Z. (2013). *Kriminalistička taktika*. Beograd: Kriminalističko policijska akademija, p. 44

17 Clues, reasonable doubt, grounds for suspicion are facts which point to the presence of a criminal offense and a close or distant link between that offense and some person, based on which it can be concluded with a higher or lower probability whether a criminal offense was committed or not, what is the connection between some (specific) persons and the criminal offense, as well as other circumstances relevant for the clarification of the criminal matter. Vodinelić, V. (1985). *Kriminalistika – otkrivanje i dokazivanje*, Skopje: Fakultet za bezbednost, p. 188.

18 Vodinelić, V. (1985). *Kriminalistika – otkrivanje i dokazivanje*, Skopje: Fakultet za bezbednost, pp. 87-88.

are connected with a criminal offense in any way or they know who committed the offense, and moral indications, as a type of psychological indications, and are based on the evaluation of the character of the suspect or the accused. It is believed that the indicating evidence is only complete when it simultaneously encompasses the material, psychological and moral indications. All of them together show the event as a whole: its external and internal side. Without the first the case remains wrongly determined, and without the second it remains unexplained[19]. Aside from that, there can be mention of the informative value of indications, which is realized through the identification of traces. The doyen of criminalistics, Professor Vodinelić, says: "Through the analysis of nine gold criminalistics questions we come to the conclusion that a clue (signal carrier of information) contains the following informational elements: local (where?); time (temporal), (when?); modal (how?), subjective, identifying (name?); motivational (why?)".[20] Recognizing the mentioned indicating facts is possible to determine immediately (knowledge which directly points to a specific indicating fact) or intermediately (establishing the existence of higher or lower probability), i.e. directly and indirectly. Indicating facts that point to a criminal offense are not recognized evenly. Namely, some facts are very hard to notice, because of their importance to a criminal offense, for the discovery of their presence would pose a certain inference regarding the criminal offense. Thereby, it must be noted that such kind of knowledge can be obtained through other indications about occurrences, rise of specific types of problems in the community (drug addiction, violence, etc.), which indirectly point to reasonable doubt for criminal offenses. Evidentiary material is most reliable when it is made up of a system, a whole of mutually connected direct and indirect (indicating) evidence and when the presence of deciding facts is based on combined evidence. These are mentioned in the context of the same fact, which needs to be proved, different types of evidence which are connected. One specific fact requires the hearing of witnesses and experts, use of objective means of evidence, documents and traces[21].

Clues which point to the presence of criminal offenses can be manifested before, during or after the criminal act. The indications which manifest themselves prior to the act include signs, psychological and physical manifestations, which point to the preparation for criminal offenses and the presence of will to commit such offenses. Certainly, some criminal offenses, such as organized crime, are construed as planned criminal acts, whereby the preparation for the execution of these offenses is incriminated, so the indications present in this phase of execution of criminal offenses of organized crime have special importance. These indications can be manifested through planning the executing of a criminal offense, joining of more persons, obtaining means for execution, preparing alibi, getting forged personal documents, etc. All the above and other activities are regarded as planning to execute a criminal offense. Also, these indications encompass those manifestation signs which point to the will to execute criminal offense, and which are primarily seen in the leniency towards a professional execution of criminal offenses. Another indication is moral capacity to commit a criminal offense (indication by character), motive for a criminal offense as an indication, suspicious behavior as an indication, socializing with notorious persons, prior convictions, physical and spiritual performances suitable for execution of criminal offenses, knowledge, ability, craft and professional experience, skills and habits and the knowledge of specific circumstances which are not commonly known or ignorance of certain circumstances which should be commonly known. The indications manifested during a criminal offense are many indicating facts which point to the presence of criminal offenses. These imply taking a concrete action of executing specific criminal offenses and the presence of the perpetrators of criminal offenses where criminal offences were executed, possession of means of execution and motivation for execution of concrete criminal activities. These represent basic indications as a reflection of the perpetrator's activity during the execution phase. These indications can point to the presence or non-presence of a criminal offense, means of execution, forgotten or deliberately left objects, physical and spiritual traits and characteristics, habits, skills, abilities and knowledge, the character exemplified by the perpetrator of a criminal offense as an indication, knowledge of specific circumstances that are not commonly known or lack of knowledge of specific circumstances that should be known and which emerged during a criminal offense, motive of a criminal offense during its execution, accessory to a criminal offense, etc. indications also manifest themselves after a criminal offense was committed are twofold: first, as material indications (traces on the perpetrator, possessions of means of execution, way of concealing the mere means of execution, way of concealing the object obtained though a criminal offense, as well as benefit from committing a criminal offense, and that is ultimately – profit) and other, indications as a consequence of psychological effect of a committed criminal offense on the perpetrator(s) (excessive spending of money, attitude and behavior, irresistible desire to show off or prove oneself, concealing identity, abnormal payment on games of chances, interest in the proceedings and key witnesses, etc.)[22].

19 *Ibidem*.
20 *Ibidem*.
21 *Ibidem*.
22 On indications before, during or after a criminal offense was committed, refer for more details in: Vodinelić, V. (1985). *Kriminalistika – otkrivanje i dokazivanje*, Skopje: Fakultet za bezbednost; Krivokapić, V. Krstić, O. (1999). *Kriminalistika taktika II*, Beograd: Policijska akademija; Simonović, B. Matijević, M. (2007). *Kriminalistika taktika*, Banja Luka: Internacionalna asocijacija kriminalista; Simonović, B. (2004). *Kriminalistika*. Kragujevac: Pravni fakultet and other criminalistics publications.

Based on the value they have in the criminalistics activity, indications can be divided into: a) indications as orientation-eliminatory facts and b) valid indications, i.e. probative value (circumstantial evidence)[23]. Indications as orientation-eliminatory facts are irreplaceable during the procedure of the criminalistics control and criminalistics processing phase. Police officers are in charge of gathering them outside the proceedings by taking the operational-tactical activity. In that way, obtaining criminalistics information is not regarded as evidence in the legal sense of the word, but is invaluable because it guides the criminalistics activity in specific directions. Based on these indications different criminalistics versions can be planned and checked which explain and determine the possible meanings of discovered indications. Most of the discovered indications in an investigation are primarily heuristic which help trace new (up to that moment) unknown carriers of proving probative information that will turn into evidence in proceedings (e.g. using bloodhounds helps find material objects of carriers of probative information which will be obtained through probative actions, for instance an investigation). Evidentiary indications (circumstantial evidence)[24] are gathered through procedural (court) activities and are regarded as evidence in the true sense of the word. The process of attestation by indications is different and longer than by circumstantial evidence. Unlike direct evidence which is unambiguous (e.g. a witness testimony), indicating evidence is manifold, so it is necessary to plan and check the versions of every possible meaning, on the other side, every indicating fact that is observed, for itself, has no value precisely due to its manifold. It is for these reasons that indicating facts are connected into a whole, their mutual analysis, assessment and evaluation. Indicating evidence is composed evidence which makes the unity of all indications that together make a mosaic, an image, a whole presentation of the entire criminal offense. Here we have quantity (possible manifold interpretations of every separate indication) turning into quality when all indications viewed together build a full evidentiary building, for all of them as a whole exclude different interpretations of the event (versions) and impose only one interpretation. Indicating evidence is only complete when different interpretations of every indication mutually exclude each other and when there is only one left, which does not allow the planning of other versions. Attestation by indications does not only give the number of indications during the process of their mutual comparison but also the quality (weight) of every indication. A smaller number of indications have greater probative power (the so called *main indications*) which point to a closer and stronger connection between a criminal offense and some person, than a bigger number of less important indications (the so called *circumstantial indications*) where this connection is distant, weaker and less specific.

CRIMINAL-LEGAL RELATION AND DETECTION OF CRIMINAL OFFENSE

As stated already, the criminal-legal relation is based on taking specific legally prescribed actions (first of all the Law on Criminal Proceedings[25]). For initiating an investigation it is enough to have reasonable doubt that a criminal offense was committed[26]. Law enforcement officers come to this stage of doubt through specific operational activities within their regular tasks and assignments or in some other way (other sources of knowledge of criminal offenses and the perpetrators of criminal offenses). This means that the police, in order to report an offense, first have to establish reasonable doubt that a criminal offense was committed[27]. As well, the prosecutor is obliged to immediately after reasonable doubt that a criminal offense was

23 Simonović, B. Matijević, M. (2007). *Kriminalistika taktika*, Banja Luka: Internacionalan asocijacija kriminalista, pp. 110-111.

24 In dealing with indications, during the formation of indicating evidence, several stages emerge. The first stage is detection (identification) of an indicating fact through fixed actions and checking of its plausibility. The second stage entails the analysis and evaluation of the meaning of an indicating fact. The versions of its possible many meanings are submitted to planning and checking. An indicating fact is viewed and studied inseparably from other indicating facts and direct evidence. The third stage implies the analysis of all available evidence and evaluations, the fact that they build up a system together, a whole and unambiguous building of evidence which excludes other interpretations of a criminal offense. It is wrongly assumed that the direct evidence is more significant than the indicating one. When joined with other indirect evidence, indications in criminal proceedings become very powerful. Evidentiary material is best useful when it is made up of a system, a whole of mutually connected indirect and direct (indicating) evidence and when deciding facts are established on combined evidence. Combined evidence is used only in the sense when it refers to the same fact, which needs to be proved, different types of evidence that are connected. One specific fact requires the hearing of witnesses and experts, use of objective evidence means, documents and traces. In: Simonović, B. Matijević, M. (2007). *Kriminalistika taktika*, Internacionalan asocijacija kriminalista, Banja Luka, pp. 110-111.

25 Law on Criminal Proceedings, the Official Gazette of Republika Srpska, no. 53/12.

26 The prosecutor gives the order for an investigation if there are grounds for reasonable doubt that a criminal offense was committed (Article 227 of the LCP RS). Reasonable doubt is specific in character, it is based on concrete information that is strong enough to be justified. It is the starting point for the claim that a criminal offense was committed, and that establishing reasonable doubt is the beginning of the realization process which needs to confirm that the indications about a criminal offense are based on real circumstances which are possible to prove.

27 This informing – report of a criminal offense – refers to the offense and not the perpetrator, wherefore report of a criminal offense against a person as the perpetrator of the offense is not legally required, while the police were required according by the old law to bring criminal charges against a certain person, for the police were authorized to establish reasonable doubt that a concrete criminal offense was committed by the charged one – a suspect on their own, which was the precondition for the procedural activities of the prosecutor since the investigation was conducted in regard to a concrete criminal offense and a concrete perpetrator of a criminal offense. Accord-

committed is established take necessary measures for the purpose of its detection and prosecution of the perpetrator, i.e. conducting an investigation (Article 224), finding a suspect, managing and overseeing the investigation, as well as managing the activities of law enforcement officers in charge of finding a suspect and taking statements and gathering evidence (Article 226). Accordingly, the prosecutor is responsible for establishing the grounds for reasonable doubt, he gives orders for the initiation of an investigation if there is reasonable doubt that a criminal offense was committed (Article 224, paragraph 1) and law enforcement officers are responsible for taking necessary measures for obtaining knowledge about a criminal offense (Article 226). From the moment of realization about reasonable doubt that a criminal offense was committed, the prosecutor is obliged to initiate an investigation which entails all the actions and measures for detecting a criminal offense and its perpetrator. The prosecutor has no power over the actions of the police and other law enforcement agencies for detection of criminal offenses and prevention and combating organized crime until reasonable doubt that a criminal offense was committed is established. Up to that that point, i.e. probability that a criminal offense was committed, the police are not obliged to inform the prosecutor. He takes necessary measures for detection of a criminal offense primarily based on established reasonable doubt that a criminal offense was committed, which the police usually inform him of.

Current criminal-legal laws of Republika Srpska make distinctions in terms of procedure in further investigation in regard to the presence of reasonable doubt and a criminal offense, i.e. possible sentence (Article 226 of the LCP RS). In that sense, there are two situations: *the first*, if there is reasonable doubt that a criminal offense was committed which is punishable by more than five years in prison, the law enforcement officer shall immediately inform the Prosecutor and under his authority take all the necessary measures to find the perpetrator of the offense, prevent the hiding or escape of the suspect or accomplice, find and save the traces of the criminal offense and objects which can be used as evidence and gather all useful information for criminal proceedings (Article 226, paragraph 1). In addition, the law enforcement officer shall in the event of delay take necessary actions to complete the task. In doing this task, the law enforcement officer shall obey the law. The law enforcement officer shall inform the Prosecutor of his actions and submit gathered objects that can be used as evidence (Article 226, paragraph 2). In practice this regulation stipulates that the law enforcement officer possesses the information and intelligence that a criminal offense was committed and that based on his assessment there are grounds for reasonable doubt that a criminal offense was committed, which means he is obliged to immediately inform the Prosecutor of this. Up to this stage there is no legal obligation for the law enforcement officer to inform the Prosecutor of a committed offense, no informing of the Prosecutor, nor is the Prosecutor authorized to ask for the information and intelligence that are below the standard of reasonable doubt that a criminal offense was committed. This means during the stage of doubt, indications, information and alike about a criminal offense there are no assumptions regarding the relation between the Prosecutor and the investigating agencies, and this stage of proceedings is not construed as criminal proceedings denoted as investigation; and *the second*, if there are grounds for reasonable doubt that a criminal offense was committed which is punishable by less than five years in prison, the law enforcement officer shall inform the Prosecutor of all the information, actions and measure at his disposal taken no later than seven day from the realization of reasonable doubt that criminal offense was committed (Article 226, paragraph 3). According to this regulation, the police are required to gather necessary data and intelligence for milder offenses, conduct investigating and search actions according to the Article 227, paragraph 1 and other regulations of the LCP, but contrary to the Article 227, paragraph 1 of the LCP, the police shall not after informing the Prosecutor of the subject matter under his authority take measures and actions prescribed by the Article 227 in regard to the Article 226 of the LCP, i.e. the police shall not participate in an investigation under the Prosecutor's control, but will, after data gathering and informing, inform the Prosecutor of a committed criminal offense no later than seven days after the realization of reasonable doubt that a criminal offense was committed, which falls under their legal duty. This further means that all the activities of the police till the informing of the Prosecutor about theses offenses have probative legitimacy during criminal proceedings, for law enforcement officers, as aforementioned, within the statutory period of seven days, are authorized to take actions of probative power, for the Article 20 of the LCP states that the police are in terms investigation entitled to gather and keep information and evidence.

In these situations, the Prosecutor based on such report evaluates the state of things (state of facts and evidence and information), and based on that evaluation starts an investigation, evaluates the evidentiary quality of submitted material and its importance, optionally conducts further planning of the investigation or immediately takes investigating actions himself, all for the purpose of the completion of the investigation. If the law enforcement officer should gain knowledge of new facts, evidence or traces about the criminal offense after submitting the report, he shall gather necessary information and reports on it, as an annex to the aforementioned report, and submit it immediately to the Prosecutor. Thus, with submitting the report to the Prosecutor the law enforcement officer's duties do not step here, but he continues to perform his operational activities (or investigating activities based on further instructions or orders from the Prosecutor),

ingly, based on the given principles, informing the prosecutor of the presence of reasonable doubt that a criminal offense was committed means reporting a criminal offense, and given the degree of established facts it does not have to contain facts about the suspect.

and if he should gain knowledge of some new relevant facts, traces or evidence while doing these activities, he shall gather necessary information and duly inform the Prosecutor of it.

From the point of view of practical relation between the prosecutor and the law enforcement officers during an investigation, and based on the initial knowledge about a criminal offense, the three most common situations surface: *in the first*, the data and information about a criminal offense are obtained by law enforcement officers. The duty of law enforcement officers is to inform the prosecutor the moment when the gathered information, data and intelligence give them grounds for reasonable doubt that a criminal offense was committed which is punishable by more than five years in prison. According to the Articles 227 and 228 and Article 20, item 1 it is their duty to at that moment take measures and actions of proving, i.e. investigation and informing of the prosecutor. From that moment on, the prosecutor takes over control which implies ultimate responsibility for the results of the investigation in order for both investigating subjects to fulfill their legal duties in concrete criminal proceedings. In case there is a discrepancy during criminal proceedings, law enforcement officers, given the functional independence of their state authorities, can deal with the problem at the authority level, which would exclude possible arbitrariness of the prosecutor. This is more so, for law enforcement officers are authorized to lead an investigation in accordance with the law, regardless of informing of the prosecutor. *The second practical situation* can occur when the information and data about a criminal offense reach the prosecutor first. In that case, the prosecutor is entitled to evaluate such facts, and if he concludes that they give grounds for reasonable doubt that a criminal offense was committed in regard to the Article 224, he can give order for the beginning of an investigation. However, in order for the prosecutor to complete the investigation, i.e. to gather enough evidence that give grounds for reasonable doubt that a particular perpetrator committed a criminal offense, i.e. to indict, the prosecutor has to in most cases first notify law enforcement officers, for he cannot conduct the operational part of the investigation without them. Even in situations such as these, the duties of law enforcement officers do not seize with the orders given by the prosecutor, because they are obliged by legal duties, i.e. duties prescribed by the Articles 227 and 228 and Article 20, item 1. *The third typical situation* arises when the police or the prosecutor realize that there are grounds for reasonable doubt that a criminal offense was committed, but the perpetrator remains unidentified, i.e. proceedings against John Doe or the injured party or when the third party reports a committed criminal offense[28].

One of the main problems in practical handling is the problem of reasonable doubt. Namely, respecting the aforementioned legal regulations and the widely used definition of the term "reasonable doubt", there should be no place for dilemma. Nevertheless, it is another thing in practice. Namely, there are dilemmas regarding precisely the degree of reasonable doubt, i.e. the level of probability that an offense was committed, and in particular making a connection between a person and that offense, and therefore the time of informing the prosecutor by the law enforcement officers. Thus in practice, in regards to this problem, two main standpoints emerge. The advocates of the first regard that early informing of the prosecutor is not a good thing, because it unnecessarily burdens the prosecutor and points to the fact that what is given to him is actually just operational data, i.e. criminal intelligence information which needs to be checked and similar. Others think that untimely informing of the prosecutor makes investigation harder at the start, because if he is not timely aware of all the facts then he cannot conduct a quality investigation[29] (Modul 2, 2010: 8). The problem in the given examples reflects itself in different interpretation of the institute reasonable doubt, wrongful understanding of the position of the law enforcement officer and alike. Discrepancy in procedure and understanding inevitably cause additional procedural problems on the relation the law enforcement officer and the assigned prosecutor. Internal procedures, taken because of these omissions by the law enforcement officers have shown that these problems do not end with their procedure. Namely, when the statements of law enforcement officers are checked in official records, based on the contact with the prosecutor, it can happen that the prosecutor remembers, for example, the phone call but not all the details from the official record of the law enforcement officer. This in fact shows that the communication between the law enforcement officer and the assigned prosecutor is not adequate, thus the control over the work of law enforcement officers. Furthermore, the consequence of this kind of communication is a substandard investigation, and unnecessary transfer of responsibility from one onto the other.

Aside from that, when it comes to informing of the prosecutor the question of legal qualification arises for the purpose of timely informing of the prosecutor by the police. It is considered that if some actions give grounds for more possible qualifications, the police should evaluate the subject case through a harder qualification and inform the prosecutor of this, for in that case the control of the prosecutor starts from the start which enables legal acts of proving. Practice shows that the police do not give the right qualification of actions that represent a criminal offense, which can, in return, have negative consequences in terms of procedural value of taken actions and information gathering. Equally, there is a dilemma regarding the question of the rights and duties of the police and the prosecutor's office in cases when based on the knowl-

28 Modul 1 – *Postupak istrage kao odnos krivičnoprocesnih radnji tužioca i policije*. (2010). Sarajevo: Visoki sudski i tužilački savjet BiH.
29 Modul 2 – *Praksa i kriteriji postojanja opasnosti od odlaganja u postupku preduzimanja nekih radnji dokazivanja*. (2010). Sarajevo: Visoki sudski i tužilački savjet BiH.

edge, information and reports of specific offenses there are no grounds for reasonable doubt that a criminal offense was committed. In order to establish such grounds, a law enforcement officer needs to take specific actions of proving that can be enforced exclusively after the prosecutor was informed and the order to start an investigation was given, which will never take place for laws on legal proceedings state that the prosecutor should be informed only after reasonable doubt is established[30].

CONCLUSION

Taking into consideration all the above, it can be concluded that detection of a criminal offense is manifold. Not only does it imply the function of law enforcement agencies, but it also deserves special attention. Namely, detection of a criminal offense has both criminalistics and criminal-procedural value. In that sense, it is not enough to just detect a criminal offense, but also to legally document it in order to secure that the perpetrator of a criminal offense is rightfully punished. In that regard, the criminal, criminal-procedural and criminalistics relation of detection is really important. Therefore, it is important to view this problem not only semantically, but also in the context of actual significance. Accordingly, this problem has to be addressed seriously, and not just as a problem that has to be taken into consideration. In terms of detection and disclosure of a criminal offense and the perpetrator, the concept that Professor Vodinelić offers can be of great help, which requires new content. Special attention needs to be given to current concepts of investigation, i.e. prosecutorial investigation by considering all the repercussions of the system of detection and disclosure of criminal offenses and the perpetrators of criminal offenses.

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30 The area in which given situations are most common is the investigation of criminal offenses of financial and economic crime, in which, due to its specificity, it is very hard to establish reasonable doubt without taking proving actions and the involvement of the prosecutor.

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INTEGRATED CRIMINAL INVESTIGATION MODEL IN CHINA

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Abstract: The integrated criminal investigation model (ICIM) is good for scientifically allocating criminal investigation resources, realizing information sharing, complementing mutually with each other's advantages between different police agencies, improving the efficiency in investigating a criminal case. Conducting an integrated criminal investigation is the need for fighting crimes, the necessary choice for constructing a modern policing mechanism in the era of the information technology, and the important approach to maximizing the effect of all sorts of criminal investigation resources. This paper starts with discussing the concept of the ICIM, then analyzes the drives of the ICIM, and then focuses on discussing approaches to improving the effect of the ICIM.

Keywords: integrated criminal investigation model; criminal investigation resources; information-led criminal investigation; information sharing.

INTRODUCTION

With the commencing of the 21st century, China is changing fast in nearly every scope everyday, which creates a dynamic society filled with people, materials, money, and information flowing hither and thither. Within such a dynamic changing society, criminal activities have as well demonstrated the trait of being dynamic. Hence it calls for a changed criminal investigation model placing more weight on the promptness of police responses and the efficiency of police cooperation that aims to "control dynamic criminal activities with dynamic criminal investigation measures"(yidong-zhidong). Meanwhile, with the unprecedented development of technology and information knowledge in our society, criminal investigation measures have also featured with employing technological and informational devices that greatly requires changes, development and innovation in criminal investigation activities. Responding to such needs of social changes, an "Integrated Criminal Investigation Model (ICIM)" (hecheng zhencha) has been proposed and developed steadily in China.

CONCEPT OF ICIM

According to the definition and interpretation in the Chinese dictionary, "hecheng" has two basic meanings: a. "to compose a whole with parts" [2], which is a physical way of "hecheng" that maintains the properties of the original "parts" and put these "parts" together in line with certain rules to make a "whole". Such a "whole" may be a compound word or phrase for more accurately expressing a certain meaning or concept (for example "case-solving", "case-solving rate", and "case-solving number"); it also may be a real thing that is beneficial to life or social production (such as a car, a refrigerator, or a computer). b. "to transform matter with simpler components into matter with complex components through chemical reactions" [3], which is a chemical way of "hecheng" that mainly aims at synthesizing new matter such as synthesized leather, synthesized fertilizer, and synthesized cloth. In whichever way of "hecheng", it aims at satisfying the needs in human life and production. Otherwise "hecheng" will lose its value and will be ultimately eliminated.

Based on the above meanings of "hecheng" and taking consideration of the features of criminal investigation activities as well, we uphold that the goal of the ICIM can only be achieved by blending the two-layer meanings of "hecheng" into the theory and practice of the "integrated criminal investigation model". This is

1 lyt1207@163.com
2 Jiang Lansheng, etc. Xiandai Hanyu Cidian (Contemporary Chinese Dictionary) 6th edition. Beijing: The Commercial Press, 2014: 521.
3 ibid.

because criminal investigation is a systematic project[4] that not only needs cooperation between different agencies and between police of different duties[5], but also needs to organically integrate various criminal investigation measures, clues, information, and evidence into the thinking process of criminal investigation to achieve the goal of clarifying the facts of a case. The former belongs to the physical "hecheng", i.e. composing "a whole for criminal investigation" in accordance with certain ratio and rules, through reorganizing police officers and equipments scattered in different agencies so as to achieve the effect of "1+1>2". The latter can be categorized as the chemical "hecheng", which means to pool all criminal investigation information (like matter with simpler components) gathered by different criminal investigation measures, through study and analysis, to draw criminal investigation hypotheses, assumptions, or conclusions (like matter with complex components).

If analyzed from the deeper layer of the nature, the "hecheng" in the ICIM is not simply adding parts and parts together, but is to form a united combat entity incorporated police officers from different agencies with achieving the ascertainment of facts about a crime as their basic duties. It needs also to establish a series of criminal investigation mechanisms that ensure different agencies complement each other by combining their organizational advantages and cooperating smoothly, which emphasizes scientific allocation of criminal investigation resources so to play the full use of the information in criminal investigation. The aim of the ICIM is to "best allocate police resources, minimize the input cost, maximize the fight effect". In a nutshell, the ICIM aims to establish a criminal investigation model that can ensure high quality and efficiency of criminal investigation by integrating various criminal investigation forces, employing assorted measures, and comprehensively analyzing information.

DRIVES OF ICIM

In 1970s, for effectively fighting organized crimes and drug crimes, the USA police explored a new policing cooperation model through transferring personnel from different police agencies to establish joint interagency task forces so as to share investigative skills, information, and powers of different agencies and cooperate closely[6]. From then on, the joint interagency policing cooperation model was broadly employed in the USA.

In 2006, the Ministry of Public Security (MPS) of China promulgated "Murder Cases Investigation Mechanism", demanding joint operations among police different agencies in the process of investigating murder cases, which can be seen as the bud of the ICIM. In practice, local police agencies extended this mechanism into investigating other types of felonies and gangster serial crimes that developed the ICIM into its embryo. In September 2010, at the National Criminal Investigation Work Conference of Public Security Organs, a deputy minister of the MPS proposed that all criminal investigation agencies nationwide should from now on place more weight on "hechengzhan, kejizhan, xinxizhan, zhengjuzhan"[7](integrated war, technology war, information war, and evidence war). In recent years, the ICIM has been spreading fast and steadily nationwide, and the main drives behind it go as follows.

The need for fighting crime

In the past decade, the trends of specialization, intellectualization, professionalization, conglomeration, and cross-regionalization have become increasingly prominent traits in crime, which engenders more difficulties than ever to the criminal investigation work. Correspondingly, police agencies have also become more specialized and professionalized in internal work division, which leads to the result that information and different investigation measures held by different police agencies. Yet these police agencies are relatively independent from each other, shouldering different functions and powers, and usually fight a single-handed fight, lacking efficient and prompt cooperation in actions.

However, criminal investigation today has become a complicated system project. The best effect of criminal investigation can only be obtained by synthetically making use of the advantages of various resources and comprehensively employing assorted professional investigation measures. Such an effect can

4 Liu Liming. Xingzhen gongzuo "hechengzhan" linian qianyi (On the idea of "integrated fight" in criminal investigation work). Gongan Yanjiu (Policing Studies), 2013(3)

5 In China, though police are all called "people's police", they are usually divided into several types according to different duties, such as criminal investigation police, peace maintenance police, traffic police, foreign affairs police, judicial police (working in courts and procuratorate), jail police, marine police, forest police, etc.

6 Zeng Zhongsu. Meiguo jingwu redian yanjiu (A study on USA policing hot topics). Beijing: Zhongguo Renmin Gong'an Daxue Chubanshe (Chinese People's Public Security University Press), 2005

7 Liu Liming. Xingzhen gongzuo "hechengzhan" linian qianyi (On the idea of "integrated war" in criminal investigation work). Gongan Yanjiu (Policing Studies), 2013(3), p.30.

never be gained if the criminal investigation operations solely rely on the criminal investigation agency armed mainly with traditional investigation measures.

Putting it simply, coping with the new trends of crimes demands police from different agencies to formulate a more effective criminal investigation model that embraces establishing cooperation mechanism between different police agencies, integrating all sorts of investigation resources, complementing each other with its own advantages, simplifying application processes, improving response speed and effect.

The inevitable choice for information-led criminal investigation mechanism

With the development of information technology in modern society, criminal activities have extended from the physical spaces to the virtual spaces, traces of crimes have also extended from tangible physical evidence to intangible electromagnetic information[8]. Such changes inevitably demand an information-led criminal investigation model should be established, taking the advantages of information technology to propel the change of the criminal investigation from the passively responding model to the proactively monitoring model, from the extensive pattern to the intensive pattern.

The development of information technology provides the police with new weapons for fighting crimes. The internet-based technology has provided more convenient, fast, and reliable methods for police to cull information and clues about wanted criminals from among the information ocean in modern society through internet-based intelligent information comparison and collision. This has become one prominent feature of modern high-efficient criminal investigation model. Yet according to the internal division of duties, various information resources and the power to employ certain informational or technical measures to investigate crimes are entitled to respective police agencies, traditional criminal investigation agencies usually hold only a portion of crime information and have no power to employ technical measures to investigate crimes though they are responsible for investigating most crimes. In China, the newly-established technical investigation agencies, internet monitor agencies, commanding centre, and information agencies usually play pillar roles in managing and providing crime information and accurate guidance but they are not responsible for specific investigation activities. The information related to crime should be processed, through collection and analysis, into an actionable intelligence product to aid law enforcement police officers in developing tactical responses to investigate or control crimes and/or threats[9]. Otherwise the information collected will be useless. Therefore, integrating various police resources is the inevitable choice for fully utilizing information technology to promote the effect of criminal investigation in modern society.

In practice, it is not rare that some criminal cases were delayed to be cleared up, and some turned into cold ones forever, mainly due to the ineffective coordination and interaction between traditional criminal investigation agencies and those newly-established ones. The experiences in China demonstrate that nearly 75% criminal suspects were arrested within 72 hours after crimes were reported to the police[10]. If time goes beyond that 72 hours, police will have to input more manpower, energy, time, and money but chances of finding out criminal suspects decline greatly because most evidence, particularly electromagnetic traces, may be destroyed during that period and can never be recovered. If police want to make full use of the "72 gold hours" to solve a criminal case promptly, they should be able to integrate necessary police forces quickly and effectively. The ICIM is proposed and implemented to meet such a need.

APPROACHES TO PROMOTING THE EFFECT OF THE ICIM

Seen from the criminal investigation work in recent years, in the process of investigating serious crimes such as murders, robberies, rapes, explosions, and various organized crimes, the ICIM has actually demonstrated its strengths through effective cooperation between different police agencies, achieving information sharing, and employing multiple investigation measures, which has remarkably improved the efficiency and the quality of criminal investigation. For the purpose of further consolidating and developing the effect of the ICIM, based on my field researches[11], the following suggestions are proposed.

8 Lu Juan. Xinxihua tiaojianxia xiandai jingwu yunxing moshi xiangguan wenti tantao (Some issues concerning modern policing operation model under the circumstances of informationalization). Gongan Yanjiu (Policing Studies), 2013(11)

9 Carter, D. L., & Carter, J. G. (2009). Intelligence-led policing: Conceptual and functional considerations for public policy. Criminal Justice Policy Review, 20(3), 310-325.

10 This is from my interviews with some frontline police officers in October, 2014 when I was doing researches in a local police agency in Fujian Province, China.

11 From January 2014 to January 2015, I was working temporarily at a local police agency as a police work participant and observer. During that time I talked and discussed the ICIM with a number of police officers over formal and informal occasions.

Deepening the ideology of the ICIM

An ideology is a set of ideas and attitudes that strongly influence the way people behave[12]. An ideology is usually abstracted as a result of one's perception and rationalization of phenomena or objective things. Hence it is a more systematic and rational body of doctrine or belief that can guide "an individual, social movement, institution, class, or large group"[13]. To a great extent, we may say that ideology determines thought, thought determines result. Such is also the case in conducting criminal investigation activities. Different criminal investigation ideologies will produce different criminal investigation results and effects. To make better use of the ICIM in practice, criminal investigators must have a deeper and more open-minded understanding of the ideology of the ICIM.

This requires police officers should truly come to know that the ICIM is the realistic need for fighting crimes, and is the inevitable choice for establishing a modern information-led criminal investigation mechanism. In addition, police officers should also understand that the ICIM is in essence a set of criminal investigation thinking activities guided by the notion of "hecheng" (integration); such criminal investigation thinking activities should not only be applied to investigate those felonies that have broad social influence but also be implemented in handling all criminal cases. As has been stated above, the ICIM embraces not only the "physical" composition of different police agencies and officers but the "chemical" synthesis of all sorts of information and the process of analyses as well. The latter is more a thinking and analyzing process than a simple adding process or a process of assembling physical parts. The integration in a criminal investigation thinking process is the soul of all criminal investigation activities, and is also the supreme level of the ICIM.

If the ideology of the ICIM could be thoroughly implemented into practices, police officers, either as an individual or as a group of whole, would willingly employ multiple investigative measures to collect clues and evidence, instead of over-relying on certain limited methods. And in the process of analyzing the circumstances of a case, a criminal investigator will actively and consciously pool all sorts of information gathered, through discriminating the false from the true, then come to a judgment or conclusion based on solid evidence and close logic. This will be helpful in preventing police officers from being addicted to some technical measures and the information obtained through such measures that may lead to a one-sided, even wrong, deduction or conclusion. Only if we guide criminal investigation activities with scientific criminal investigation ideology can we achieve a qualitative leap in improving criminal investigation activities.

Establishing integrated criminal investigation agencies

Local police agencies should establish integrated criminal investigation agencies in accordance with local realities, which is the necessary condition for conducting the integrated criminal investigation work. Generally speaking, an integrated criminal investigation agency should include police officers from the agencies of criminal investigation, forensic science, technical investigation, internet monitor, crime intelligence, video surveillance, and commanding centre; whether other agencies being responsible for drug investigation, public order maintenance, traffic control, counter terrorism, patrol, etc., should join in an integrated investigation agency should be decided in accordance with the need of controlling local crimes and the need of investigating a specific crime.

As for the specific organization of an integrated criminal investigation agency, if conditions permitted, it is good to take the method of selecting candidates from related police agencies to establish an integrated office. Organized by this way, it will compose a relatively solid professionalized and specialized agency with assigned personnel, equipped with necessary office appliances, working together and sharing each other's information and professional knowledge. For those who do not meet such conditions, they should at least establish an integrated commanding and analysis agency, appointing some officers from different police agencies as liaison officers to ensure an integrated operation and commanding orders are implemented down to the earth in solving a specific criminal case.

Improving integrated investigation mechanism

A scientific mechanism is the important guarantee for ensuring various police agencies and officers to engage in criminal investigation coordinately, smoothly, and efficiently. It is the constitution of a mechanism that clarifies the division of responsibilities, limit of powers, the work flow process, etc., which in turn ensures the smooth and efficient operations of the integrated criminal investigation work. Among the many, the followings are those aspects should be solved with priority.

12 Longman dictionary of contemporary English 3rd edition. London: Longman House, 1995.
13 http://dictionary.reference.com/browse/ideology?s=t

First of all, it is necessary to establish a commanding system so as to ensure the efficient delivery of instructions and the coordinated actions and fast responses between different police agencies in conducting criminal investigations. Only if the united commanding is adhered to can the various police powers, special measures and specific resources be sufficiently integrated, which will ensure various police agencies and officers implement their functions efficiently, integrating intelligence analysis, instructions, investigations, and actions as a whole. On the contrary, if there lacks of a united commanding, various police agencies will act respectively that will be very hard to form an integrated force. According to my researches, the commanding power should be entitled to the criminal investigation agency, guiding the whole integrated criminal investigation work. This is because that criminal investigation agencies are the major forces in investigating most criminal cases, engaging in the whole process of criminal investigation such as accepting a crime report, filing a criminal case, making an investigation conclusion of a criminal case, and transferring a criminal case to a procuratorate agency for the prosecution. Other police agencies usually engage in criminal investigation periodically providing specific support for solving a criminal case. It is the responsibility and the role the criminal investigation agencies play in the process of investigating crimes that determines they are the most suitable commanders in the ICIM. Certainly, the commanding centre at each police bureau can also serve as the leading agency. No matter which agency implements the commanding power, it has both advantages and disadvantages. Local police agencies should decide the commanding power in accordance with the specific conditions within each local police organization.

Second, it is essential to regularize the work process so as to ensure an efficient linking up between various steps in an integrated criminal investigation, the smooth flow of all sorts of information, and the organic combination of different investigation measures. Whatever organization patters and work mechanism are to be employed, "coordinated combat between various police agencies" is the intrinsic notion of the ICIM. Currently there are three operation models. One is the combat entity model that is a special standing work agency being composed of officers mainly selected from agencies of commanding centre, criminal investigation, technical investigation, internet monitor, forensic science, etc., focusing on investigating serious crimes and providing help to investigate other crimes and related operations. Another is the semi-entity model that requires various police agencies appoint several officers as the members of the integrated criminal investigation operations, who stay in their own workplaces at peace time and assemble together when an operation is launched. This model fits only for investigating some greatly grave crimes. A third model is the non-entity model that establishes only an integrated criminal investigation coordination agency, appointing some liaison officers within various police agencies, being responsible for passing down instructions and coordinating actions in criminal investigation operations. The shared aim of all three models is to integrate police forces, complementing each other with respective advantages, so as to promptly and efficiently solve a criminal case.

Third, it is also important to stipulate efficient and reasonable rules to assess the performance of each police agency and officer in the integrated criminal investigation. Good performances should be awarded while those irresponsible conducts should be punished. Such rules should aim at strengthening cooperation rather than competition, encouraging to form a combined force through integrating various police agencies and their functions as a whole, instead of being seemingly married in the shape but actually divorced in the soul.

Strengthening the development of police information technology

The ICIM was born as a result of the development of information technology and its application in police work. To some extent, the process of an integrated criminal investigation is the process of intelligence and information collecting, analyzing, flowing, checking, and utilizing. An integrated criminal investigation process usually starts from information collection, through analysis, collision, comparison, and examination, finding out clues and evidence that may serve as actionable intelligence for locating and arresting criminal suspects and clearing up a criminal case. During this process, the information and intelligence flows between various police agencies, like a ribbon closely linking participant police agencies together.

Intelligence analysis needs a great amount of information related to crime and other categories of social information as backup databases. Among all sorts of information and intelligence, only a small portion is gathered through special secret measures. Most resources of information are collected in police routine work or from other government and social agencies. Therefore it is essential to strengthen the development of integrated information platforms so as to share the information resources mutually. Particularly, the information barriers between police agencies should be broken up, scattered police databases and application systems should be combined and/or connected with each other. At the same time, more intelligent analysis tools should also be improved so as to improve the speed and accuracy of intelligence analysis. In the era of information, the development of police information technology means the increase of police manpower, the rise of police capacity, and the growth of police efficiency.

Improving police officers' professional qualities

As has been demonstrated in the history of human society, human beings are the most active element in the production force, the quality of human beings is the most important element in all human activities[14]. Analogically, the quality of criminal investigators is the most important element in criminal investigation activities. Police officers from various police agencies are the practitioners of the ICIM. The professional qualities of these officers will greatly influence the effect of the ICIM. If we liken an integrated criminal investigation agency to a machine, then police officers act like the parts that compose the machine. Improving police officers' professional qualities means equipping the machine with improved parts that will surely improve the work of the ICIM.

CONCLUDING REMARKS

In this day and age, criminal offenders react quickly and cunningly to the development of modern science and technology. They conspire with each other in committing crimes, taking the advantages of technology to make their modus operandi progressively professional. Hence it demands professional knowledge and specialist skills to investigate crimes committed by some professional offenders. Correspondingly, the professional divisions within police organizations have become increasingly specialized, and the knowledge within each specific police field also becomes more complicated and profound. It is impossible for one police officer as an individual to master all professional knowledge and investigative skills needed for investigating crimes. As a result, the specialist divisions among police professions are the inevitable responses to the development of modern technology and the need for controlling crimes. Such divisions of work all aim at developing police technology to better solve crimes. The ICIM is a way of integrating those divided specialist police forces to act as one in the process of investigating crimes. The ICIM is probably the most desirable choice for managing and organizing police forces to conduct criminal investigations in the modern information era.

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THE DIFFERENTIATION BETWEEN POLICE ACTIVITIES AND EVIDENCE COLLECTION IN CRIMINAL PROCEEDING

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Abstract: One of the questions raised by the jurisprudence is related to the difference between the police activities, in terms of Article 286, paragraph 2 of the Criminal Procedure Code of the Republic of Serbia (CPC), and evidentiary activities. Actually, the original duties of the police should be distinguished from the, so-called, delegated duties when the public prosecutor may delegate the police to undertake certain evidentiary activities regulated by the Article 299, paragraph 4 of the CPC. Contrary to the evidentiary activities, the police activities, determined by Article 286, paragraph 2 of the CPC, are not regulated by specific procedural rules; and special procedural forms, specific for the evidence collection, do not apply to the authorized police officers' conduct. However, in certain situations the police may be in a position to undertake a specific action that cannot be delayed. In such situations, instead of acting in terms of Article 286, paragraph 2 of the CPC, the police moves onto evidence gathering that represents fundamentally different way of acting. Obtaining telephone communication data and using them as evidence draws particular attention in this area. The paper discusses the current evidence assessment issues in jurisprudence and their principles, with the emphasis on the special evidentiary activities that are being increasingly applied in domestic courts with general jurisdiction, with regard to the private and family life according to Article 8 of the European Convention.

Keywords: Evidentiary activities, illegal evidence, telephone communications, police, evidence assessment, human rights.

INTRODUCTION

For many years, it has been accepted in the criminal law literature, jurisprudence and the tradition of almost all legal systems that evidence, in order to be the subject of court evaluation, has to have two basic characteristics in general. Firstly, to refer to the facts that are subject of examination and secondly, to comply with legal requirements that refer to the evidence gathering and the evidence providing activities. Legal evidence may be divided into two broad areas: first, substantive facts that have been accepted by a court of law for the jury's consideration (that is, the actual legal evidence); and, second, procedural rules, usually termed the law of evidence, that constitute a set of exclusionary legal requirements for hurdles.[1]

Therefore, it is not sufficient that the introduced evidence is related to the particular case but it is necessary for the introduced evidence to be acceptable, in other words legal. The parties must guarantee that the evidence introduced to the criminal procedure meets both conditions i.e. that it is both relevant and legitimate. Legal evidence must not only be relevant to the issues in the case, as formulated by the arteries, but admissible as well. Relevance „is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case. Both admissibility and relevance must be established by the party introducing the evidence, and only then is the adjudication tribunal furnished with digestible matters of fact. [2]

The system of illegal evidence depends on the structure of criminal proceeding (adversarial or mixed), the relation among the main tendencies in the criminal procedure (the effectiveness of the prosecution and the protection of fundamental human rights and freedoms), the regime of the illegal evidence determination (*ex lege and ex iudicio*), the degree of court discretion in the assessment of the evidence legality.[3] The common practice in all legal systems is to exclude illegal evidence that may influence the court decision. For example, in criminal proceedings, in Germany, a rule called "evidence prohibition", or more specifically

1 J. Thayer, *A Preliminary Treatise On Evidence At The Common Law*, 1898, pp.190-191.
2 M.D. Forkosch, "The Nature of Legal Evidence", *California Law Review,* vol. 59, 1971, p.1378.
3 I. Bojanić, Z. Đurđević, „Dopuštenost upotrebe dokaza pribavljenih kršenjem temeljnih ljudskih prava", *Hrvatski ljetopis za kazneno pravo i praksu* , 15, number 2/2008, 973.

"prohibition of the evidence evaluation" (*Beweisverwertungsverbot*)[4], is applied. And the Anglo-American legal systems apply the rules on the exclusion of illegally obtained evidence *(exclusionary rule*)[5].The question of the legality or illegality of the evidence is very often associated with the police activities in the process of evidence gathering.[6] In addition, modern technology can easily lead to the violation of privacy in the process of evidence gathering. Almost all legal systems accept certain restrictions, created on the principle of proportionality between the rights to privacy of an individual, on the one hand and the society protection from criminal acts, on the other hand. These issues are discussed in both domestic and international jurisprudence.[7]

In general, we can say that evidence is considered illegal due to violation of procedural form, which also represents the violation of fundamental human rights, and such evidence is not to be used in criminal proceedings. Also, the evidence opposed to the legal system, to the procedural principles, to the specific law provision or to the social morality is considered invalid even though it would have been eligible for the examination of the facts which are subject to the action of proving. [8]

The principle of proportionality in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms[9], requires the introduction of "urgent social need" for certain measures which partly restrict protected human rights to the extent that the restriction is proportionate to the aim pursued.[10] At the same time, the protection of the rights of the injured and victims of crime in general represents a particular issue that has to be dealt with special attention and enjoys special protection.[11]

In some theoretical concepts of criminal proceedings the absence of the victim is evident. The absence of the victim is explained by the conflict that would arise between the interests of the victim on the one hand and the interests of the public prosecutor for the effective prosecution of crime in terms of the *crime control* model or the rights of the defense within the *due process* model, on the other hand.[12] Therefore, there is a theoretical embodiment of the criminal procedure concept of the *victim participation* model based on the fairness to the victim, the respect of the victim and the respect of the victim's dignity. The emergence of this concept is the result of the ideas of victimization, the ideas about the rights of victims. These ideas gradually influenced the alternation of the national criminal laws on both material and procedural level.[13]

We can say that the illegal evidence in criminal proceedings represents a complex and differentiated criminal-procedural concept and its content is in constant evolution and development. The system of illegal evidence is always, in each state, developed through jurisprudence. However, due to its interaction with the protection of fundamental human rights, the court deals with the issue of the illegal evidence but the court discretion is limited by more or less strict boundaries imposed by the legislator. The standards prohibiting the use of illegal evidence are regulated through international documents on human rights, or on the constitutional level in the internal legal systems.

4 Strafprozesordnung in der Fassung der Bekanntmachung vom 7. April 1987 (BGBl. I S. 1074, 1319), die zuletzt durch Artikel 2 Absatz 30 des Gesetzes vom 22. Dezember 2011 (BGBl. I S. 3044) geandert worden ist.

5 The principle based on federal Constitutional Law that evidence illegally seized by law enforcement officers in violation of a suspect's right to be free from unreasonable searches and seizures cannot be used against the suspect in a criminal prosecution. More about this: L. Glasser, „The American Exclusionary Rule Debate", *George Washington International Law Review*, vol. 35, 2003, 33.

6 The exclusionary rule established in Weeks was constitutionally required only in federal court until Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). In Mapp, the Court held that the exclusionary rule applied to state criminal proceedings through the Due Process Clause of the Fourteenth Amendment. Before the Mapp ruling, not all states excluded evidence obtained in violation of the Fourth Amendment. Since Mapp, a defendant's claim of unreasonable Search and Seizure has become a matter of course in most criminal prosecutions. See: Y. Kamisar, "In Defense of the Search and Seizure Exclusionary Rule", *Harvard Journal of Law and Public Policy*, vol. 26, 2003, 120.

7 The U.S. Supreme Court also invoked the exclusionary rule in Kyllo v. United States, 533 U.S. 27, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001). It set out a new rule for police when they want to use new types of Electronic Surveillance, including thermal imaging, to examine the inner workings of a home. The Court held that police must apply for a warrant from a court before using a device that can obtain details of a private home that would have been unknowable without physical intrusion. If police fail to secure a warrant, the search will be regarded as "presumptively unreasonable" and the evidence that the search produced will be inadmissible at trial under the exclusionary rule. More about this: J.H. Israel, Y.Kamisar, W.R. LaFave, *Criminal Procedure and the Constitution.* St. Paul, Minn.: West, 1993; J.A. Flanagan, „Restricting Electronic Monitoring in the Private Workplace", *Duke Law Journal* 43, 1994, 1270.

8 M. Grubač, *Krivično procesno pravo*, Beograd 2006, 70.

9 The European Convention for the Protection of Human Rights and Fundamental Freedoms has been introduced into our legal system by the Law on ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, with the subsequent amendments, *The Official Journal of SCG - International Agreements, 9/03, 5/05 and 7/05-correction and The Official Gazette of RS - International Agreements, 12/10* - hereinafter ECHR.

10 P. Leach, *Taking a case to the European Court of Human Rights 2nd Edition*, Belgrade 2007, 164.

11 G.P. Ilić, „O položaju oštećenog u krivičnom postupku", *Anali Pravnog fakulteta u Beogradu* 1/2012, 139.

12 D. E. Beloof, „The Third Model of Criminal Process: The Victim Participation Model", *Utah Law Review* 2/1999, 299.

13 R. Ottenhof, „Les Droits des Victimes en Droit Penal International", *International Criminal Law: Quo Vadis?*, Proceedings of the International Conference held in Siracusa, Italy, 28 November – 3 December 2002, on the Occasion of the 30th Anniversary of ISISC, Nouvelles etudes penales, No 19, Ramonville Saint-Agne 2004, 519, 520.

ASSESSMENT OF THE EVIDENCE LEGALITY IN DOMESTIC JURISPRUDENCE

Domestic jurisprudence deals with the issue of evidence assessment and its legality taking into account several aspects: international standards on the protection of human rights, the rights guaranteed by the Constitution, the legal provisions of the Code of Criminal Procedure and the approach of jurisprudence, the approach of the Constitutional Court and the Supreme Court of the Republic of Serbia in particular.

In contrast to most international human rights documents that do not have effective implementing mechanisms,[14] the provisions of the Convention not only are directly applicable at the national level, but they take precedence over the provisions of domestic law.[15] Consequently, human rights have completely become a part of positive law on the European level[16] and crucial contribution was made by the European Court of Human Rights.

The Criminal Procedure Code of the Republic of Serbia (CPC)[17] strictly prescribes that a judicial decision cannot be based on the illegal evidence and if that happens it is considered to be a reason for appeal. In addition, the CPC provides a preventive measure - duty of the court. If the court finds that the evidence is illegal it is the duty of the court to issue a decision on its exclusion from the evidence file. When the decision becomes final, the court will physically exclude disputed records and evidence from the evidence file, put them in a separate envelope, seal them and keep them on a special place so that they cannot be examined nor used in the further course of the proceeding (Art 358, CPC). This last measure is provided to prevent the court, even though its decision is not based on the illegal evidence, from attaching greater importance to certain evidence due to the awareness of the illegal evidence existence.[18]

In some analyzes, in domestic criminal proceedings, a distinction is made between the violation of procedure due to evidence gathering actions and the violation of the procedure due to presentation of evidence.[19] This first violation of the procedural provisions, according to both previous[20] and new CPC, is based on the fact that the "judgment is based on illegally obtained evidence". To consider evidence "illegal" it is necessary to determine that the evidence itself, directly or indirectly or due to the violation of the evidence gathering procedures, is opposed to the Constitution, the Criminal Procedure Code, law or generally accepted rules of the international law and ratified international treaties (Article 16, paragraph 1 of the CPC).

From the above mentioned, we can conclude that under domestic criminal law, the protection of fundamental human rights and the right to defense is provided on both international-legal and constitutional level. On the other hand, it is the obligation of the state to conduct the effective prosecution as the prevention of crimes and to sentence the perpetrators. So, in addition to the obligation to protect fundamental human rights there is an obligation of the state to effectively prosecute crimes in terms of international legal obligations. It is the positive obligation of the state under the European Convention and developed jurisdiction of the European Court of Human Rights. The selection of evidence that court decision could be based on depends on the balance of these two interests established by the decisions of domestic courts.

RELATIONSHIP BETWEEN THE PUBLIC PROSECUTOR AND THE POLICE IN PRE-TRIAL PROCEDURE

The new Code of Criminal Procedure has greatly changed the role of the public prosecutor in criminal proceedings, including the engagement of the prosecutor in managing the pre-trial proceedings.

The management of pre-trial proceedings in the domestic criminal procedural law has formally been under the jurisdiction of the public prosecutor so far. However, in practice, this law provided authority was not often supported by any real mechanisms that would enable its implementation. So, the public prosecu-

14 M. A. Jovanović, I. Krstić, „Ljudska prava u XXI veku: između krize i novog početka", *Anali Pravnog fakulteta u Beogradu* 4/2009, 6.
15 D. Popović, *Evropsko pravo ljudskih prava*, Edicija Međunarodni propisi i evropsko pravo, Službeni glasnik, Beograd 2012, 44.
16 F. Sudre, *La Convention europeenne des droits de l'homme*, Presses Universitaires de France, coll. „Que saisje?", Paris 1997³, 3, 7.
17 The Criminal Procedure Code of the Republic of Serbia, ("The Official Gazette of the Republic of Serbia", 72/11, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014). - further on CPC.
18 S. Brkić, „Upotreba nezakonitih dokaza u krivičnom postupku Srbije", *Zbornik radova Pravnog fakulteta u Novom Sadu*, 1/2011, 184.
19 D. Subotić, „Nedozvoljeni dokazi u krivičnom postupku", *Sudska praksa* 3-4/2007, 69.
20 The Criminal Procedure Code of the Republic of Serbia, („The Official Journal of SRJ" , бр. 70/01 and 68/02, "The Official Gazette of the Republic of Serbia", 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09, 72/09, 76/10.).

tor usually was an organ that, in the pre-trial procedure, was just, more or less, informed by the police about the undertaken activities with possible consultation on further treatment.[21]

The new concept of criminal proceedings in the domestic criminal procedural law insists on a fundamentally different role of the public prosecutor and consequently on a different relationship between the prosecutor and the police at this stage.

From the standpoint of the court, the collection of evidence performed by the police, with the increased activity of the public prosecutor, should contribute to the quality of evidence presented to the court, in terms of both their evidentiary value and undisputable legality.

It is not only the right but also the duty of the public prosecutor to actively participate in the pretrial proceedings and, if necessary, to facilitate the police authorities operation in the field and provide formal and material assumptions for the legality and quality of the collected evidence.

The role of the prosecutor is particularly important in terms of the special evidence collection activities[22], which is particularly delicate area on the aspect of human rights protection and evidence legality.

The *ratio legis* of criminal procedure special rules, in terms of clarification and substantiation of the most serious crimes, applying special evidentiary activities, actually provides creation of more favorable legislative and factual conditions for investigation and proving the various forms of criminal behavior. At the same time, it is of crucial importance to ensure their legitimacy and make clear distinction, in the jurisprudence, between them and other evidentiary actions as well as the other police activities which are not classified as evidentiary activities.

Recent developments in the collection of relevant evidence are characterized by an increased application of special evidentiary activities, which are usually of proactive character, meaning that they include the use of undercover, intrusive techniques. The common feature of special evidence collection actions is that they represent determined legally allowed activity of "secret" data collection, which can have evidentiary value[23].

Traditionally, undercover operations are mainly used in the opposition to the so- called "consensual crime" or "victimless crimes", such as the activities of illegal trade of narcotics and weapons on the first place, as well as the illegal trade of gold jewelry, nuclear material, cars, credit cards, prostitution, child pornography, etc.[24]

This is due to the increasing complexity of the organized crime, corruption and various forms of economic crime that are becoming a problem of international dimensions. Prevailing opinion is that: "The forms and phenomena of criminal, imposing the greatest threat to our society such as organized criminal networks, drug trafficking, money laundering and human trafficking, are international phenomena. Cooperation in terms of information sharing is particularly important but it is not sufficient".[25]

It is inevitable and realistic that special evidentiary activities and special investigative means, by their very nature, to a certain degree include invasion of privacy. It is very common, in the jurisprudence, that the defense notably insist on the exclusion of the evidence collected in special evidentiary actions pointing out that such evidence represents violation of rights of privacy and violation of Article 8 of the European Convention. In the course of criminal proceedings it is often indicated by the defense that legality of evidence collected in special evidentiary actions or in undercover police operations and by using special investigative means, is illegal and deprives the defendant of a fair trial, which is guaranteed by Article 6 ECHR.

In deciding whether such arguments are approved, the courts principally estimate: if there is an explicit law basis for the application of certain evidentiary activity, what is the appropriate legal framework for the authorization and supervision, as well as the existence of the necessity and proportionality in all aspects related to the implementation of some of the special evidentiary activities.

Consequently, the public prosecutor is expected to be the head of the preliminary investigation and the responsible for directing the work of the criminal police in detecting crime and its perpetrators.

The aim pursued is collaboration, on the highest possible level, between the police and the prosecutor in order to contribute to the evidence gathering activities in accordance with the formal procedural provisions related to evidentiary activities for a specific type of evidence.

In practice, the public prosecutor in the criminal procedure still undertakes certain procedural actions that should lead to verification of the responsibility of the perpetrator, for example: filing the indictment,

21 G.P. Ilić, M. Majić, S. Beljanski, A. Trešnjev, *Komentar Zakonika o krivičnom postupku*, JP Službeni glasnik, Beograd 2012, 607.
22 According to the CPC special collection of evidence actions are: secret communication surveillance, secret monitoring and recording, simulated jobs, search of the computer data, delivery control and undercover investigator.
23 M. Škulić, „Prikriveni islednik - zakonsko rešenje i neka sporna pitanja", *Bezbednost,* 3/05, 379.
24 D. Marinković, „Prikrivene operacije navođenja na krivično delo", *Nauka, bebedednost, policija*, 2-3/04, 158.
25 G. Koriath, „Verdeckteer Ermittler - Ein europaweit taugliches Instrument", *Heidelberg, Kriminalistik*, 8-9/96, 1996, 540.

proposing evidence, filing remedies, while the police undertake certain operational and tactical measures leading to the detection of the offender, for example: information work, collection of information, data processing, etc.

So, the prosecutor may request from the police to be particularly engaged in the examination of a particular case and to determine possible existence of certain offense in a particular situation. In addition, the public prosecutor may order special engagement in the detection of the perpetrators of certain criminal offenses, which are considered to be of particular importance at the certain point of time.

Thus, the public prosecutor is, by the provisions of the new Criminal Procedure Code, entitled with certain powers even in the field of the detection of offenses and offenders despite the fact that they, traditionally, were reserved for the police. It is believed that it is, in the new Code of Criminal Procedure in terms of the legal solutions, started from the belief that, by entrusting the public prosecutor with the leadership role in the preliminary proceedings, the compliance with formal legal provisions relating to the collection of evidence will be ensured to the maximum extent.

POLICE ACTIVITIES AND EVIDENTIARY ACTIVITIES IN CRIMINAL PROCEEDINGS

One of the questions raised by the case law is:

How to, in terms of Article 286, paragraph 2 of the CPC, make distinction between the police actions and the evidentiary activities, in some cases?

The above mentioned provision stipulates that police can: seek the necessary information from the public; search the vehicles, passengers and baggage; undertake the necessary measures to identify people and objects; in the presence of the responsible person, inspect certain facilities and premises of state bodies, companies, shops and other legal entities in order to obtain insight into their documentation; etc.

However, these police activities must be distinguished from the procedural evidentiary activities undertaken by the public prosecutor and, in some cases, the police.

In other words, the original duties of the police should be distinguished from the so-called delegated duties, when the public prosecutor, according to Article 299, paragraph 4 of the CPC, may delegate the police to perform certain evidentiary collection.

The main purpose of the police activities is: to detect the perpetrator, to detect and provide evidence and to collect information and data that may be useful in the proceedings.

Making distinction between these activities and the evidentiary activities is of particular importance in the new concept of criminal proceedings. In fact, unlike the police actions determined by Article 286, paragraph 2 of the CPC, the evidentiary activities represent the actions of the public prosecutor and the police in the process of evidence gathering.

These actions, as well as the ways of gathering and presenting evidence are specifically determined in Title VII of the Code of Criminal Procedure. If the evidentiary activities are conducted in accordance with these provisions, the collected evidence can be used in the further course of the criminal proceeding and the court decision can be based on them.

Thus, for example, information gathered in this way cannot be used in further course of the criminal proceeding.[26]

However, although the facts gathered in the operational activities of the police cannot be used as evidence in criminal proceedings, it is not an impediment to the police to perform evidence gathering activities against the defendant on the basis of operational facts. For example, evidence gathered by the search of a house or people, even when the search warrant is not issued, is not automatically illegal.[27] This police activity is supported by the provision of Article 158, paragraph 1 of the CPC, which stipulates that the public prosecutor or the authorized police officers can, exceptionally, enter the house and other premises and, without a warrant and witnesses, search the house and present individuals in order to: perform the immediate arrest of the offender, execute the decision on detention, etc.

So, in the process of performing some actions and activities according to Article 289 of the CPC, the police can get into a situation to perform certain actions that cannot be delayed. For example, the process of inspection of vehicles or individuals can lead to the deprivation of items or necessity to conduct site investigation.

26 G.P. Ilić, M. Majić, S. Beljanski, A. Trešnjev, op.cit., 611.
27 The decision of the Appellate Court in Belgrade Kž.1. 2538/11, 30. 11.2011, *Bulletin of the Higher Court in Belgrade, No. 82*, Intermex, Belgrade.

Also, if there is a risk of destruction of evidence, or of possible changes that may reduce the evidentiary value of individual items and clues, the police officer securing the scene will provide special protection on the spot where they were found.[28]

In addition to detection of perpetrator and potential detention, site investigation takes an important place. This kind of procedure presupposes the existence of the consequences, in terms of injury or endangerment of a good, which is a reason to suspect on a criminal offense.[29]

The Supreme Court of Cassation in its decision: Kzz.154/14 of March 05t 2014.[30], took the stand that: "Authorized officials of the police are authorized to deprive any person from its possessions even before the expiration of the status of the suspect, so the confirmation of the impediment of certain item from the defendant B.P, is properly regarded as evidence in the first instance judgment, and contrary to the allegations set forth in the request does not constitute illegal evidence".

In such situations the police, instead to perform activities according to Article 286, paragraph 2 of the CPC, performs evidence collection activities that are of fundamentally different character.

In some cases, there is a difficulty in distinguishing between these two types of activities. It is, for example, sometimes difficult to distinguish when the examination of vehicles, passengers and luggage stops and when it turns into search of premises and people. Instead of undertaking activities of the detection of the offense and the offender and evidence providing activities, the police in such cases undertake evidence collection activities, performed according to the provisions of the CPC, so that evidence can be used in the further course of the criminal proceeding.

GATHERING INFORMATION FROM CITIZENS AND EVIDENTIARY ACTIVITIES

Referring to the evidence assessment, it should be taken into account that, according to the Code of Criminal Procedure, not all evidentiary activities are the actions that the police can undertake independently.

Thus, for example, secret surveillance of communications, actually performed by the police authorities, is subject to a special procedure and to be carried out it must be supported by the request of the prosecutor and the court order (Article 166 of the CPC). Likewise, the police cannot independently perform questioning of a witness or an expert. The testimony of a witness or an expert, collected in the process of the operating activities, is not, according to the CPC, referred to as evidence which a judicial decision can be based on.

Hearing of a witness or an expert by the police is, without doubt, a specifically provided criminal-operative activity, which is an important source of facts in determining the circumstances relevant for the detection of offenses and offenders. In addition, notifications gathered in such a way are an important landmark for the public prosecutor in evidence gathering activities. However, from the standpoint of the CPC, the above-mentioned actions of the police, represent the activities of the collection of information from the citizens, in terms of Article 288 of the CPC, and do not represent the evidentiary action.

Records and notes taken by the police on collected information from the citizens must be excluded from the evidence file and cannot be used as evidence in criminal proceedings. The judge of the preliminary proceeding shall, ex officio or at the request of the parties and the defense attorney, after the investigation, issue a decision on the allocation of such records and notes (Article 237, paragraph 3 of the CPC).

This is the consequence of the absence of the implementation of the procedural guarantees on the performance of these activities, although they are applied to the activities such as: hearing of the defendant and witness examination by the public prosecutor or the court.

Unlike the evidentiary activities, police activities are not regulated by specific procedural rules and the special procedural forms, characteristic for evidentiary activities, do not apply to the conduct of authorized police officers.

Statements taken in these activities cannot be, not even directly, included into evidence file.

So, according to the jurisprudence: "The injured party cannot be interrogated as a witness in regard to the content of the statement given to the police authority, nor is it obliged to explain the difference between the statement content given to the police and the testimony given before the investigating judge, because the court decision cannot be based on such information".[31]

28 V. Vodinelić, *Kriminalistika,* Beograd 1984, 383.

29 M. Žarković, O. Lajić, Z. Ivanović, „Policijsko postupanje prilikom obezbeđenja mesta krivičnog događaja kao preduslov za uspešnu forenzičku identifikaciju", *NBP Žurnal za kriminalistiku i pravo, Kriminalističko-policijska akademija* 2010, 72.

30 Decision of the Supreme Court of Cassation, Kzz.154/14 on March 5th 2014, more on the link: http://www.vk.sud.rs/sr/%D0%BA%D0%B7%D0%B7-1542014, December 18th 2014.

31 The decision of the High Court in Nis, Kv. 642/10, 24.06.2010, *The Bulletin of the High Court in Nis, No. 32/2014,* Intermex, Belgrade.

If the court would have shown the injured parties or witnesses the official records of their statements, which cannot be treated as evidence at the trial, asking them to approve or disapprove their truthfulness, it would have meant not only that the court, indirectly, had accepted these notes as evidence, even though they had not been read at the trial, but also that the decision would have been based on them.[32]

According to that, the testimony on the content of the statements received by the plaintiffs before the criminal proceeding, of an authorized police officer as a witness cannot be used as evidence on which the court decision is based on.[33]

Also, on the testimony of a police officer, heard as a witness, on the circumstances of the interview with the suspect before the criminal proceedings, a court decision cannot be based.[34]However, the testimony of an authorized police officer may be evidence on which court decision is based, if the testimony is on his personal observation on the spot.[35]

To sum up, the authorized police officials may be questioned as witnesses on their own observations and on what they saw on the crime scene. For example, perception of the residence of the accused, layout of the rooms, weather conditions, the behavior of the defendant or the victim, visible injuries on any of the persons present and the like.

In judicial practice, there is a broader interpretation in terms of the above questions so the Court of Appeal in Belgrade in its judgment Kž.1.4324 / 11 dated 22.11.2011 of the trial court accepted the conclusion that:

"In proceedings for offenses of unauthorized production and distribution of narcotics and illegal possession of narcotics, a police officer may be heard as a witness in the following circumstances: 1) when the accused pointed to the person from whom he was obtaining narcotics, and 2) when the operating activities revealed the person from whom the defendant had purchased the drugs, since exemption from punishment can be applied" [36], according to Article 246, paragraph 5 of the Criminal Code,[37] on the ground of these circumstances.

So, in terms of the evidence evaluation it is important that the content of the statements given by the citizens, in the process of the information collecting, is not included in the criminal charges, because it does not represent evidence and after the investigation it is excluded from the evidence file. The only exception to this rule is a situation when a person has been questioned by the police as a suspect, according to Article 289 of the CPC. In this case, the content of the statement of the suspect may be included into criminal charges, a record of this statement is submitted to the public prosecutor in attachment, and is referred to as evidence.

TELEPHONE COMMUNICATION AS EVIDENCE IN CRIMINAL PROCEEDINGS

The existence of secret surveillance of communications possibilities, determined by the provisions of Article 166 to Article 173 of the CPC, has opened the question of the evidentiary value of the so called "telephone calls listing."

Could be the "listing" of telephone communications, obtained by the police in terms of the provisions of Article 286, paragraph 3 of the CPC, reffered to as an evidence on which the court decision may be based?

Before the recent amendments to the Criminal Procedure Code in May 2014, it was stipulated by Article 286, paragraph 3 of the CPC, that "under the instruction of the public prosecutor the police can obtain records of the telephone communication, base station usage and the location of places from which the communication was performed, in order to fulfill their duties in terms of Article 286, paragraph 1 of the CPC". After the amendments to the Code of Criminal Procedure in 2014, to the above mentioned legal provision: Article 286, paragraph 3 of the CPC, is added stating that "under the instruction of the judge for preliminary proceedings and at the request of the public prosecutor", the police can undertake actions to obtain "listing" of telephone communications.

32 The standpoint of the Appellate Court in Belgrade made in the decision Kž1. 7092/10, 01.02.2011.
33 The decision of the Appellate Court in Kragujevac Kž.1.5212/10, 26.11.2010, *The Bulletin of the Appellate Court in Kragujevac, No. 2/2011*, Intermex, Belgrade.
34 The decision of the Appellate Court in Nis Kž1.2233/10 , 21.06.2010, *The Bulletin of the Appellate Court in Nis, No. 1/2010*, Intermex, Belgrade.
35 The decision of the Supreme Court of Cassation, Kzz.80/2014, 27.02.2014, visit site: http://www.vk.sud.rs/sr/%D0%BA%D0%B7%D0%B7-802014, 18.12.2014.
36 The decision of the Appellate Court in Belgrade Kž.1. 4324/11, 22. 11.2011, *Bulletin of the Higher Court in Belgrade, No. 82*, Intermex, Belgrade.
37 The Criminal Code of the Republic of Serbia („The Official Gazette of the Republic of Serbia", 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014) – further on CC.

This issue attracts attention, because it represents the assessment of the evidence legality in a situation when the police undertakes certain actions, according to the police powers, primarily to detect the perpetrator and criminal acts so the question is: whether the data, obtained in such a way, can be used as evidence in criminal procedure, providing that there is a proposal of the public prosecutor and the order of the judge for preliminary proceedings for their acquisition?[38]

In other words, the question is:

1) when, the "telephone calls listing", obtain according to these provisions, can be used only for operational purposes by police, and

2) when it can be used as evidence in criminal proceedings?

Considering the above questions in terms of law application in practice, the following should be taken into account first: is it necessary to apply legal provisions, that refer to secret surveillance as an evidence collection action (Articles 166-170 of the CPC), when obtaining "telephone calls listing" and does such "telephone calls listing" only under these conditions have evidentiary value in the criminal proceeding?

In fact, for quite a long time, it was accepted, in the domestic case law, that there are no impediments in treating the "telephone calls listings," obtained by the police, as evidence in criminal proceedings. In the previous concept of the criminal proceedings, special attention has not been paid on the distinction between the actions undertaken by the police, only in terms of operating activities, and the actions undertaken by the police as the authorized organ for the collection of evidence.[39] Thereby, it was taken into account that obtaining "telephone calls listing" does not include the content of the conversation, as it is included in the case of secret surveillance of communications, but only includes obtaining information from the telephone operators on phone numbers that in a given period were communicating, as well as on the base stations locations, which were included in particular cases.

For example, in one of the earlier decisions, the Supreme Court of Serbia Kž.1. No.1274 / 2004 dated 23.09.2004, stated "that "listing" of made and received phone calls, recorded by the authorized postal service, is a recording of telephone numbers from which the calls were made and received but not wiretapping and audio recording. So, basing the judgment on obtained "listing" as evidence, the essential violation of a provision of the criminal proceedings has not been done." It is also accepted that: "Along with other evidence, the Court is entitled with the right to refer to the "listing" of telephone communication between the defendants as evidence."[40]

However, recent domestic jurisprudence has a completely different point of view on the above mentioned issues.

The Supreme Court of Cassation, at the meeting held in March 2014, providing answers to questions of basic and higher courts of the Republic of Serbia, held that:

"In terms of the provision of Article 286, paragraph 3 of the CPC, it is clear that, after issuance of the order of the public prosecutor, the police is authorized to obtain the record of telephone communications, the base stations usage and location of the sites from which the communication was performed; but this authority is applicable only in terms of the performance of regular police duties relating to the detection of the offender, preventing the perpetrator from hiding or fleeing, detection and collection of evidence and items that may have evidentiary value, etc.

However, in terms of the above mentioned telephone communications as evidence in criminal proceedings, it follows that not only the content of the communication, but also its formal features (tracking and identifying the source, destination, start, duration, completion, types of communication, identification of base stations and identification of persons with whom communication is performed) are subject to the secrecy of the means of communication so, it is leading to the conclusion that, a court decision - court order, that determines a time limit for these actions, is needed in order to obtain these data".

Therefore, according to the above mentioned standpoint, in order to use the obtained data, such as: the "listing" of made and received phone calls, base stations, monitoring and identification of sources, destinations, start, duration, completion, types of communication, identification of the base station and the identification of persons the communication was performed with, as evidence in criminal proceedings - the court order is required. It is believed that the court order is necessary, because the police actions raise the question of invasion of privacy not only of the defendants, but also of other persons who have been in communication with them.

38 Please note that, according to the Article 289, paragraph 1 of the CPC: "In the process, the decisions are made in the form of judgments, decisions and orders", while Article 286, paragraph 3 of the CPC stipulates to act upon the "instruction"" of the preliminary proceedings judge, so from the standpoint of jurisprudence it is unclear what kind of decision the preliminary proceedings judge would eventually bring if the Article 286, paragraph 3 of the CPC is applied, what should be the form and the content of the instruction.

39 G.P. Ilić, M. Majić, S. Beljanski, A. Trešnjev, op.cit., 615.

40 The decision of The Supreme Court of Serbia, Kž.1. 310/05 dated 11.05.2006, *Bulletin of the jurisprudence of the District Court in Novi Sad*, No.11/2007, Intermex, Belgrade.

In this sense, the notion of the term "means of communication" is particularly important.

The domestic courts accepted that the term "means of communication" includes not only the direct content of communication (ie not only the audio recorded conversations of the specific content), but also data about: 1. who and with whom the communication was made or tried so, 2. at what time the communication was performed or tried, 3. the duration of the conversation 4. the frequency of communication in terms of correspondence, conversations or messages directed over a specified period of time and 5 from which location it was performed.

Significant influence on such domestic jurisprudence point of view has had a decision of the Constitutional Court of the Republic of Serbia 1UZ 1245/2010 dated 13.06.2013[41], which determined that the provision of Article 128, paragraph 5 of the Law on Electronic Communications injures, "*in fine*" the inviolability of the right on communication confidentiality between the users of electronic communications.

Specifically, the provision of Article 128, paragraph 5 of the Law on Electronic Communications imposes an obligation on the operator to make the retained data (despite the fact that they do not reveal the content of communications), available on request of the competent authorities (eg, police), without a prior court decision. The Constitutional Court pointed out that the decision of the court should be a mean of control and the significant obstacle to every possible misuse of powers by the authorities. The Constitutional Court, by the above mentioned provision, pointed out that "the right to privacy of correspondence includes not only the written word, but also the spoken word, so, it applies to electronically sent letters and messages and telephone calls".

The above mentioned standpoints imply that the retained data are protected by the right of the inviolability of the means of communication confidentiality, and accordingly, the violation of the guaranteed rights of the retained data usage can be achieved only according to the provision specified in Article 41, paragraph 2 of the Constitution, ie. these data can be used only for a limited time and on the basis of the court decision, only if they are crucial for the conduct of criminal proceedings or for the security protection of the Republic of Serbia, determined by law.

The European Court of Human Rights, in its judgments "*Klass and others v. Germany*" and "*Malone v. United Kingdom*" [42] has also indicated that "the interception of telephone communications, performed by a public authority, is violation of the right on correspondence confidentiality. In fact, the laws allowing public authorities to secretly intercept communications, may, by their very existence, be treated as a "threat" and referred to as an infringement of right on correspondence confidentiality as well as of the right to privacy". [43]

In the decision "*Copland v. United Kingdom*", "listing" is considered an integral part of telephone communication.[44] The above mentioned standpoints represent the continuation of the tradition of the European Court for Human Rights established standards , which insist on that one of the fundamental principles of a democratic society is the principle of the rule of law. Any measure that to some extent violates the privacy of persons can be justified only if it is conducted in accordance with the law and if it is necessary to determine material facts. It is not only important that the delivery of certain information is determined by law in advance, therefore it is predictable, but also that it is in every particular case justified and proportionate to the seriousness of the offense.[45]

So, although obtaining "listing" of made and received calls must be distinguished from the secret surveillance of communication content. We cannot ignore the fact that according to the international standards, the information about with whom a certain person communicates and about the communication intervals is information included into the right of private life protection, according to Article 8, paragraph 1 of the European Convention, and the restrictions of this right, under conditions that are not provided by the Convention, can be treated as violation of this right.

In this regard, if the public prosecutor intends to use the "listing" of telephone calls as an evidence, then for its acquisition, he must provide a court order, which will in terms of form and content meet the requirements of Article167 paragraph 2 of the CPC.

41 The Republic of Serbia, the Constitutional Court, Jurisprudence base of the Constitutional Court, visit site: http://www.ustavni.sud.rs/page/jurisprudence/102/sr-Latn-CS/, 28.12.2014.

42 *Malone v. United Kingdom,* No. 8691/79, August 2nd, 1984, visit site: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57533#{"itemid":["001-57533"]},28.12.2014.

43 Under the influence of this decision, The United Kingdom passed the law on communication interception - *Interception of Communications Act*, in: P. Leach, op.cit., 292.

44 *Copland v. United Kingdom*, No. 62617/00, April 3rd, 2007, visit site: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-79996#{"itemid":["001-79996"]}, 28.12.2014.

45 *Sunday Times v. United Kingdom*, No. 6537/74, April 4th, 1979, visit site: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57584#{"itemid":["001-57584"]}, 28.12.2014.

CONCLUSION

Summarizing the previous discussion, it could be said that the perception of illegality or legality of certain evidence is in close connection with the manner of their acquisition. In addition, in the process of evidence collection, the special attention is paid on human rights and strict application of legal provisions regulating the presentation of evidence.

The issue of evidence assessment in the domestic jurisprudence is a "living" area and develops towards harmonization of international standards on human rights, constitutional principles and applicable legal provisions.

The previous concept of the criminal proceedings did not pay special attention on distinction between the actions taken by the police in purely operational terms and the actions when the police act as an authority in the process of evidence gathering. Usually the largest amount of evidence was collected at the stage of the proceedings characterized by the absence of a large number of formal requirements, which ensure lawfulness of their collection. According to the latest legislation a duty to immediately inform the public prosecutor, if in the pre-trial investigation certain evidentiary actions were undertaken, is imposed on the police.

The main difference between the evidentiary activities and the police activities is reflected in the fact that police activities are not regulated by specific procedural rules and the special procedural forms, characteristic for the evidentiary activities, do not apply to the conduct of authorized officers. For this reason, information collected by the police does not have evidentiary value in the further course of the criminal proceeding.

In terms of evidentiary value of the "listing" of recorded telephone communications, the accepted standpoint in the recent national jurisprudence is that a court order on its acquisition is needed; otherwise, it does not have evidentiary value in criminal proceedings.

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THE DELICTUAL AND CRIMINAL ASPECTS BEHIND ARRANGED CHILD MARRIAGES WITH ROMA AND EGYPTIANS

Slavko Milic[1]

Abstract: All civilized nations of the world seek to ensure the legal protection of human rights. This aspiration includes also the rights of the children, because their position is particularly sensitive in the family and in society. Roma and Egyptians belong to rare communities of the Balkans and Europe, where the patriarchal forms were preserved both in the society as well as in the family. Low level of social development, as compared to other ethnic groups in the Balkans, is reflected not only at the level of material and spiritual culture, but also in the social organization of living. Manifestations of this patriarchal way of life is reflected through preservation of arranged child marriages, which in the modern world is considered to be the deprivation of basic children's rights. Arranged marriages consist usually of a negative customary denial or restriction of all fundamental human rights, mostly regarding girls, who do not have the ability or the right to freedom of choice in relation to education, healthy living, employment and often life without violence and discrimination. The state is obliged to protect children's rights, due to obligation by international and national regulations. Regarding this, Montenegro is a signatory to many international legal acts.

However, such important documents are not regulated to the appropriate extent in our legislation or lack their full implementation. Montenegrin Constitution states that "ratified international contracts and generally accepted international legislation shall have primacy over national legislation, and are directly applicable when they regulate the relations differently from the national legislation", however, there is a present trend of lack of interest of the relevant entities to terminate this negative phenomenon through the application of legal acts and current criminal methods.

Keywords: arranged marriages, human rights, Roma and Egyptians.

INTRODUCTORY REMARKS

Every year the hundreds of girls and boys from the population of Roma and Egyptians in the Western Balkans and Europe are the subject of arranged child marriages. Although slavery was abolished in the mid 19th century, it has been restored in the 21st century despite the strict prohibitions and in front of the eyes of all state bodies, thus fostering the impression in these communities that arranged marriage is stronger than law. A significant number of professionals and experts in the fields of law, social services, child protection and the police departments, despite the established legal mechanisms cannot stop the negative trend buying and selling young girls. A number of professionals clearly indicate that this is a custom which has been threatening basic human rights for decades, denying safe childhood to young girls. Professional and scientific public unfortunately does not deal with this phenomenon and rarely recognizes it. Children's early and forced marriages have the characteristics of the most brutal violations of children's rights. This occurrence origin from the earliest period of human society, which has been maintained until today, only changing it forms of manifestation. Today this phenomenon in Montenegro, Serbia, Bosnia and Herzegovina and more widely is present mostly among the members of Roma population. Due to the alarming scale and unpredictability of consequences it can cause, child marriages within this community must be prevented as soon as possible. With this ethnic group, the additional difficulties are other numerous phenomena that prevent the possibility of free choice, economic and social independence, thus increasing the social exclusion of the child. The increase of arranged child marriages is influenced by the high level of poverty, patriarchy, poor education, illiteracy, the impact of powerful social changes and the lack of interest by competent authorities, and these are just some of the reasons why in the traditional sense this phenomenon continues to exist until today. The number of child marriages is difficult to be accurately statistically measured, monitored and controled and it is even more difficult to be prevented, because it usually occurs within closed ethnic communities, whose members are living at the margins.

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RELEVANT INTERNATIONAL LEGAL REGULATIONS FOR FIGHTING TEENAGE CHILD MARRIAGES

Arranged child marriages in the international law are covered by a number of community regulations. This area has been treated through various forms of human rights violations; however, our determination comprises some international norms which show strong commitment to combat these negative social phenomena such as: the UN Convention on the Rights of the Child (1959) as a unique international document to protect rights and interests of children. One of the rights guaranteed by the Convention is the child's right to protection from all forms of violence, abuse, neglect and negligent treatment. Discrimination against Women[2] of 1981 in Article 2 calls the states upon taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, obliges states to take all appropriate measures in all areas, including legislation, to ensure the full development and advancement of women, and the use and implementation of human rights and fundamental freedoms, establishing that child marriages have no legal effect, and that the state is obliged to take all appropriate measures, including legislation, to determine the minimum age for marriage. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962 oblige son taking all necessary measures to abolish these customs, laws and practices by ensuring, complete freedom of choosing a spouse, eliminating completely child marriages and betrothal of young girls before puberty, establishing appropriate penalties where necessary and civil or other register in which all marriages will be recorded.

The Optional Protocol with the Convention on the Rights of the Child about the sale of children, child prostitution and child pornography (2000)[3] prohibits the sale of children, child prostitution and child pornography, arguing that the UN Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that could be dangerous or could interfere with the child's education, which could be harmful to the child's health, physical, mental, spiritual, moral or social development. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe - CETS No 201, 2007)[4] and the Council of Europe Convention on Action against Human Trafficking (2005)[5] are important international regulations that prohibit and condemn all forms of exploitation of children as well as the Beijing Platform for Action (1995)[6], following four World Conferences of the United Nations on Women. These international instruments include the eradication of harmful customs and traditions, violence against girls, consent to marriage, age of marriage registration of marriage and the freedom to choose a spouse. Recommendations of the CEDAW Committee for Montenegro (item no. 39) - Forced and early marriages - this body recommends that the State strengthens its efforts to raise awareness among the Roma and Egyptian population on the prohibition of forced and child marriages, as well as the harmful effects of such marriages on mental and reproductive health of girls and to effectively examine, prosecute and punish legally all cases of forced and early marriages.

Council of Europe Convention on preventing and combating violence against women and domestic violence[7], known as the Istanbul Convention (2011) is the first legally binding international instrument in Europe in the area of violence against women and domestic violence and far-reaching international agreement that deals with this form of human rights. In the article no.32 this document obliges member states to take the necessary legal or other measures, in order to ensure that forced marriages will be considered annul and will be divorced without undue financial or administrative burden on a victim.

NATIONAL REGULATION FOR PREVENTING TEENAGE CHILD MARRIAGES

The Constitution of Montenegro defines it as a democratic, social and ecological state, focused on the rule of law. Everyone has the right to equal protection of rights and freedoms; everyone is equal under the law, regardless of any special and personal characteristics. The special protection of children and families

2 The Convention on the Elimination of All Forms of Discrimination against Women http://www.un.org/womenwatch/daw/cedaw seen on 01.02.2015.
3 Optional Protocol with Convention on the rights of the child, sales of the children, children prostitution and pornography http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx Seen on 01.02.2015.
4 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20Bosnian.pdf
5 The Council of Europe Convention on Action against Human Trafficking: http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm seen on 01.02.2015.
6 Beijing Platform for Action :http://www.e-jednakost.org.rs/kurs/kurs/download/pekinska_ deklaracija.pdfseeon on 03.02.2015.
7 Official Gazette of Montenegro – International Agreements, bo. 4/2013.

is also guaranteed. Family Law (2007)[8] acknowledged the special rights of the child in family relations as a legacy of modern law. Having a child is the subject of rights and self-conscious personality, the rights of the child are not derived from the rights of parents and do not depend on them. Marriage cannot be concluded by a person who is under 18 years of age, except in exceptional cases and under the conditions prescribed by a special law. Person under 16 years of age as a minor is not allowed to marry. Family Law prescribes the manner in which the child who has reached the age of 10 years may freely and directly express their opinion in all proceedings that decide on their rights and express their opinions.

Thus, the marriage of minors may not be entered into against their will. With the will expressed by the parties, the marriage can be started only in cases prescribed by law. The right of the protection of children exposed to the arranged marriages with or without their will is realized, as a rule, in the court proceedings. The aspect of will cannot be counted until the children turn 16 years of age. When immediate protection is needed for minors and persons whose labour capacity, as well as the possibility of self-representation and self-protection is limited, the Family Law, exceptionally, allows taking specific measures of family protection from abuse and neglect or actions that are not taken in the best interests of the child - in administrative proceedings. Administrative proceeding in which decisions are made on the determination of some of the measures of family law protection that are suitable to ensure temporary protection from child abuse and neglect or domestic violence, the center for social care should always run ex officio. Initiative on the initiation of ex officio proceedings may be submitted by medical, developmental and educational institutions, institutions of social protection, judicial and other state authorities, associations and citizens. Moreover, it is the right and duty of all listed entities to inform the Centre for Social Care of the reasons for the Protection of the Rights of the Child (Family Law, Art. 354).

We have highlighted one of the possible solutions, which is a measure of preventive protection of the child in the family, as well as sanctions for cases of severe disruption of children's rights related to its development in the family. The guardianship authority has general supervision over the exercise of parental rights and in this sense it is legally required the right and the obligation to take all legal measures of protection when the rights and the best interests of the child are threatened. (Family Law, Article 82). The decisions about monitoring the execution determines the control program and defines the person who will monitor the development of the child, the parents control procedures, submit periodic reports to the guardianship authority and take other measures in the best interest of the child. Family Law also predicts other strict measures in civil court proceedings, such as deprivation of parental rights (Family Law Art. 87) and the restriction of parental rights (Family Law Art. 85) and similar. Everyone should report criminal offenses that are subject to prosecution ex officio, and the Criminal Code defines in which cases, failure to report a criminal offense constitutes a criminal offense. The Criminal Code (2003) prescribes the protection of man and other basic social values. Criminal offenses against marriage and family are contained in Chapter 19. of the Criminal Code represent additional protection of the family and marriage, considering that primary care is provided by family law. As far as family relationships, Criminal law is limited mainly to the protection of minors as family members, as well as those family members that are subjects of serious violations of their fundamental rights as is the case with some of the offenses that apply in cases where actions are product endangering children's rights when contracting marriages or extra-marital relationships among members of Roma and Egyptian population. Criminal offenses against minors include those crimes where victims (passive subjects) may be minors. These are the crimes for which the underage is an element-constituent of the offense, for which the underage is a qualifying circumstance, as well as acts of a "general character" whose victim may be a minor, in connection with this we primarily focus the actions contained in the Criminal Code. The rights of the parent towards the children, generally called parental rights, serve the purpose only if they are properly fulfilled. The right itself means an active relationship, and if this is not the case then a relationship is subject to certain social intervention. In this sense, social intervention in the area of application of the Criminal Code when it comes to this area, is directed towards the application of the following criminal offenses: Extramarital community with a minor (Art. 216 of the Criminal Code of Montenegro) - this crime according to our legislation is done by an adult who lives in an extramarital relationship with a minor. This essentially does not consider criminal intervention in relation to the protection of common law marriage, but in relation to a minor, who is believed to have not reached still a sufficient degree of mental and physical integrity. Also, this offense shall be punished by a parent, adoptive parent or guardian who enables a minor to cohabit with another person or leads a minor towards this. A severe form of this offense is if the offense was committed by force, threat or for gain. Disclaimer for this crime, which is often qualified in practice, with the knowledge about "arranged child marriage" is that if the marriage is already constituted, then the prosecution will not take place, and if it is undertaken, it shall be terminated. The most common problem is the situations that are very common among Roma and Egyptian population, when the male and female minors start non-marital cohabitation upon agreements of their parents and the existence of the criminal offence cannot be determined. Neglect and abuse of a minor - (Art. 219 of Criminal Code of Montenegro) - this action constitutes a gross neglect of duty of care

8 Family law : http://www.scribd.com/doc/146668582/Porodi%C4%8Dni-Zakon-Crne-Gore. Seen on 28.12.2014.

and education. In paragraph 2 incriminating action is forcing a minor to action that does not match his age, or some "other" action that is harmful to a minor. An arranged marriage of a minor is, regardless of the consent of the minor, harmful to them; therefore this criminal act provides protection to minors, because they did not achieve a sufficient degree of physical and mental maturity. Cohabitation before the age of 16 for them is harmful and is an obstacle to their development, education and more. However, this offense when the act is relating to arranged, forced or child marriage, often does not apply. Domestic and family violence - (Art. 220 of Criminal Code of Montenegro) is followed by most media due to the specificity of family relationships. This crime is the most common, since the application of the gross domestic violence damages the integrity of members of the family or family community. The criminal offense - Human Trafficking - (Article 444 of Criminal Code of Montenegro)which is very often in professional circles cited as an alternative for combating child early and forced marriages, prescribes the act of execution in a way: someone who by force or threat, by deceiving or maintaining in deception, by the abuse of authority, trust, dependency relationship, difficult circumstances of another human being, retaining identity documents or giving or receiving of payments or benefits in order to achieve the consent of a person who has the control over another person: recruits, transports, transfers, sells, buys, mediates in the process of sale, hides or holds another person for the purpose of forced labor, servitude, commission of crimes, prostitution or begging, pornographic use, taking away a body part for transplantation or for use in armed conflicts, shall be punished by imprisonment of one to ten years if the offense was committed against a minor he offender shall be punished by imprisonment in duration from one to ten years, if the criminal offence is committed against the minor, the perpetrator will be punished with the fine prescribed for that offense, even if there was no force used, threat or any other of the listed modes of execution by imprisonment for the minimum of three years. Also, a severe form is prescribed if serious body injury or a death happens to a person, in which case more stringent prison sentence will be applicable. Since there were problems reported the implementation in relation to this phenomenon, the Law on Amendments to the Criminal Code of Montenegro (2013)[9], defined changes that favor the prevention of children's early and forced marriages, by adding the word "slavery" and "slavery-like relationship", as well as the word "constitution of unlawful marriage". However, the author believes that despite these circumstances not much will change in the attitude towards this phenomenon, unless the term is extended with the additional description of the acts of execution or the words "agreed or forced" marriage. The Law on Protection from Domestic Violence (2010)[10] is a legal document which defines violations in the field of combating all forms of physical, psychological, economic, sexual violence against women and domestic violence.

CLARIFICATION OF CHILDREN MARRIAGES AND THEIR CRIMINAL ASPECTS

Practical criminal activity excludes the possibility of partial approach in the prevention, detection and clarification of the crimes and identification of their perpetrators, due to orientation of contemporary criminology towards the practice. With criminal offenses which in their nature contain elements of their own or of specific criminal offenses "delictapropria" which according to the legal description can only be carried out by a person who has a particularly special characteristic, where personal characteristics, relationship or circumstance on the perpetrator side (parent or guardian) represent the element of the crime, it is difficult taking into account other factors that accompany the phenomenon of contractual and child marriages (the poverty rate, the homogeneity of the community, customary law) to shed light on crimes with elements of coercion against a child. For these offenses very often there is an element of apparent willingness of the child who is aged between 12 to 16 years, or elements of coercion, which is in both cases against the law. The girls from the Roma population are very often signed out from the regular school system out against their will in the sixth or seventh grade, after which their "virginity is being preserved" as a basic measure of value in this culture. After that, the girls begin preparing for marriage and normally they are sold between EUR 200 to EUR 15,000, depending on the social status of their family, financial situation of the family and the like. The consequence of the execution of these crimes is usually the permanent loss of basic human rights to education, adequate health care, life without violence and discrimination, lack of employment and a high level of mortality in children's pregnancy.

These crimes are very difficult to prove because they happen in a closed community and within the family, and a large number of Roma children live as "legally invisible persons" without documentation of their existence. There are two basic forms of social reaction to this type of crime: prevention and repression, which certainly constitute the main components of criminal policy. However, although the prevention of crime is socially more useful and purposeful, yet positions on social repression towards this phenomenon are defended, but they are not taken, thereby missing the prevention as well. The regulation of preventive

9 The Law on Amendments to the Criminal Code of Montenegro: http://www.sluzbenilist.me/ PravniAkt Detalji.– seen 01.02.2015 .
10 The Law on Protection from Domestic Violence (Official Gazette No. 64/10 CG)

activities is very difficult to separately show, while that is not the case with the repression which is legally fully standardized.[11]Organized and premeditated crime prevention cannot be accessed if previously the categories of persons who commit offenses are not analyzed, because this is a necessary precondition for the prevention of this type of crime. Therefore, it should be noted that it is very important when clarifying these forms to clearly know the ways of execution, customs, culture, traditions and way of functioning of the Roma community and the role of certain "customary bodies", one of which can be considered to be an "Old council", which is very often operated by the management of male community leaders. Moreover, proving is difficult because of multiple discrimination of women in these communities, which is not the subject of this work.

For these crimes good international crime cooperation is often needed, because children often get illegally transferred to foreign countries where their price is literally significantly higher, especially if they preserved virginity. Especially significant crime policies and activities in the clarification of the crimes of this type are reflected in the ways of learning about the crimes. State authorities often learn about these from the community members of Roma and Egyptian population, directly through the operational work, it can be reported by other citizens, or by other entities, usually the Centers for Social Work and sometimes through the media. The most significant measure during the first action is as much as possible closer cooperation among public prosecutors, police and Centers for Social Care with civil society organizations from these populations. The civil society organizations are important as often due to language barriers, the lack of knowledge about the customs and life in the community, they can help in the collection of evidence and the process of proving, by creating a relevant link between the processes which directly or indirectly influenced the occurrence of the crime. Their role may be of particular importance in the collection of evidence relevant to criminology, where the representatives of NGOs will help the victim or persons who have been in contact with the criminal offense, but can also help in collecting clues, the grounds for suspicion of closer and distant relationship between that person and the possible perpetrators, accomplices or helpers just by knowing the method of execution. Otherwise, offenses in the field of marriage and family are in the actions involving interpersonal relationships of individuals where it is not desirable to have state intervention, especially in the application of penalties and criminal law.[12] However, a very important segment represents criminal investigation which must represent a set of planned and undertaken measures and actions taken by the police services in pre-trial proceedings in order to raise the initial findings to a larger degree of probability that will enable the adoption of the criminal procedure decisions. Also, it is important to collect and certain knowledge that centers for social work may obtain, because these institutions sometimes are in possession of information that can help clarify the crime. Our criminal legislation provides for secret surveillance measures that can be applied in relation to the perpetrators of these crimes. These activities must consist primarily in cooperation with the Roma community in providing telephone numbers of perpetrators in order to respect the legal procedures. The criminal procedural actions may consist in the application of the provisions of the Code of Criminal Procedure, primarily in the search of the apartment and other premises in the temporary seizure of items and items that can be used as evidence in criminal proceedings (mobile phones, SIM cards, computers and other computers that contain installed means of communication, etc.). Frequent communication of police officers with members of the community through the formation area for fieldwork police officers near a village inhabited by members of the minority as well as the acceptance of these populations in the police service, is often examples of how some other disadvantaged and marginalized groups abroad, and reacts states. Police officers can through educational work in partnership with other state authorities to strengthen the capacity of community members and encourage them to report crimes. Also, along with preventive measures, police officers must take measures in relation to the Roma parents who neglect their children or do not include them in the regular school system, exposing them to beggary and vagabondism. Special protective role in strengthening parenting and building cooperation with the Roma community may be an important basis for the prevention of these phenomena.

CONCLUSION

Arranged children's marriages are most drastic form of violation of children's rights, which deny the young girls their rights to freedom of choice, the right to a life free of discrimination, the right to work, education and health care. So far, the few studies of this phenomenon have confirmed that arranged children marriages in the Roma and Egyptian communities are still a major problem, especially in case of girls, because they leads to social exclusion, leaving schools and staying without the possibility of knowing and developing skills and creating their own future, and forcing them to surrender to life chosen for them by their parents, mostly male family members, who have control and power. Female family members are not sufficiently empowered to fight for their rights and the rights of their daughters. This negative aspect of tra-

11 Vladimir Krivokapić, Kriminalistička taktika, VSUP, Beograd, 2003 pages 5-12.
12 Zoran Stojanović, Komenar krivičnog zakonika OSCE, Podgorica 2010 str. 468-469.

dition is a problem that is not yet addressed by state authorities in a manner that would stop the violation of women's and children's rights, and authorities due to existence of legislative interference and bad application of the regulations have not been able to stop modern day slavery of members of this community. Crime approaches difficult to undertake due to the homogeneity of the communities in which Roma live mostly, being isolated and pushed to live on the margins of modern society.

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THE ELEMENTS OF SPACE-TIME IN PROVING DRUG-RELATED CRIMES

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Abstract: By space-time clue presenting crime fact is one of the basic proof methods. In the drug-related crime investigation, applying of the elements of space-time has its own characteristics. To prove most of drug-related crimes, the spatial clue is the main clue, and the chronological clue is secondary. The elements of space-time play a significant role in the drug-related crime investigation, especially in illegal possessing drugs investigation, the proof of "knowledge", controlled delivery, and the investigation of the drug-related crimes in cyberspace. So it is important to collect and preserve the elements of space-time in all kinds of evidence in drug-related crime investigation. These elements of space-time can form crime map (relationship schema) of the specific crime and chronological proof clue. By them, the scattered fragments of fact can be joined, and then the investigators can prove the crimes more effectively.

Keywords: time, space, proof, fact, drug-related crimes investigation.

INTRODUCTION

The drug-related crimes investigation faces more and more difficulties, because of the high invisibility of the criminal behaviours and the highly organized criminals. For punishing the drug crimes effectively, many special investigation measures and proving methods are applied in this field. But we cannot ignore the traditional proving methods. As one of basic proof ways, the presenting crime fact by space-time clue is important in most of drug-related crimes fact-finding.

Drug crimes are closely related to the elements of space-time. For some examples, the crime of transporting drugs implies the drugs' displacement in space, and the crime of smuggling drugs means the drugs' displacement to cross the national border (frontier). Similarly, the crime of drug trafficking is the drugs' movement between the seller and the buyer. And the illegal possessing drugs means the drugs lie in somebody's controllable scope. Sometimes, proving drug crimes needs both the space elements and the time elements. In the way of drug crime which is called "separation of the criminal and the drugs", the information of spatial position about drugs is not enough. The investigator needs indicate the suspect by the suspect's fingerprints on the external packing of drugs and the elements of time which can contact the drugs and the suspect retrospectively.

As stated, the frequency of occurrence and the function of proof between the elements of space and time are different in drug-related crimes. Different from the other kinds of crimes, in drug-related crimes investigation, the spatial clue is the main clue, and the chronological clue is secondary.

Different kinds of drug crimes investigation and proof depend on the elements of space-time in varying degree. The elements of space-time play a significant role in the illegal possessing drugs investigation, the proof of "knowledge", controlled delivery, and the investigation of the drug-related crimes in cyberspace.

APPLYING THE SPATIAL ELEMENTS IN THE ILLEGAL POSSESSING DRUGS INVESTIGATION

In American criminal law, the possession is one of the important crime forms; in England and Wales criminal law, the possession is the main part in the state of affairs.[2] In the theories of Chinese criminal law, most scholars regard the possession as the third criminal form together with conduct and omission.[3] Possession means that somebody actually controls something. Proving the crime of illegal possessing drugs depends on the evidence about the spatial relation between the suspect and the drugs.

1 liuminglm@sohu.com
2 CHU Huai-zhi, *American Criminal Law*, 3rd ed., Beijing: Peking University Press, 2005, p. 38.
3 GAO Ming-xuan &MA Ke-chang, *Criminal Law*, 5th ed., Beijing: Peking University Press and Higher Education Press, 2011, p. 70.

So the investigators should pay attention to the following spatial information in evidence, and prove the actual control relation with these spatial records.

– The drugs placement record in the transcripts of crime scene investigation or examination. If the places where drugs were stored belonged to the suspect, the actual control relation will easily be proved.

– The spatial information of the drugs in photograph and audio-visual recording.

– The distance between the drugs and the suspect in the witness statement.

– The distance between the drugs and the suspect in the confession and defence of the suspect.

The value of the crime of illegal possession of drugs also includes that alleviate the accuser's proof burden by means of proving the state of possession. The crimes of smuggling drugs, drugs trafficking, transporting drugs and producing drugs need higher proof request for the subjective condition. When the evidence cannot reach the standard for proving the subjective condition of those crimes, the accuser will impose the actor criminal responsibility with the crime of illegal possessing drugs. Therefore, the investigators in all kinds of drug-related crimes must notice the spatial elements in the evidence for fighting crimes effectively.

APPLYING THE SPATIAL ELEMENTS IN THE PROOF OF "KNOWLEDGE"

The criminal in drug-related crimes often lie that he or she did not know that the seized substances were drugs. In judicial proof, presumption and inference can alleviate the burden of proof of "knowledge" on the accusers. In the presumptions about the "knowledge" in drug crimes, the positional relationship between the drugs and the suspect is always the core of basic fact for presumptions. For example, concealing drugs in body or next to the skin is one of the basic facts on "knowledge" presumptions. This presumption directly utilizes the spatial element. That is the positional relationship between the drugs and the suspect's body. For the proof of "knowledge", the investigators need pay more attentions to the spatial elements and the spatial information in evidence discussed above.

And the investigators can also infer or prove the "knowledge" by the evidence mapping or crime mapping of the specific case. Here is a simple case for reference. At midnight, the suspect Hu wanted to come in the waiting room in the Luoping railway station. At the entrance, there was a routine check of every person and baggage. The duty police officer checked Hu's identification card firstly. While he was going to check Hu's haversack, a blue-white plastic box dropped out from the haversack. The police wanted to open the box for checking over. Hu lied to the police that he would open it by himself, then, took back the box, and quickly ran away with the plastic box. The police exclaimed, 'Stop!' Then he chased Hu. But Hu ran more quickly. When Hu ran outside of the station office, he cast the plastic box. The police did not catch up with Hu at last. On the way back, along the Hu's escape route, the police found the discarded box and scattering articles. These articles were 12 pages of red Methamphetamine tablets, and the net weight was 222 g. And police found Hu's brown leather jacket and white shirt on the roadside 760 meters away from station. About 4 o'clock, police captured topless Hu in the roadside greenbelt nearby the gas station which was not far from the railway station.[4] The investigators could draw a behaviour trace and evidence map in this case. The map could be marked by coordinates, distances, time-points and so on. Here is the simplest trace map (See Figure 1). In this map, Point A and point B are important to prove the drug crime. Point C and point D are subsidiary. In the point A, the place storing the drugs is revealed, and then, the suspect escaped from the checkpoint. From A to B, we can see the drugs' movement. In the point B, the drugs were discarded by the suspect, and were found by the police. The investigators can presume the "knowledge" on the basis of the location of the drugs and the evasive behaviour from A to B.

4 SHI Yong-ping &LI Bo-yang, *Empirical Analysis of Physical Evidence Collection in Drug Cases*, 88 Journal of Yunnan Police Officer Academy 24 (2011).

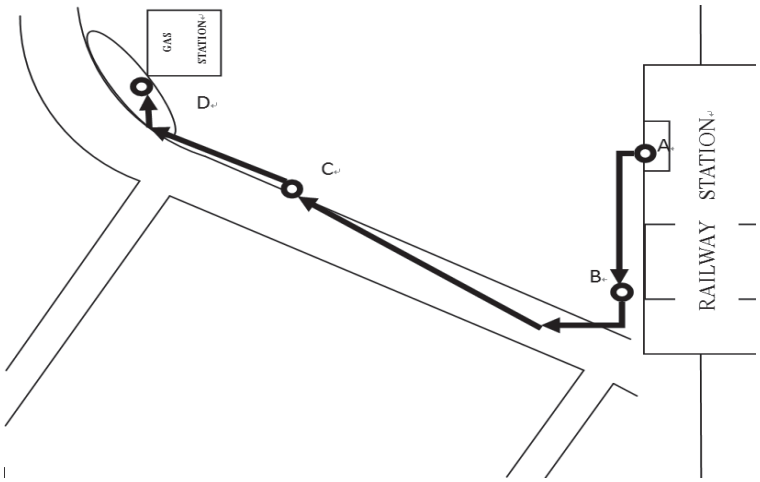

Figure 1 *The simple map for the behaviour trace and evidence positions*

APPLYING THE ELEMENTS OF SPACE-TIME IN CONTROLLED DELIVERY

Controlled delivery is one of active investigation measures. It is more applied in drug crime investigations. Controlled delivery is usually divided into four stages: intelligence gathering, decision-making, implementing and capturing the suspects and evidence.[5] All the four stages need keep eyes on the elements of space-time.

– In the stage of intelligence gathering, the investigators should analyze the integrated elements of space-time to estimate the pattern of activity both of the prime culprit and the drugs.

– In the stage of decision-making, the decision-maker needs consider effectively the control of the drugs and the suspects for preventing escape. The key method to control effectively is to monitor the drugs or the suspects closely. In the process of monitoring, the record of space and time is essential. In the record, the time line should be continuous and the spatial line should be clear.

– In the stage of implementing, the performers should pay close attention to the key point-in-time, location information, and their coherent traces in the kinds of investigation measures, especially the monitoring of the movements and the communication.

– In the stage of capturing, the main operations are arresting the suspects and collecting the evidence. So there would be many pieces of physical evidence, documentary evidence, transcripts of crime scene investigation, and transcripts of examination and so on. The records of positions and time in these pieces of evidence need be written conscientiously and carefully and preserved properly. These records would be the end points of the movement of traces of the drugs crimes.

APPLYING THE ELEMENTS OF SPACE-TIME IN THE DRUG-RELATED CRIMES IN CYBERSPACE

With the promotion of the network technique and the mobile communication technology, the concept of cyberspace extended gradually from internet space by computers to cyber space by mobile communication. At the same time, because of the lack of the network supervision, the drug-related crimes from the computer network into the mobile network. In China, the drug-related crimes in cyberspace are constantly appearing.[6] In the investigation of drug-related crimes in cyberspace, the detectives should collect and utilize the elements of space-time both the real space and the cyber space, especially the elements in the junctures between the two spaces.

5 ZHENG Xue-rong, et al., *The Implementation of the Drugs Controlled Delivery in the Framework of the Criminal Procedure Law*, 152 Journal of Hubei University of Police 158(2014).
6 LI Wen-jun, et al., *Drug-related Crimes in the Cyberspace*, 161 Journal of People's Public Security University of China (Social Sciences Edition) 119(2013).

There are not the real spatial elements in the cyberspace. Therefore, collecting and jointing the elements of time is the main aspect of the drug crimes investigation in the cyberspace. At the same time, the investigators need confirm the fictitious spatial elements with the evidence coming from network detection technology. In the real space, the core elements of space and time include the important nodes of the drug crimes, such as the time and position of the drugs transaction, the time and position of the illicit money circulation, the positional relationship between the drugs and the suspects. The elements of space and time in the junctures of the real space and the cyber space include the locations of the network terminals and the time of the suspects on line, the starting point and the end point of the drugs movement and so on. The crime pattern in the cyberspace is more complex than the drug-related crimes only in the real space. By the trace and evidence map (or called 'relationship schema') and the chronological clue, proving the facts of the drug-related crimes in cyberspace will be clearer and in more comprehensive way.

Take the first nationally drug-related crime by the video dating site on the Internet in China as an example. In 2011, '8.31' mega drug use and drug trafficking offenses by Internet was solved. The case came from the finding of the police in Lanzhou and Xi'an. Some drug addicts set up chat-rooms by the video dating site. The house-owners of the chat-rooms set access permissions. Entrants need to be introduced by the acquaintance, and need perform drug use behaviour by means of Video. A large number of addicts performed drug use, communicated the feeling of drug use, and sold drugs online in the chat-rooms. There were different sizes of chat-rooms from ten people to hundreds of people. The drug-related crimes by this way were rampant. From April to July of 2011, the anti-drug police, the cyber police, the criminal investigation police and the other kinds of police took remote forensics nationwide. In this campaign, there were a lot of pieces of evidence on line collected and preserved. Through preliminary investigation, more than 130 drug-related suspects were locked, and the scope covered 29 provinces and 58 big-middle-sized cities, such as Fujian, Hubei, Shandong, etc. At 17 o'clock on the 25th August, the police task force focused on obtaining the electronic data on the involved website. At 0 o'clock on the 2nd September, the police in 29 provinces took action to arrest and search together. In this case, there were 12,125 suspects arrested, 496 crimes producing drugs and drug trafficking detected, and 308.3 kg drugs seized.[7]

One of the major characteristics of the drug-related crimes in cyberspace is the concentrated cyberspace and scattered real space for producing drugs, illicit money circulation, dispatching and receiving drugs and so on. For marshalling the fact fragments, finding the blind spots of the investigation, and jointing the scattered evidence to prove complex crime, the investigators should apply the elements of space-time both cyberspace and real space comprehensively. Drawing the specific crime map (relationship schema) based on the elements of space-time about the complex case is one of good choices. According to the case of '8.31', we can draw an example map to tidy the basic information, especial the elements of space-time (See Figure 2).

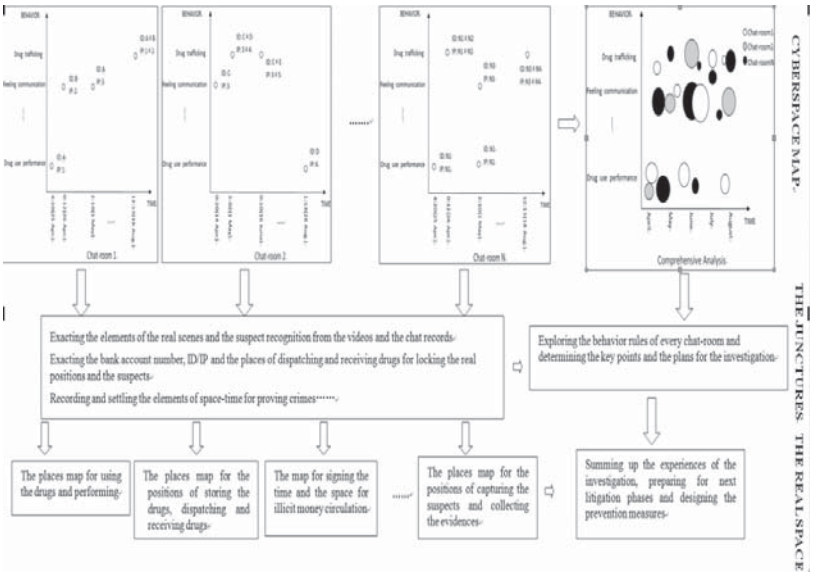

Figure 2 *An example of the simple map of the drug-related crimes in the cyberspace*

7 LIU Jian-qiang &LI Heng, *The Traits, Investigation Plans and Prevention Measures of the Drug Using and Drug Trafficking by Network: Take the '8.31' Mega Drug Use and Drug Trafficking Offenses as Example*, 103 Journal of Yunnan Police Officer Academy 20 (2014).

This map is composed of three portions, including the cyberspace map, the junctures and the real space. In the portion of the cyberspace map, we take every involved chat-room as independent space and depict the drug-related behaviours in the chat-rooms by the elements of time and virtual positions such as IP address. According to these, we can get the information of the specific suspect (e.g., C in chat-room 2), the information of the chat-rooms and the information of the whole rule or trend of the drug-related crimes in chat-rooms (the area of the circle in the map of comprehensive analysis means the frequency of some behaviours in the chat-room). The information, especially the elements of time and position in the cyberspace, is the basic for the next investigation measures. Extracting and confirming the junctures information is the key of the investigation. Through the analysis of the junctures information we can connect the real space and the cyberspace and bring convenience for locking the suspects and the position of crimes and for proving the crimes in court. After the first two portions, we can execute the capture campaign intensively. In the capture, the investigators should pay close attention to collecting the evidence which echoed with the evidence in the cyberspace. In the end, we can sum up the experiences and design the prevention measures based on the integral information in the crime map. The map above is only a simple sketch map for the case. The investigators can develop the map in details and in contents. At the same time, the arrows are unidirectional in this map. The investigator can regard the arrows as bidirectional even multidirectional arrows. That means the factors and information can be mutual impact and utilization.

CONCLUSION

Firstly, the elements of space-time are not the evidence themselves. The elements of space-time are the information of position relationship and time revealed by the evidence. They can exist in all kinds of evidence, such as the records of time and position in the transcripts of crime scene investigation, the information of time and position in the videos or electronic data, the records of time and location on the documentary evidence and so on. Therefore, to make more elements of space-time be applied in the process of proving crimes, the investigators need pay high attention to collecting and preserving evidence earnestly and meticulously.

Secondly, the proof function of the isolated elements of space-time is limited, and we need connect all kinds of the elements of space-time. Organization of the elements of position and time according to the chronological clue or the displacement clue is the traditional and effective way. Furthermore, we can draw the trace and evidence map (relationship schema) about the specific crime to concentrate all kinds of information especially the information about time and position.

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UNDERCOVER INVESTIGATOR IN THE FUNCTION OF PROVING ORGANIZED CRIME ACTS

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Abstract: Organized criminal acts, as acts of distinct social risk, are usually "resistant" to some common rules of investigative activities; therefore the question of choosing appropriate methods of opposition is imposed. Very specific ways of response to organized crime are covert operations which, as a measure of cover investigation, are nowadays an essential form of legal and criminalistics actions. In that sense, engagement of undercover investigator is the most effective method. However, with the sensitivity of its engagement in mind, especially reflected in its conspiratorial involvement within criminal environment, the question of evidence gathering in such circumstances comes to the fore. Because of that the author indicates the specificity of undercover investigator operations in criminal organization, but from the aspect of influencing on evidence gathering. In particular criminal aspects of evidence gathering and their "use value" are considered, as well as influence of certain limiting factors on their acquisition. The author also indicates that "verification" of the gathered evidence may be subject to various polemics due to the involvement of undercover investigator in criminal proceedings.

Keywords: organized crime, undercover agent, evidence, special investigative methods.

INTRODUCTION

Long ago it became clear that modern forms of crime require new, different ways of confronting them. Practice shows that traditional forms are not able to provide evidence that would lead to "breaking" a criminal organization. That is to some extent justified, given the fact that crime today, especially its organized forms, follows contemporary social trends and tends to hide itself within legal activities. Costly, lengthy and - according to many opinions - controversial methods of covert action impose themselves as a solution to this problem. Covert operations are methods of conspiratorial action directed towards specific "targets", without their knowledge, temporarily suspending their certain rights due to "things of greater importance". These "things" are the commitment of the state to deal with those who commit criminal activities thus risking violation of certain human rights guaranteed by highest legal acts. The necessity to choose between the obligation to protect general social values, on one hand, and temporary suspension of certain human rights on the other hand, imposes an obligation to use undercover operations very selectively, only in cases where other methods cannot achieve the goal, and that is detection, prevention and proving the most serious criminal acts. A particularly sophisticated method of covert action is to hire an undercover investigator.

However, bearing in mind that this investigator is engaged secretly, and that he acts in a manner which does not reveal his real purpose, and that he acts under such circumstances that the persons, towards who his activity is directed are unaware of his official purpose, as well as different "challenges" which he is exposed to (for example, frequent "checks" performed by criminal organizations, constant pressure of legal action in "illegal circumstances"), there is the question of how to collect evidence and the question of their validity in criminal proceedings that would follow later. Therefore, the engagement of an undercover investigator must be precisely planned and professionally "guided" in order to collect evidence and justify his involvement in the best possible way.

SPECIFIC FEATURES OF AN UNDERCOVER INVESTIGATOR'S OPERATION IN CRIMINAL ENVIRONMENT (ORGANIZATION)

Covert action brings special "rules of the game", by which only a relatively small number of people is able to "play". This primarily includes special psychological characteristics of people who engage in such operations. This "detail" is especially important in hiring an undercover investigator, bearing in mind the sensitivity of his engagement, particularly in operational terms. Therefore, the success of his operations lies

in adequate planning at all stages of engagement, regardless of whether he is engaged in a one-time mission or for a much longer period, at the same time respecting its conspiratorial character.

The activity of an undercover investigator belongs to the intelligence sphere. As such, it is a secret activity and can be directed towards detecting criminal acts, but also at data gathering that will help to clarify and prove criminal acts that have already been discovered. Also, the activity of the undercover investigator can prevent future offenses that are being planned by the members of criminal organizations. The secret nature of his activity generates certain specific features that in different ways affect his whole engagement in the criminal environment, thus affecting the achievement of the final goal of a covert operation.

Long stay in the criminal environment. The undercover investigator is mainly engaged in long-term undercover operations. It takes time for him to build such a position that will enable him to gather evidence[1]. During his stay in a criminal organization, there is always a degree of risk to his physical integrity - despite all the security measures taken - that causes him to suffer from constant pressure of not making a mistake in his work. Also, an undercover investigator may, due to a long stay in a criminal environment, become a part of a criminal organization himself, and act in his own interest and not in the interest of the prosecuting authorities (e.g. obstruction of evidence, "planting" of information and data, etc.).

Living a "double life". The undercover investigator who is in a criminal environment acts "under the legend". This means that he leads the "double life" without the knowledge of his family, colleagues and friends. This causes a great psychological pressure[2] to the investigator, since he is convinced that he is doing something righteous that the persons closest to him must not know about, neither can it be publicly recognized when successfully completed. Life "under the legend" causes him to constantly fear for his personal safety, the safety of his family in case he is discovered, and the fear of possibly making an error during his work. Great psychological pressure opens up the possibility of a mental disorder, with all the consequences that such disorder may have on his engagement.

Handling large amounts of financial resources. During his engagement, the undercover investigator is often in contact with large amounts of money, regardless of whether it comes from the funds of "operational costs" or from the funds that he receives as a "member" of a criminal organization. When it comes to the luxurious lifestyle of the leaders of criminal organizations, who are the "target" group of an undercover investigator's operation, the investigator himself must adapt to it. However, the "high life" may negatively affect both his performance and the goal of the covert operation.

The key role of "technical means" in all phases of the engagement. Hiring an undercover investigator is closely connected to the use of technical means. At the very beginning of preparations for a covert operation, a so-called technical preparation is required, and it includes the training of an undercover investigator on how to use a variety of means, primarily, those for audio and video recording, which would later facilitate the documentation of criminal activities for him. However, if the collection of evidence relates exclusively to the use of technical means, there is always the possibility that the technical equipment may "fail" at a certain moment. This can result in failing to document certain criminal activities (or to collect evidence), or in exposing the undercover investigator to risky situations (loss of connection with the support team, revealing of his identity, etc.).

COLLECTING EVIDENCE AND THEIR "USE" VALUE

Police affairs can generally be divided into two areas. *The first* area includes the so-called *operational police duties*, which are directed towards the detection and prevention of crimes, offenses and misdemeanours. *The second* area includes activities relating to the direct application of regulations, by adoption of administrative acts and application of administrative measures, execution of administrative actions and administrative supervision. With regard to the undercover agent's role, his performance can only be included in this first category of police affairs. This means that his work belongs to operational policing.[3]

Operational work in crime science, is a thorough system of legally defined, confidential or secret operations of the prosecuting authorities, conducted in a complex way outside the criminal and administrative processes, and also by other official actions of these organs, that are meant for the suppression of crimes and their prevention, primarily by obtaining, verifying and using information on events, communities or individuals that have become the subject of legally motivated interest, with the aim of detecting and directing evidence.[4]

1 On the basis of German practice regarding the use of an undercover investigator, it has been calculated that, on average, it takes 22 months for an undercover investigator to create a "position" in a criminal organization which allows him to collect evidence of its criminal activities.

2 Due to this, psychological testing, seminars and advisory discussions are introduced in the US every year.

3 Modly, D.: Certain legal and operational aspects of police investigations, Croatian annual for criminal law and practice, Zagreb, 1997, number 2, p. 518-539.

4 Kostic, S.: *Fundamentals of criminal operations,* Belgrade, 1987, p. 27.

According to some authors, operational policing can be divided into four groups[5]:

– *First,* includes all those activities that are public and which are not based on fraudulent conduct. This group includes the so-called *conventional police methods*. In these cases, based on information and reports on crimes committed, given by crime victims or witnesses of crimes, the police undertake certain actions as a response to the crime committed;

– *Second one* also includes public activities, but only those which are based on certain types of fraud, trick, etc. For example, the use of a variety of deceptions in obtaining a confession from the suspect;

– *Third group* represents activities that are not public, but do not include any fraudulent conduct, such as, for example, various forms of police surveillance that do not involve active policing and

– *Fourth*, the activities of the police which are not public, but are based on fraudulent conduct, trick or deception.

Engagement of an undercover investigator in a criminal organization should result in procedurally valid evidence. He is primarily expected to communicate the information he has acquired during his engagement as a witness in criminal proceedings. However, when it comes to his appearing before court as a witness, there is great resistance. On the other hand, some believe that the "value" of an undercover investigator is not in his appearing as a witness before court in criminal proceedings and testifying about what he learned during his engagement in a criminal organization, but just in directing the activities of law enforcement authorities that lead to criminal proceedings. It may also be possible that his operations within the criminal organization result in some other elements, which could be used, in an appropriate way, for purposes of operational police work. This means that certain information he obtains during his engagement in a criminal organization may be crucial in taking appropriate operational measures against certain persons, which could then result in starting an investigation against persons because of who, in this particular case, the undercover agent was not engaged in the first place. In this sense, we deal with a complex institute and its activities, which not only serve the purpose of collecting evidence, but also provide adequate guidance for further forensic work and criminal prosecution of perpetrators.

With regard to the importance of information that the undercover investigator collects, there are two types of them: *first*, the information that is direct evidence in criminal proceedings; *second*, the information that does not represent proof, but is part of information obtained by the undercover investigator during his operation, that can get probative value if, as a witness, the undercover investigator presents it in the court. The first group of information includes written documents that are collected by the undercover investigator, the means used in a crime, audio and video materials, photographs, recordings of telephone conversations and similar. The second group of information consists of information that the undercover investigator collects during his covert action while having contacts with members of criminal organizations, which are not material in their nature (not contained in documents, videos, etc.), but rather represent a direct experience of the undercover investigator, or what he personally saw or heard during his engagement in a criminal organization. The information that relates to what he personally noticed during his engagement is a part of his statement that he gives as a direct witness, since he has direct knowledge about it, or he is directly linked with the source of information. The information relating to what the undercover investigator heard from members of the criminal organization (indirectly) is part of his testimony that he gives as the so-called *"hearsay witness"*[6].

Another possibility is that the official records and reports of the undercover investigator are used in the court as evidence. There are opposing opinions on this possibility. It is believed that the official record that the undercover investigator makes is actually the report on the action taken, so there is no obstacle in using it in the procedure as legally valid evidence. However, the prevailing opinion is that the official record of the undercover investigator cannot be used as evidence on which a judgment would be based. The investigator's notes (their cognitive value precisely) are important for the criminal investigation of the case. However, their use as legally valid evidence would exclude the application of the principles of immediacy and contradiction. Even the formal acceptance of the use of an undercover investigator represents a significant concession made towards the effectiveness of actions. Further acceptance of his official records as legally valid evidence would mean a complete prevalence of this tendency over the tendency directed towards the protection of citizens in criminal proceedings. The fact that the investigator's official record is not the evidence that a court judgment could be based on does not necessarily mean that it cannot be used for a criminal investigation of a case.

There is also the issue of handling of evidence collected by the undercover investigator using the techniques that, according to their content, belong to a different kind of covert investigation measures. If the

5 Dusko Modly: Certain factors that hinder or prevent the fight against organized crime, Criminal topics, Sarajevo, 2004, number 3-4, p. 51-73.

6 The testimony of the "hearsay witnesses" may represent a compromise during the testimony of the undercover investigator, because his appearance in court is not required. It can provide partial or complete safety of the identity of the undercover investigator. This kind of testimony is very frequent in Canada.

evidence is collected based on a court order and other legally prescribed conditions are met, there is no reason for the evidence gathered in this way not to be accept as legally valid, and therefore, a court judgment can be based on it.

Another important issue when it comes to evidence collected by the undercover investigator during his engagement in a criminal organization is the so-called *accidental discovery*. The term "accidental discovery" can refer to two cases. *First*, when it was obtained by applying some of the measures of covert investigation, and does not apply to the person against whom the measure was prescribed but indicates that the offense was committed by another person. There are different opinions on the case when the accidental discovery relates to another person as a possible perpetrator, not to the person against whom the measure was prescribed. There are opinions according to which such evidence can be used if a criminal offense legally justifies the measure of covert investigation that was applied. The question is, whether in this case such an accidental discovery, has only cognitive value when the competent authority is deciding on the request for an investigation, or is it valid evidence on which a court judgment can be based? According to one view, "accidental discoveries" can be used as legally valid evidence on which a court judgment can be based, even if they indicate that the offense was committed by another person, not the person that the measures were applied to. The condition is that the criminal offense falls within the legal catalogue of offenses against which covert investigations measures can be taken. According to the second opinion, the "accidental discovery" is not legally valid evidence, since it is the result of police action which cannot be regarded as a formal activity - at least in relation to the person against whom it is directed, since there is no previous court order regarding the application of this measure to that person.[7]

The second case relates to the evidence collected in connection with another criminal offense of the person to whom the measure is applied and not related to the criminal offense for which the measure was determined in the first place. In legal theory, when talking about the latter case, there is no confusion about the use of the so-called *accidental discoveries*, as legally valid evidence on which court judgments can be based. The only condition that must be met is that this other offense, which is the subject of accidental discovery, belongs to a particular legal catalogue of offenses and that measures of covert investigations can be applied to it.

"LIMITATIONS" OF AN UNDERCOVER INVESTIGATOR WHILE COLLECTING EVIDENCE

The evidence, as the desired "final product" of every police activity directed to those who commit criminal activity, is of a different structure. It depends on the types of criminal acts and is not the same in, say, criminal acts that fall under general criminality and criminal acts that belong to organized crime. Some offenses leave no material traces, and the offense itself is commissioned following a verbal agreement. In such cases, there is no victim who will report an offense, and if there are witnesses of criminal activity, they are generally not interested in cooperation with state authorities or the police. Therefore, it is often not possible to collect enough evidence.

Operation of an undercover investigator in practice leads to the problem of solving relations between two diametrically opposing requirements:

– *First*, that the undercover investigator remains undetected but at the same time effective in situations when the criminal environment expects from him proofs of loyalty, most commonly by committing criminal acts; and

– *Second*, which bans his going into the "punishable zone", i.e. the prohibition of committing criminal acts.

Thus, in covert operations, he tries to "reconcile" the two requirements by using carefully planned and guided activities, and to document the criminal activities of the organization. However, the "freedom" of collecting evidence is "limited" by a number of factors, which further complicates the sensitivity of the situation that his engagement implies. Factors of "limitations" can be regarded through legal and criminal and operational terms.

Legal ones represent the kind of "limitations" which are imposed upon an undercover agent based on the legally established limits of his work. These are, above all, "limitations" regarding the prohibition of committing criminal acts and banning "agent provocateur" behaviour.

Undercover investigator as perpetrator of criminal act. Operation of an undercover investigator in a criminal organization or carrying out his covert (hidden) operation involves taking specific measures and actions which are either on the verge of legally permissible, or belong to the "punishable zone". Sometimes,

7 Haris Halilovic: *Undercover investigator, legal-criminal approach,* Faculty of crime science, Sarajevo, 2005, p.66 – 67.

these actions represent the most severe violations of the law, and every attempt to keep "hands clean" while being inside the organization raises doubts and suspicion. On the other hand, criminal organization divides the criminal tasks among its members and allows no exceptions in their execution. By performing frequent "checks" of new members, a proof of their loyalty is sought, which often requires committing the most serious crimes. However, by "entering" a criminal organization, the undercover investigator becomes its member, where by refusing he risks to be revealed and to get his physical integrity endangered. If he commits criminal acts as a member of a criminal organization, he puts himself in the situation of being criminally responsible for these acts.

On the other hand, the role of the state in preventing criminal acts is not to cause them to happen. In other words, the state, together with its normative acts, must not give legitimacy to committing criminal offenses, even if they are intended to suppress other, more severe and socially dangerous ones. Therefore, one of the most sensitive issues related to the use of undercover investigator, are the limitations of his activity in the context of possible going into the "punishable zone".

Continental (European) law does not allow an undercover investigator to enter the "punishable zone" during his operation – it prohibits the conduct which would contain the elements of the offense. The limit to which an undercover agent may carry out his activities in a criminal organization is precisely determined and based on his passivity and non-active participation in the activities of the organization. Any potential exclusion of criminal responsibility of an undercover investigator must be explicitly stated in the law, or it must be subsumed under some of the general grounds for excluding the existence of a criminal offense or criminal responsibility.

Common Law, however, allows committing criminal offenses, but only under certain conditions. For example, in the United States, a secret (undercover) agent is allowed such action in cases that are referred to as *different illicit (illegal) activities*. The conditions for such activities are provided by Attorney General's guidelines,8 the only document that precisely defines the engagement of an undercover agent. Activities within the "punishable zone" are approved from a different level and are described very broadly which is perhaps the reason why covert (undercover) agent in the United States is used frequently and has excellent results in combating organized crime.9 Undercover agents have been used in criminal investigations in the United States since 1972, while the first request for approval of financial resources (the amount of one million dollars) was submitted in 1977.10

The practice of authorizing crimes is the practice where undercover investigators are allowed a conduct that would be considered criminal out of the context of the investigation. The need for *authorized crime* usually occurs when the police must maintain their covert identities and commission of crime has to be encouraged, where the undercover investigator can pretend to be a drug addict, a buyer of illegal weapons, or he can offer the suspects drugs or "money for purchase".[11]

In our country, according to the Criminal Procedure Code, the prohibition of committing criminal offenses stems from explicit legal definition according to which it is prohibited and punishable if undercover investigator incites another person to commit a criminal offense.

If the undercover investigator, during his stay in a criminal organization commits an offense unrelated to his engagement as an undercover investigator, this issue is resolved by the general rules, and there are no specifics. However, what if an undercover investigator commits crime in order to prevent the revealing of his identity and his role in a criminal organization, or if he does not do anything to prevent the commission of crime by the criminal organization. Both situations, especially when the undercover investigator commits a criminal offense to prevent the revealing of his identity and role in a criminal organization, should be dealt with in accordance with general rules that relate to extreme necessity. This means that the undercover investigator does not commit a criminal offense if he has undertaken appropriate criminally and legally relevant measures in order to eliminate simultaneous obvious danger which is threatening either him or another person and which could not be eliminated in another way, and where the harm done does not exceed the harm that would otherwise be done. Also, if the undercover investigator causes danger through negligence or exceeds the limits of necessity according to general rules, he is then considered to have committed a criminal offense, but may be punished less severely, or, if the excess occurs under special extenuating circumstances, he may also be released from punishment.[12] The undercover investigator must be aware that there is no specific legal basis which would allow him to commit unpunished crimes during his undercover operation.

8 *The Attorney General's on Federal Bureau of Investigation Undercover Operations.*
9 Zeljko Nincic: Undercover investigator as a standard in confronting organized crime, *Confronting organized crime – legal frame, international standards and procedures,* The Academy of Criminalistic and Police Studies, Belgrade, 2013, p. 491.
10 Gary T. Marx: Undercover: Police Surveillance in America, Berkeley, 1988, p. 4.
11 Elizabeth E. Joh: Breaking the Law to Enforce It: Undercover Police Participation in Crime, Stanford Law Review, Volume 62, Issue 1, 2009.
12 Milan Skulic: *Organized crime, the concept and criminal procedural aspects,* Belgrade, 2003, p. 406.

Undercover agent as "agent provocateur" (instigator). An "agent provocateur" is a person who is infiltrated in a criminal organization and whose mission is to encourage an entire organization or its members to commit unlawful activities, where by doing so, the organization can compromise itself. This is a person who induces, encourages or incites other persons to commit a criminal offense all with one goal – catching them in an attempt to commit the offense - *in flagrante delicto*.

Incitement to commit a criminal offense involves intentional infliction or encouraging of the person who is being incited to commit an offense. It is, therefore, any act which intentionally causes or consolidates another person's decision to commit an offense. The emphasis is on the voluntary process that immediately precedes the commission of the offense. If an undercover investigator has incited another to commit an offense, then it is the circumstance that should exclude the perpetrator from prosecution. This means that authorized officials (undercover investigators mostly fall under this category) and their actions must not influence the perpetrator to create or reinforce his decision to commit the offense. The requirement of absolute passivity in the execution of these actions cannot be imposed upon the undercover investigator; his activity (concerning the perpetrator) must be within the limits of the already created and finalized decision of the perpetrator. If the perpetrator has already made a final decision on execution of a criminal act, and if it is not disputable (he is not changing his mind whether to commit the offense or not), and the commission of an offense is only a matter of time and opportunity, then in the actions of the undercover investigator there are no acts which could be recognized as acts of incitement to commit a criminal offense.

Although the general opinion of the professional community is that the undercover investigator who is within a criminal organization in order to collect possible evidence of criminal activities of the very core of a criminal organization must not encourage anyone to commit a criminal offense, the legislative practice of different countries treats this problem in different ways. In the jurisprudence of the United States, the institute called *police provocation* is treated as a special kind of defense in criminal proceedings. In such cases, the accused bases his defense on the objection that the offense was committed as a result of persuasion by "agent provocateur". The reference to the fact that the accused person was induced into committing a crime is called *the defense of entrapment*. If the defense raises the *entrapment defense*, what follows is the so-called *objective approach*, i.e. investigating the conduct of the "agent provocateur", which the accused person may refer to in his defense, if the means and methods used by the "agent provocateur" confirm the claim that only this circumstance created the accused person's decision to commit a crime, to which he otherwise was not prepared without the incitement by the "agent provocateur". This defense is not accepted in the case of a general readiness of the accused person to commit a crime.[13]

In English law, the fact that the accused would not have committed the crime if the undercover agent had not induced him to do so, generally does not represent a reason for his release, but it can be taken into account when sentencing. Terms and powers of an undercover investigator are regulated by the instructions of the Ministry of Interior which are based on the principle of freedom of police investigations in relation to the commission of crime. Provocative behaviour of undercover investigators is forbidden with regard to incitement to commit a criminal offense, and it is subject to prosecution. A police officer who coordinates the work of an undercover investigator prior to joining a secret operation is obliged to instruct him how to avoid any behaviour that could act as an incitement to commit a criminal offense.

Here, the use of the undercover investigator could possibly be allowed only in terms of concretization of the already taken decision on the execution of the crime. Then we would be talking about the so-called *limited constituent use of the undercover agent*, and we would not be able to talk about his punishability in relation to what he provoked.[14]

On the other hand, if an undercover agent permanently and substantially interferes with the process which provokes the commission of an offense, so that the contribution of the perpetrator is not the main focus compared to the undercover agent (which means it is not just a concretization of an already taken decision on the commission of the offense) then criminal proceeding against the offender should not be led, and the undercover agent would that way enter the "punishable zone".

With regard to the actions of an undercover investigator, the element of deception is particularly interesting. The institute of undercover investigator is basically founded on deception, taking into account the fact that a large number of people (when it comes to his identity) is deliberately mislead. The mere fact that there is a legal basis for this makes the institute of undercover agent even more complex.

Both in theory and practice, the following question can be raised: whether "agent provocateur" should be considered as a direct perpetrator of a crime, either because he has worked directly towards the commission of the offense, or because he has provided essential help in this regard. The motive of the agent provocateur's action is not the same as the provoked person's motive. He wants the offense to occur in order for him to identify and facilitate the punishment of the offender, while the provoked person wants to commit

13 Davor Krapac: Special measures and actions for detection and suppression of criminal acts of organized crime in the new Criminal Procedure Code, Croatian annual for criminal law and practice, Zagreb, number 2/1997.
14 Dusko Modly: The Informers, Zagreb, 1993, p. 40.

the offense so as to benefit from it. However, the intention of the "agent provocateur" is in a specific way directed towards the realization of a crime, and therefore, his motive is irrelevant.[15]

Criminal - operational "limiting" factors are those which by their actions directly affect the position, action, and the aim of a covert operation, i.e. the detection, prevention and proving of criminal acts.

While acting in a criminal organization, the undercover investigator is often faced with the need to change methods and ways of working. The reasons for the change of working methods may be the following:

– Change of operating circumstances of a criminal organization;
– Endangering life and safety of undercover investigator;
– Endangering life and safety of other citizens;
– The goal of the action and the possibility of revealing the activities of the undercover investigator;
– Improving the quality of evidence, and
– Obtaining substantially new information and data.

Any change in the method of work of the undercover investigator, bearing in mind the fact that he is infiltrated in a criminal organization, inevitably creates some problems. The problems that arise due to changes in the methods of work of the undercover investigator while he is in a criminal association are the problems in the following:

– Implementation of the already developed plan of action;
– Communicating with an undercover investigator;
– Conduct of undercover investigator;
– The method of collecting evidence, and
– The manner of reporting.

Problem in the implementation of the already developed plan of action is one of the basic problems that occur when changing the methods of the undercover investigator's work. Within the action plan, all the necessary details for concrete actions are worked out. The changes in the methods of work represent imposed and unforeseen circumstances that require immediate response. On the other hand, this can have a crucial impact on the further engagement of the undercover investigator and the achieving of the ultimate goal of his action, which is - collecting evidence. When it comes to the impact on the plan of action, changing the methods of work of the undercover investigator brings the need for:

– Change in the plan of action or in some of its parts;
– Additional operational work on the collection of new data that would be of importance for the further engagement of the undercover investigator;
– Additional secret equipping of the space with technical means where members of criminal organizations reside and plan their criminal activities, and
– Termination of further engagement of the undercover investigator.

It should be noted that all of these activities require time, while changes to the methods of work of the undercover agent have the aspect of the urgency of action, which is an additional problem. However, this need for a quick response must never lead to acting in a hasty manner, nor should it – which is even more dangerous - allow improvisation in the action.

The problem in the implementation of the already developed plan of action and the need to change it leads to *communication problems* with the undercover investigator. These problems are reflected in the need to organize an emergency contact (communication) with the undercover investigator, which must be in accordance with the new situation and which must respect the fundamental principles of protecting the integrity of the undercover agent. The new situation requires the selection of a new place and time of contact. It is preferable to use previous points of contact because the previous plans have those places "covered" with technical devices and it is easier to organize constant monitoring teams as support. Also, it is necessary to re-consider what method of communication (direct or indirect) to use. Due to the importance of contact, it is preferable to use direct (oral) contact, but other means of communication should not be excluded as well. Undertaking all established measures of protection remains crucial. The duration of contact must be in accordance with the assessment of risk that the change of working methods requires.

Changing the method of work during engagement of the undercover agent, greatly affects his *behaviour* during an undercover operation in a criminal organization. Just knowing that the method of operation must be changed may seem frustrating for the undercover investigator, given the fact that he has already "cemented" their positions, established good contacts with members of the criminal organization and created the basis for gathering information and evidence about its criminal activity. Changing the methods

15 Alain De Nauw: Provocation of the offense that a police officer commits, Izbor, Zagreb, number 4/1980, pp. 367-370.

of work of an undercover investigator requires quick adaptation to new circumstances, thus creating new possibilities for making a mistake. The way that the investigator deals with members of criminal groups also changes, so adaptation to new circumstances often requires from the undercover investigator creating new (different) relationships with some members of the criminal organization and "breaking" some that are already established (those links can sometimes be very "close") which may cause suspicion among members of the criminal organization, and therefore jeopardize the undercover investigator.

Another problem in the work of an undercover investigator when it comes to changing working methods is the *way of reporting*. In a "normal" situation, the activity of the undercover agent is gradual, planned in advance and, accordingly, reports on the activities are delivered in a way which is agreed in advanced. In the case of changing the working methods, contacts that the undercover investigator makes must be more frequent, since the new situation requires more precise instructions, while giving orders to the undercover investigator and coordination of his activities must be done "on the fly".

All these activities, inevitably affect the process of *collecting evidence*. This is a particularly sensitive issue, given the fact that the purpose of engaging an undercover investigator is to gather evidence about criminal activities of members of criminal organizations. Changing the methods of work causes the changing of course of the activities of an undercover agent, often from one "direction" (for which the undercover agent has already provided the necessary "foundation" to gather evidence), to the other. In this changing of the course, valuable time may be lost, a concept which the undercover agent has built in order to get the evidence may get "crushed", and he, himself, may become demoralized for further work as he becomes aware that often he must start from the "beginning" in the organization of his activities aimed at gathering evidence. That may ultimately affect the quality of the collected evidence, but also the quality of the "justification" of the use of an undercover agent.

DISCUSSIONS OVER THE WAY AN UNDERCOVER SHOULD PARTICIPATE IN THE CRIMINAL PROCEEDING

As a procedural action, examination of witnesses in criminal proceedings takes place under relevant legal provisions, respecting basic principles of proceedings. However, in certain circumstances, when specific conditions are fulfilled, legal provisions allow the course of the testimony not to follow these basic principles so strictly and one of these situations is when there is the need to protect the identity of witnesses due to justifiable reasons. In this respect, although during the proceeding he has all the rights and duties as any other witness, the undercover investigator is, however, different from other, "ordinary" witnesses, taking into account the specificity of his engagement.

Therefore, taking into account, on the one hand, conspiratorial action of the undercover agent and the fact that his testimony in criminal proceedings may have an exceptional probative force (particularly in respect of certain facts that would be very difficult to prove using other methods) and, on the other hand, the need of the defendant and his counsel to have a fair trial (where hiding the identity of the undercover agent represents an exception to the general rules of the testimony, which may be in conflict with the right to a defense), many of legislations are very careful when it comes to the way of solving this issue.

The appearance of an undercover investigator as a witness is an issue that triggers many different opinions. Those different perceptions are primarily related to the following issues:[16]

– *First*, whether an undercover investigator should be provided with identity protection during the testimony, given the fact that, in most of the cases, it is a police officer whose job it is to be exposed to danger.[17] The existence of this danger that threatens the witness is the basic condition for enabling him identity protection. Most of proceedings systems approve the thesis that anonymous testimony is not allowed and that hiding the identity of the witnesses is a serious threat to establishing the truth and practicing the right to defense. However, all modern legislations recognize the institute of anonymous testimony and apply it under appropriate conditions. Therefore, the position that opposes the protection of the identity of the undercover agent cannot be justified;

– *Second*, whether the undercover investigator, during his testimony should be allowed anonymity based on the fact that there is a high probability that (given his role) he will be exposed to danger,

16 Haris Halilovic: *Undercover investigator, legal-criminal approach,* Faculty of crime science, Sarajevo, 2005, p.66 – 67.

17 However, the question here is whether the undercover agent is obliged to be subjected to danger? At first glance, this seems indisputable bearing in mind that the undercover agent, in most cases a police officer, has the duty to expose himself to danger. However, the duty of exposing oneself to danger is not absolute. Thus, we may say this duty would actually not exist if it was, regarding the person obliged to expose himself to danger, quite certain that his own death would follow. In addition, the undercover agent performs his duty of exposing himself to danger by covertly acting within the group, thus not having additional duties beyond what is his primary task. By fulfilling such additional duties, not only his real role would be revealed, but that way he would personally expose himself to additional risk to his life and body. This additional risk substantially exceeds the professional duty of the undercover agent. More in: Milan Skulic: *Organized crime, the concept and criminal procedural aspects,* Belgrade, 2003, p. 406.

and that testifying publicly would mean further inability to use him in the role of undercover agent, or should he be allowed to testify anonymously, under the same conditions as all other citizens. The theory is more inclined to the opinion that the undercover investigator should only be allowed the right to require from the court - in a manner prescribed by the law - to be examined with his identity protected, just like any other citizen. Many believe that the automatic exercise of the right to be provided with the status of protected witness (only because it is about an undercover investigator) is unjustified for two reasons: *first*, because this would result in an unequal position of other citizens, and second, it would contribute to a "more comfortable" behavior of the police officer who is acting in as an undercover agent which could have a negative impact on his performance;

– *Third*, if the possibility of anonymity of an undercover investigator is already accepted, should it include only the hiding of his identity, or can it go to a level that involves hiding his face and voice. Today's legislations recognize two technical forms of anonymity: a common form of anonymity, which only includes concealing the identity of witnesses, and the so-called *total anonymity of witnesses*, which in addition to hiding the identity includes the hiding of the face and voice too; and

– *Fourth*, would the use of a statement that the undercover agent gives indirectly, as an indirect witness, be allowed.[18]

Also, there is ambiguity regarding why an undercover investigator would hide his appearance given the fact that he is testifying on actions and behavior of individuals belonging to the criminal organization which he has attended and therefore he is well known to those individuals that he is testifying against; therefore the request for anonymity is not fully in accordance with the criterion of lawful and sane conduct. However, if the undercover agent is not testifying as an anonymous witness, the idea of his further use is probably dismissed. Therefore, both in theory and in practice there is always the dilemma of whether to reveal his identity and thus meet the needs of a particular case, and by doing so, "waste" the undercover agent.

Regarding the part which determines the rules for conducting covert activities, legislations of most countries tend not to engage in detailed regulation of the appearance of an undercover investigator as a witness. The experiences are different. In Germany, for instance, an undercover investigator is questioned through contact (*hendler*) inspectors or the "leaders" of undercover investigators; in Poland the testifying is in writing, where questions and answers are delivered via prosecutor; in the US, Canada and Italy the testifying is done directly, without hiding the identity; in Slovenia the investigator obtains the status of protected witness, and the process is similar in other republics of the former Yugoslavia.[19] Certain guidelines on the testifying (although not binding, they are important because they come from relevant international factors), are contained in Recommendation R (97) 13, issued by the Committee of Ministers of the Council of Europe.[20]

In the Republic of Serbia, the Code of Criminal Procedure regulates that the undercover investigator may, exceptionally, be questioned as a witness in criminal proceedings, where the questioning is carried out so that his identity is not revealed to the parties, according to the rules on the questioning of protected witnesses. The appearance of an undercover investigator is possible under a pseudonym or a code. Shortly before his questioning, the identity of the undercover investigator is confirmed based on the statement of his immediate superior. All information about the identity of the undercover agent represents secret information.

From all that is stated above, it can be seen that regarding the anonymity of an undercover agent during his appearance before the court as a witness, there is a number of open questions. However, practice - and especially court practice, will show over time what solutions will prove as optimal and most acceptable. The assumption is that the solutions will be guided more by the requirements, or by the need for successful opposition to crime, especially its organized forms, and that they will not in a certain way "please" traditional principles of criminal procedure.

CONCLUSION

The measures of covert investigation can be classified into the domain of formal police work, bearing in mind that these are measures whose use is strictly defined by the law and that they are mainly carried out by the police authorities. All data and information collected by applying these measures have the character of legally valid police evidence in criminal proceedings, whose treatment compared to other traditional, non-police evidence, is the same as for all other evidence on which the court judgment can be based. This means that in terms of police evidence, the same rules of evaluation apply as for the other evidence.

18 Ernst Roduner: Covert investigations, Izbor, Zagreb, number 2/1988, p. 131.
19 Gligorije Spasojevic: Hearing of an undercover investigator as a witness, Legal life, Belgrade, number 9/2007, p. 717-725.
20 Djordje Lazin: Undercover investigator in criminal proceedings, Legal life, Belgrade, number 9/2004, p. 498-499.

However, a special question is the engagement of an undercover investigator and his role in gathering evidence of criminal activity of the organization in which he is "infiltrated". These are the secret (covert) operations of the so-called *deep infiltration* (*deep cover*), which include the operation of an undercover investigator under a false identity ("the legend") over a longer period of time, which in itself causes certain specific conditions (living a "double" life, dealing with large amounts of financial resources, constant psychological pressure, etc.) which may affect the final result of covert operations, i.e. the collection of evidence. These conditions, along with additional (legal) restrictions like prohibition to commit a criminal act or to act in the role of an "agent provocateur", create the need for precise planning of the investigator's engagement in all phases, with special emphasis on criminal aspects of collecting evidence and their "use" value.

Because of all this, the undercover investigator must be aware of the sensitivity of his engagement, the responsibility to "fulfil" the mission assigned to him and collect evidence about criminal activities of the organization in which he operates. Also, he needs to be aware of the two kinds of dangers that he must face - not to be discovered and not to enter the "punishable zone".

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THE ROLE OF FORENSIC ACCOUNTING IN THE CRIMINAL PROCEEDING

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Abstract: In this paper, the author attempts to highlight the role and importance of forensic accounting in criminal proceedings. Contemporary forms of crime are very complex. Because of that, the process of crime detection requires involvement of persons from different professions. Skills and knowledge of forensic accountants are very important for detection of the following offences: tax evasion, breach of duty, unlawful reimbursement and payment, misuse of budget funds and corruption offences (active bribery and passive bribery). Forensic accountants analyze accounting records and documents for the purpose of collecting criminal evidence. Because of that, forensic accounting is different from the other similar activities – financial inspection and audit. Subject of work of financial inspection is checking of financial regularity of work in the institutions which are subjects of inspections. Purpose of activities of internal audit is to help the management in improving work process. The objective of activities of the external audit is also determining the regularity and legality of operations. The auditors who during the audit process notice that there is evidence that constitute doubts about the existence of criminal acts, have to report it to the authorities. Forensic accountants are persons who are engaged by judicial authorities to collect criminal evidence.

Keywords: forensic accounting, criminal proceedings, evidence, offences.

INTRODUCTION

Managing a legal entity implies its continuous adaptation to ever changing business conditions. Business decisions must be based on timely, complete and adequate decisions that are in accordance with the information obtained. Accounting provides informational support to the management of enterprises. Therefore, it is often defined as a sub-function of management function. Many authors under the term accounting consider all procedures whose task is to, in terms of quantity and value, cover and control all cash flows and outputs arising in a legal entity.[1]

In recent years, both in economic and legal theory and practice, one often speaks of forensic accounting. However, there is no unique definition of this term in science. The word "forensic" comes from the Latin word *forensis,* which means one that belongs to the forum (public), i.e. one concerning the court evidentiary proceedings.[2] Thus, forensic accounting can be defined as the analysis of accounting records and financial statements in order to collect evidence indicating the existence of a criminal offense, or as an interpretation of accounting procedures for the purposes of criminal proceedings.

Classic accounting does not have proper instruments or methods, and institutions dealing with economic and financial crime do not have properly trained personnel to collect evidence of the existence of financial crimes. That is why forensic accounting has developed as a new discipline that involves testing and interpreting evidence and facts in legal issues and providing expert opinions in court disputes.[3]

A certain form of forensic accounting dates back to 1817 and refers to a court decision in connection with the bankruptcy of a company. Scottish accountants in 1920s carried out expertise in arbitration cases. It is believed that Maurice E. Peloubet, one of the owners of an accounting house in New York, in his paper of 1946, first used the term forensic accounting. In theoretical sense, Bologna and Lindquist understood forensic accounting as a term to describe any financial investigation that could lead to legal proceedings. According to them, this discipline involves the use of financial information and facts in resolving legal disputes.[4]

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2 И. Клајн., М. Шипка, Велики речник страних речи и израза, Прометеј, Нови Сад, 2006. p. 1341.
3 Т. Сердар, С. Врањеш, Откривање и спречавање финансијских превара у циљу јачања финансијских перформанси предузећа у Републици Српској, in: Acta economica, број 19, Економски факултет Универзитета у Бања Луци, Бања Лука, 2013. p. 180.
4 *Ibid*., pp. 181-182.

Considering that this is a new discipline, forensic accounting is a branch of accounting that is under development, and it is influenced by globalization of the economy, the need for control of competencies in the accounting profession and the lack of specialized knowledge in investigations and clarification of facts relevant to criminal proceedings. Forensic experts have to implement all procedures with an attitude of professional scepticism, to inspect relevant documentation and are subject to continuous interdisciplinary education.[5]

Most of the pressures aimed at presenting financial information in a more favourable light than they really are, are of financial nature, however one should not neglect non-financial pressures on a company's management, such as challenges to "circumvent" the system or fear of showing unsatisfactory performances.[6] Regardless of the motive for misrepresenting financial statements, such behaviour may represent both the act of committing misdemeanour and the act of committing the most serious criminal offences. Sometimes evidence collected by tax and budget inspectors and state auditors are not sufficient for the judicial authorities. In such cases, the help of forensic accountants is need.

THE METHOD OF MANIPULATING ACCOUNTING DATA

The accounting frauds[7] represent intentional misrepresentation or omission of accounting information in order to hide the real (mostly unfavourable) financial performances, resulting in a false image presented to the users of financial statements. An important feature of such behaviour is that the in this way perpetrator obtains certain benefits on account of balance sheet addressees. In other words, such actions result in transferring values to the perpetrators of frauds, at the expense of owner and other creditors of a company.[8] The term "creative accounting" is used to describe this behaviour; theorists see it as a process of transformation of the financial and accounting information from the real state to the one wanted by the drafters of the financial statements. This is achieved by applying certain accounting rules in a way that suits management, as well as by ignoring certain rules. The most commonly used "creative accounting" methods are arbitrary manipulation and interpretation of accounting principles, overestimation of revenues from sales and property values, underestimation of the cost of goods sold, expenses and other liabilities, time-related manipulation while recognizing of revenues and expenditures, bookkeeping of fictitious transactions, imprudent assessments, incorrect measurements or assessments of the effects of events and transactions, misrepresentation or not presenting of important events, manipulating cash flows.[9]

Sometimes employees use their position to abuse resources of the organization, that is, take, appropriate and use material means of a legal entity for their personal needs. The most common forms of misappropriation of funds is done through multiple payments to the same vendor, not issuing invoices, payment of fictitious purchases, unrecorded sales, payment of wages to fictitious employees, fraudulent commissions etc.[10] In addition, it sometimes happens that an employee, before recording the funds, charges the buyer for goods, and then takes money for him/herself.[11]

False financial reporting may be one of the methods of committing criminal offense of causing false bankruptcy or criminal offence of fraud. False financial reporting implies deliberate issuing of altered and misleading financial statements in order to avoid a negative opinion on the financial stability of an organization. Positive effects are highlighted, and negative are minimized, relevant data are omitted from the statement, or even changed. The financial statements can display more profit compared to the profit generated, by increasing revenues and profit or decreasing expenditures and losses for the current period.[12] Moreover,

5 *Ibid*, pp. 198-199.
6 *Ibid*., p. 128.
7 Article 14 of the EU's Criminal Convention on Corruption, which was adopted in January 1999 in Strasbourg, stipulates the obligation for countries that ratified it, in national laws prescribe as misdemeanor or criminal offense, conduct consisting in: creating or using invoice or any other accounting document or record containing false or incomplete information, as well as unlawful omission to make a record of a payment that is associated with some of the corruption offenses. In other words, the said Article has prescribed obligation for the said countries to prescribe the accounting fraud as a criminal offense. The Federal Republic of Yugoslavia, whose legal successor is the Republic of Serbia, has ratified the said Convention in 2005 („Службени лист Савезне Републике Југославије-Међународни уговори", број 2/2002 and „Службени лист Србије и Црне Горе-Међународни уговори", број 18/2005). In the Republic of Serbia, the said offence has not been prescribed, given that legal description of the criminal offence of fraud from the Article 208 of the Criminal Code also includes the actions that can be considered accounting fraud within the meaning of Article 14 of the Convention. Given that manipulation of accounting data can be linked to corruption offenses (active bribery, passive bribery, influence paddling), forensic accountants are of great importance for process of detecting and proving of these offenses.
8 Б. Савић, Манипулација финансијским извештајима: узрок или последица економско-финансијске кризе? In: Економско-финансијска криза и рачуноводствени систем, Савез рачуновођа и ревизора Србије, Београд, p. 123.
9 *Ibid*., p. 124.
10 К. Шкарић Јовановић, Рачуноводство – Инструмент извршавања и откривања преваре, Београд, Економски факултет, p. 5, available at http://www.ekof,bg.ac.rs. Quoted from: Т. Сердар, С. Врањеш, Откривање и спречавање финансијских превара у циљу јачања финансијских прерформанси предузећа у Републици Српској, op. cit., p. 187.
11 Т. Сердар, С. Врањеш, Откривање и спречавање финансијских превара у циљу јачања финансијских прерформанси предузећа у Републици Српској, *op. cit*. p. 187.
12 *Ibid*., p. 188.

one may present lower profits compared to the generated one, by presenting lower income and profit, or higher expenses and losses for the current period.

Financial statements can: report on fictitious revenues, false time accruals (inadequate treatment of income), conceal liabilities and expenses, state improper recording or improper valuation of assets.[13] In this way, criminal offense of tax evasion can be committed, if the goal of misrepresenting data in the financial statements is evasion of taxes, fees or other liabilities to the state. In such situations, it is sometimes difficult to find evidence pointing to the existence of criminal offences or their perpetrators. For this reason, judicial authorities have to engage forensic accountants. In addition to the above/mentioned criminal offences, by analysing and interpreting of accounting data and processes, it is also possible to detect corruption/related criminal offenses (active bribery, passive bribery, influence peddling).

FORENSIC ACCOUNTING AND CRIMINAL PROCEDURE

Accountants are often invited as witnesses or experts in both criminal and civil proceedings. In civil proceedings, they are invited to give their opinions on the damage that has occurred for a specific legal person, while in criminal they are invited to give statement on the existence of a criminal offense or to collect evidence that point to its existence.

Sometimes forensic accountants can be engaged by the management of a legal person in order to determine whether a criminal offense was committed by employees. In such case, they analyze accounting records for the purpose of filing criminal charges against responsible persons and prevention of further commission of prohibited acts in this legal person. Forensic accountants may reveal the existence of not only those criminal offences for which they were engaged, but also other offences. Of great importance for instituting proceedings against responsible persons are evidence collect by forensic accountants when performing accounting analysis and verification of data. In some large enterprises (often insurance companies), there are separate organizational units employing persons engaged in forensic accounting. The goal of their work is to reveal frauds related to insurance, i.e. collection of evidence relevant to the prosecution of criminal crimes and their perpetrators. In addition, forensic accountants may also be employed in the police. Their work is of great importance in detecting money laundering, which can be connected with the activities of terrorist organizations.

The criminal procedure is usually defined as a legally regulated system of procedural actions of the court and other entities, which they undertake within their rights and responsibilities in order to determine whether substantive criminal law can be applicable in a particular case (i.e., whether committed act was defined in the law as a criminal offense, who is the perpetrator, whether the perpetrator is guilty and whether there are conditions for the application of criminal sanctions.[14] Proving also represents a procedural action. Serbian positive law is introducing a combination of prosecutorial and "party" investigation in which, in addition to the prosecutor, the evidence can also be collected by the accused party. Accused party has the right to do so, because the parties in the proceedings are "equal" according to the law. As in reality parties can not be equal, because the whole state apparatus stands behind the prosecutor, the need for the introduction of such a "hybrid form of investigation" remains an open question.[15]

Not all facts are being proved in a criminal procedure. The subject of proving are those facts that constitute the element of criminal offense, or those upon which the application of other provisions of the Criminal Code depends, as well as facts upon which the application of the provisions of the of Criminal Procedure Code depends.[16] Those facts that the court finds commonly known, sufficiently discussed, which defendant admits in a way that they require no further proof, or consent of the parties on those facts is not inconsistent with other evidence, are not being proved.[17]

Forensic accountants may be criminal procedural subjects, activated by the prosecution or the court.[18] They may appear in the criminal proceedings in the role of a witness, expert or professional advisor. Their role is of great importance in evidence procedure.

13 К. Јовановић Шкарић, Рачуноводство – Инструмент извршавања и откривања преваре, Београд, Економски факултет p. 7, available at http://www.ekof,bg.ac.rs. Quoted from: Т. Сердар, С. Врањеш, Откривање и спречавање финансијских превара у циљу јачања финансијских прерформанси предузећа у Републици Српској, *op. cit.*, p. 189.

14 В. Ђурђић, Покретање и контрола јавнотужилачке истраге (са посебним осврtом на кривични поступак у Србији), in: Тужилачка истрага регионално кривичнопроцесно законодавство и искуства у примени (Ур: Иван Јовановић и Ана Петровић Јовановић), Мисија ОЕБС-а у Србији, ОЕБС, Београд, 2014. p. 141.

15 Д. Николић, Начела тужилачког концепта истраге као основ њене разраде (са посебним осврtом на нови ЗКП Србије) in: Тужилачка истрага регионалнално кривичнопроцесно законодавство и искуства у примени (Ур: Иван Јовановић и Ана Петровић Јовановић), Мисија ОЕБС-а у Србији, ОЕБС, Београд, 2014. p. 37.

16 Article 83 of the Criminal Procedure Code.

17 Article 88 of the Criminal Procedure Code.

18 З. Јекић, Кривично процесно право, Правни факултет Универзитета у Београду, Београд, 2003. p. 34.

Engaging Forensic Accountant as a Witness

The forensic accountant may be engaged in criminal proceedings as a witness, if the authority conducting proceedings believes that his/her statement will provide information on criminal offence, perpetrator or other facts that should be determined in proceedings. [19] Thus, a person engaged in forensic accounting, which was engaged by the management of a legal person in order to collect evidence of the existence of illegal activities of employees, can appear in criminal proceedings as a witness. In addition, a person engaged in forensic accounting, which is employed in a separate organizational unit of a company that deals with detecting frauds made by both employees and persons connected with the business activity of the company, can be engaged in court. In such a case, a forensic accountant doesn't have the role of an expert or professional advisor. He/she is not engaged for possessing expert knowledge necessary for a decision on the existence of a criminal offense and its perpetrator, but because he/she possesses certain information on a criminal offense or perpetrator, which he/she came to in the analysis of accounting data at the time when he/she was engaged by the management of a specific legal person.

Engaging Forensic Accountant as an Expert Witness

Expertise represent an important source of knowledge on criminal offense and its perpetrator given to the judicial authorities by certain professionals. Legal regulation of these activities is limited to determining the conditions for its application, the role of the court and parties, as well as the rights and duties of the expert witness in criminal proceedings, while the very expertise is subordinated to the rules of a particular scientific discipline or skill (*lege artis*). There are formal and material conditions for implementation of this investigative action.[20]

As an expert, forensic accountant may participate in criminal proceedings, if the authority conducting proceedings prescribes expertise in order to determine or assess the facts in the proceedings, for which professional knowledge is necessary. If, for a particular type of expertise, there are experts from the permanent expert list, other experts may be appointed only if there is a risk of delay, if permanent experts are prevented from participating or if other circumstances require so.[21] Bearing in mind that the knowledge and skills of forensic accountants almost haven't been used in court proceedings so far, it is impossible to engage a person from the list of permanent court experts. The problem may be related to the fact that a small number of accountants possess the knowledge necessary to perform the so-called forensic accounting. In a particular court proceedings, independence and objectivity of an accountant who will be engaged as an expert, must be taken into account. Considering that in such cases accountants from accounting houses are often engaged, the problem of high costs of expertise occurs, since judicial authorities are budget beneficiaries, and various restrictions are imposed to the use of budgetary funds.

If ta forensic accountant has already been questioned as a witness, as a rule, he/she will not be questioned as an expert. The authority conducting proceedings may determine the expertise by a written order, either *ex officio*, or on motion of a party and defence counsel. However, if there is a risk of delay, expertise can also be done orally, with mandatory written note.[22] Given that forensic accountants are persons who are not legal professionals, in written order on the expertise, it is necessary to precisely mark the subject of the expertise, questions to be answered, and the obligation to submit to the authority conducting proceedings impugned and secured evidence, traces and suspicious substances, the deadline for the submission of findings and opinion, obligation to submit findings and opinion in a sufficient number of copies to the court and the parties, warning that the facts found in expertise are secret, warning of the consequences of giving a false finding and opinion.[23] In order to specify what questions need to be answered, it is necessary that the authority conducting proceedings knows capabilities of forensic accountants. This can be achieved only through professional training.

In the course of criminal proceedings, forensic accountant must fulfil the obligations specified in the order on the expertise. Before the commencement of expertise, he/she is warned that giving false findings and opinion constitutes a criminal offense, and is asked to carefully consider the case of the expertise, to accurately present everything he/she observes and finds, and to present his/her opinion without bias and in accordance with the rules of science or arts. Additional explanation may be required from him/her by the authority conducting proceedings. Of course, he/she also has the right to ask and get from the authority conducting proceedings and the parties additional explanations, to examine objects and examine the records, to propose collecting of evidence or obtaining objects and data that are of importance to the opin-

19 Article 91 of the Criminal Procedure Code.
20 З. Јекић . Кривично процесно право, *op. cit.*, p. 269.
21 Article 114 of the Criminal Procedure Code.
22 Article 117 of the Criminal Procedure Code.
23 Article 118 of the Criminal Procedure Code

ions and findings, to propose clarification of particular circumstances or asking of certain questions to the person giving the statement.[24]

After completing the expertise, authority conducting proceedings informs parties that did not attend the expertise, that they may view or copy expertise record, or written findings and opinion, and determines the period within which they can voice their objections.[25] Once the expertise is determined, , the second forensic accountant may be engaged by the defendant or his/her counsel. In such case, that person has the status of a professional advisor in criminal proceedings.

Engaging Forensic Accountant as an Expert Advisor

A person dealing with forensic accounting can be engaged in criminal proceedings as an expert advisor possessing knowledge in the field in which specific expertise is ordered. This person may also be elected and authorized by the party or defendant, when authority conducting proceedings orders expertise. The defendant and injured party, as prosecutor, have the right to submit a request to the authority conducting proceedings for appointing expert advisor.[26] This means that expert advisor can be engaged either by the injured party as prosecutor (if it comes to criminal offenses for which the perpetrator is prosecuted under a private lawsuit) either by injured person.

He/she must be informed on the day, hour and place of expertise and attend the expertise, to which defendant and his/her attorney also have the right to attend, to view documents and subject of the expertise, and propose to the expert undertaking of certain actions, to give objections on finding and opinion of the expert, to question the expert at the main hearing and be questioned. Before questioning, he/she must also tak the oath. He/she is obliged to submit to authority conducting proceedings the power of appointment immediately, and provide help to the party that engaged him/her in a professional, and timely manner. He/she must not abuse his/her rights or delay the proceedings.[27] This very introducing of expert advisor as a kind of "private expert" of the defendant, indicates that the Serbian criminal law adopted a mixture of prosecutorial and "party" investigation. However, considering that this is a kind of "private expert", very few people can bear the costs of his/her engagement.

CONCLUSION

Forensic accounting encompasses the analysis and interpretation of accounting records, documents and reports for court purposes, either in order to detect criminal offences and other illegal conduct for which court proceedings will be initiated, either for the ongoing court proceedings. Although this discipline is still developing in our country, a particular form of forensic accounting dates back to the nineteenth century, although the term "forensic accounting" was first used in the twentieth century.

Development of forensic accounting is influenced by many factors. One of them is the lack of specialized knowledge important for clarifying relevant facts in the proceedings. Today, more and more criminal offences of financial nature are carried out by extremely skilful and intelligent perpetrators, and this both detection of offenses, and proving of facts, is not possible in some cases without having knowledge in the field of accounting.

Forensic accountants may be appointed by the management of legal persons in order to detect the existence of criminal acts committed by employees, and in large companies there are separate organizational units in which forensic accountants are employed. Their activity is focused on the detection of frauds committed by employees or persons whose business is associated with the company. Often these specialized units are formed in insurance companies in order to detect frauds in connection with insurance. In these cases, forensic accountants collect evidence that they submit to the accounting service, for the purpose of filing criminal charges against perpetrators of specific offence. It may occur in court proceedings that these persons are required to provide additional information on the facts and circumstances relevant to the proceedings, which they observed when undertaking their activities. Their powers are different from the powers of the internal auditor. The aim of the forensic accountant is to determine existence of illicit behaviour, and the purpose of internal audit is determining the legality and regularity of business operations and giving recommendations towards their improvement.

Persons dealing with forensic accounting must possess special knowledge not only in the field of accounting, but also in the field of law. The manipulation of accounting data may be committed in order to conceal corruption criminal offenses. Therefore, of great importance ais the role of forensic accountants

24 Article 120 of the Criminal Procedure Code.
25 Article 123 of the Criminal Procedure Code.
26 Article 125 of the Criminal Procedure Code.
27 Article 126. of the Criminal Procedure Code.

when presenting their findings and forming opinions on connection of certain offenses with corruptive offenses (active bribery, passive bribery, influence paddling). Therefore, forensic accountants may be engaged in criminal proceedings as experts, as well as expert advisers. Their role is of particular importance in the investigative procedure when it is necessary to collect evidence of the existence of a criminal offense.

Bearing in mind that the forensic accounting is a relatively new discipline in our country, one can ask the question "who are the persons that can be engaged as expert witnesses in criminal proceedings?" The Criminal Procedure Code stipulates that when engaging an expert witness, preference is given to those who are on the list of permanent expert witnesses. During the process of engaging a forensic accountant, the said criterion cannot be fulfilled. Judicial officials should receive training, where they would get familiar with the capabilities and achievements of forensic accounting, in order to better define what the object and task of expertise. Considering the fact that the judicial budget is very limited, it is necessary for them to know in which cases it is justified to engage a forensic accountant and which certifies these persons should possess as proof of their expertise, i.e. which certificate which is recognized by the authorized by relevant professional associations. Of great importance is also training of a greater number of accountants in the said area.

The Criminal Procedure Code stipulates the possibility of engaging an expert advisor. This is a person who, as a sort of "private expert" can be engaged by the injured party and the defendant. Thus, the forensic accountant in criminal proceedings may be engaged as an expert advisor by the said persons. In these cases, the costs of engaging forensic accountant are borne by the injured party or the defendant. since a small number of persons is engaged in forensic accounting, and high cost of their expertise, one can assume that these persons could be engaged exclusively by rich persons.

However, a question of justification of employment of forensic accountants in the police may occur. Such stance is justified. They would have great significance for the detection of money laundering, which may be associated with the activities of terrorist organizations. In addition, their impact would be huge in the detection of criminal offenses of organized criminal groups.

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THE ORGANIZING AND IMPLEMENTING OF THE INVESTIGATION MEASURE OF CONTROLLED DELIVERY

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Abstract: In order to implement controlled delivery, it is important to master the concept and function of controlled delivery, distinguish controlled delivery from technical investigation and hidden identity investigation, and understand the form of controlled delivery. In practice, the necessity, procedure, safety and secrecy should be noticed when organizing controlled delivery. The key point of implementing controlled delivery includes finding out the implementation condition, making the decision of implementing controlled delivery, making plan, controlling the articles involved in the case when transported, controlling and capturing the suspect when the articles are delivered. In addition, when controlling delivery is implemented, three issues should be paid attention to, such as using the evidence from controlling delivery properly et al.

Keywords: Controlled delivery, Investigation measure.

INTRODUCTION

The concept of controlled delivery is from international convention. Controlled delivery is defined in "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988" as the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1, of the Convention. In "United Nations Convention against Transnational Organized Crime and the Protocols Thereto","Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

"United Nations Convention against Corruption" provides the similar definition of controlled delivery as "United Nations Convention against Transnational Organized Crime and the Protocols Thereto". Both conventions, the consignments controlled, cover not only drugs but also weapons, rare animal and plant products, currency and other smuggled consignments transported and/or transacted illicitly.

"The Criminal Procedure Law of the People's Republic of China" has provided the regulations for controlled delivery. In the second paragraph of article 151 for criminal activities involving the delivery of drugs and other contraband or property, a public security authority may, as needed for criminal investigation, conduct controlled delivery according to relevant legal provisions.

Based on the new Criminal Procedure Law, the ministry of Public Security of the People's Republic of China has formulated the "The Procedures of Criminal Cases for the Public Security Organs" which provided the further provision that with the purpose of identifying the personnel involved in crime or investigating the case, as the investigation required, criminal activities involved in delivering drugs and other contraband or property controlled delivery can be implemented with the permission from the person in charge of public security organ at or above the county level.

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THE CONCEPT AND FUNCTION OF CONTROLLED DELIVERY

1. The Concept of Controlled Delivery

Controlled delivery is a secret investigation measure with which the articles involved in the case are tightly controlled using varied methods and delivered at the suspects own will in pretence, when required by investigation and permitted by the person in charge of public security organ at or above the county level, in order to investigate the case, obtain the evidence. The concept of controlled delivery can be interpreted as the following aspects:

(1) The subject of controlled delivery is the public security organ. The public security organ can implement controlled delivery in the investigation based on the current situation. This is a legal investigation measure authorized by relevant laws to combat crime and protect human rights.

(2) The implementation of controlled delivery should be permitted by the public security organ at or above the county level. Although controlled delivery is a legal investigation method, the relevant laws make restrictions that controlled delivery can only be implemented after the application of the department of handling the case and permitted by the person in charge of the public security organ at or above the county level.

(3) The suitable object of controlled delivery is criminal activities involved in delivering articles involved in the case or their substitutes. The key point of this kind of criminal activities is the articles involved in the case to be delivered. The articles involved in the case or their substitutes are not only the object delivered in the criminal activities but also the object controlled by the public security organ. Specifically, the controlled articles can be the articles involved in the case including drugs and other contraband or property as well as their substitutes.

(4) The key point of implementing controlled delivery is the various ways used to tightly control the articles involved in the case. The investigation department is required to carefully design, comprehensively use the technical methods and human resource to secretly monitor and completely control the process of the transportation and the delivery of the articles involved in the case (their substitute).

(5) The purpose of controlled delivery is to investigate the case and obtain the evidence. The reason for the public security organ implementing the controlled delivery is to limit ordinary investigation measures in investigating the organization structure, backstage members and obtain the evidence when the criminal activity is involved in delivering articles involved in the case. Only by implementing controlled delivery the identification of the persons involved in the case and evidence can be obtained.

(6) Controlled delivery is a secret investigation measure authorized by the relevant laws. Controlled delivery can reflect the character of secrecy in the stages of approving, planning, implementing even lawsuit.

2. The Function of Controlled Delivery

Controlled delivery shows the unique function in the criminal activities involved in delivering drugs or properties. There is often no specific victim in this kind of criminal activities. Sometimes the suspects are hidden such as kidnapping for ransom. As a result, by controlling the articles involved in the case and their delivery, the suspects can be found and the evidence can be obtained. Specifically, the following aspects can show the function of controlled delivery.

(1) Controlled delivery helps to find the criminal activities and their organizations. The criminal activities involved in delivering drugs and other contraband or property involve a wide range of area and persons. Some cases are even transnational. According to the existing clue and the articles involved in the case captured, controlled delivery can be implemented after it has been carefully designed and prepared. Making articles involved in the case transported and delivered as the suspects' will in order to make it as a decoy, the public security organ can control the persons involved in the case and find out who is behind the threats. And this is a benefit from investigating the whole criminal organization.

(2) The investigation measure of controlled delivery benefits from obtaining the evidence. When controlled delivery is implemented, drugs and other contraband or property are delivered under control. Investigation department can catch the suspect with the articles involved in the case in the scenario that the drugs and other contraband or property are being delivered. As a result, a complete and exact evidence chain is obtained, and it can be used to punish the crime by law.

(3) The investigation measure of controlled delivery benefits from crime prevention. By controlled delivery, the investigation organ can deeply and comprehensively understand the characteristics of the criminal activities involved in delivering drugs and other contraband or property. On the one hand, the public security organ can make effort to prevent this kind of crime specifically. On the other hand the public security organ can cooperate with relevant departments to manage comprehensively so as to protect the state and the citizen's security and properties.

(4) The investigation of controlled delivery benefits from the international cooperation of investigation. Based on the international conventions and Chinese laws, it is beneficial to international investigation cooperation and combating transnational crime that implementing controlled delivery cross-nation and cross-region work jointly to combat the crime involving delivering prohibited products and/or properties, such as drug-related crime, smuggling crime, and gun crime.

THE CLASSIFICATION OF CONTROLLED DELIVERY

The manifestations of controlled delivery are different according to different standards of classification.

(1) Classified according to the areas where controlled delivery is implemented, controlled delivery can be divided as interior controlled delivery and foreign related controlled delivery.

(2) According to different kinds of articles delivered, it can be divided into original controlled delivery and substitution controlled delivery.

(3) According to different ways that the articles are transported, controlled delivery can be divided into people with articles and people separated with articles.

(4) According to the different kinds of crime that the delivered articles related to, controlled delivery can be divided into drug controlled delivery, smuggling controlled delivery and kidnapping for ransom controlled delivery, et al.

THE REQUIREMENT OF THE IMPLEMENTATION OF CONTROLLED DELIVERY

When implementing controlled delivery, the necessity, procedure, security and secrecy of controlled delivery should be noticed. The necessity is the premise of controlled delivery. The procedure is the condition of controlled delivery. The security is the principle of controlled delivery. The secrecy is the protection of controlled delivery.

The necessity of controlled delivery is that controlled delivery can be implemented only if it is necessary. The necessity is evaluated by comprehensively and deeply analyzing the characteristic and the type of the criminal activities, with the concern whether delivering articles are involved and what their characteristics are. Controlled delivery is procedural means that controlled delivery should be implemented after the application of the department of handling the case and permitted by the person in charge of public security organ at or above the county level.The safety of controlled delivery suggests that the implementing of controlled delivery should be reliable. It is necessary to tightly control the transportation of drugs and other contraband or property by necessary and possible monitoring methods in order to make sure the articles will not be lost and the investigation will not be exposed to the suspects. The secrecy of controlled delivery means that controlled delivery should be implemented covertly. No one should be informed except the persons in public security organ conducting controlled delivery.

THE KEY POINT OF IMPLEMENTING CONTROLLED DELIVERY

In general, the key point of implementing controlled delivery includes finding out the condition of implementing controlled delivery by studying the case, making decision to implement controlled delivery, making the plan of implementing controlled delivery, the transportation and delivery of the articles involved in the case under control and the arrestment of the suspects when necessary.

1. Finding out the condition of implementing controlled delivery by studying the case. This is the beginning and entry point of controlled delivery. In general, when the investigation department is investigating the case, controlled delivery can be considered to be implemented if the case involves delivering drugs and other contraband or property and if the suspect can be identified by controlling the transporting and delivering of the articles involved in the case. In practice of investigation, the condition of implementing controlled delivery comes out from the following aspects. The first is crime intelligence information. In some cases, with crime intelligence information, the investigation department is informed of some cases involved in delivering drugs and other contraband or property. But the activities of the crime and the identities of the suspects are not clear. In that condition, controlled delivery can be considered to be implemented. The second is the notification from the customs, border inspection organ, border exit and entry control organ and administrative law-enforcement departments, et al. Based on these notifications, controlled delivery can be implemented at a proper time. The third is patrol and questioning. When the public security organ

patrolling and questioning, if drugs and other contraband or property involved in the case are found, controlled delivery can be implemented based on the current situation. The fourth is the decision from investigation. During the investigation of some cases, the identifications of the suspects are not clear. The evidence is not enough. At the same time the case involves delivering drugs and other contraband or property. In this situation, the investigation department can make the decision to implement controlled delivery.

2. Making the plan of implementing controlled delivery. Based on the case, after finding out the condition of implementing controlled delivery, the investigation department should further analyze the case and report to the person in charge of the public security organ at or above the county level. After comprehensively analyzing based on the case, the person in charge of public security organ signs the decision of implementing controlled delivery. When informed of the decision of implementing controlled delivery, the investigation department should deeply analyze the case and make the plan of implementing controlled delivery. In general, the plan of implementing controlled delivery should include the following aspects:

1) The basis of the case and the purpose of implementing controlled delivery. The investigation department should repeatedly study the case, make the type and characteristic clear, as well as demonstrate the necessity and feasibility of implementing controlled delivery in order to make the purpose of implementing controlled delivery clear.

2) The type of the articles involved in the case and the form of implementing controlled delivery. Based on the case, the types of drugs and other contraband or property and the harm of the crime to the society, the investigation department should carefully choose the form of controlled delivery. In general, if the quantity and the harm of the articles involved in the case are small and the suspects is not very vigilant, original controlled delivery can be implemented. Otherwise, substitution controlled delivery should be implemented.

3) The control plan and the way of getting evidence while the articles involved in the case is transported. In the transportation period of the articles involved in the case, the control plan should be made and the method of getting evidence should be chosen based on the situation as well as the intelligence information of the trait, packing and the possible circulation channel.

4) The control plan and the way of getting evidence while the articles involved in the case is delivered. The investigation department should make the control plan and choose the way of getting evidence such as the possible positions where the article is delivered and their environment, the distribution of the police ambushes, the arrangement of the equipment et al. Additionally, it should be clear whether arrest will be implemented and the plan of the arrest et al.

5) The investigation cooperation of trans-province transportation and delivery in different place. If the articles involved in the case are likely to be transported between provinces, and delivered in a different place, the investigation department should make plan, report the case to the higher authorities and request the higher public security organ to coordinate the work and direct it in a unified way.

6) The plans to deal with emergency. The investigation department should make clear plans of remedies measures in case of the emergencies, e.g. when the article involved in the case is out of control, the hidden identity person is not reliable, the technical investigation method is not functional and the suspect behind the scenes does not appear et al. At the same time, the method to suspend controlled delivery should be fully considered.

3. The transportation and control of the article involved in the case. In the step of transporting the articles involved in the case under control, the investigation department should obtain the trait, packing and the possible circulation channel, route and direction of the article involved in the case. Besides, based on the case, the investigation department should implement technical investigation measure, hidden identity investigation measure, video investigation measure and make use of a number of intelligence information in order to control the delivery and obtain the evidence.

4. The control and arrest when delivering. Before the article involved in the case is delivered, the investigation department should set ambush, set up the equipments and monitor delivery based on the condition of the case as well as the intelligence information and the prediction of the direction of the article et al. In the step of delivering the article involved in the case, the investigation department should obtain the evidence based on the general plan of the case. If the arrest is necessary while the article is delivered, it is important to make sure to arrest the suspects handling the articles involved in the case. After the article is delivered, with the evidence obtained in the scenario of delivery, the investigation department should arrange the police force to conduct arrest in time, based on the requirement of the investigation of the case.

THE ISSUES TO BE NOTICED WHEN IMPLEMENTING CONTROLLED DELIVERY

When implementing controlled delivery, several issues should be noticed. The first is a fully prepared and unified command. The controlled delivery is a specialized work, which involves a wide range of area and need investigation tactics. The investigation department should deeply analyze the case, carefully make the plan and fully prepare manpower, equipment et al. At the same time, the investigation department should pay enough attention to the unified command, from the step of approving the implementation of the controlled delivery. If the case involves multiple provinces and departments, the investigation department must report the case to the higher public security organ. The case should be deployed in a unified way and handled cooperatively. The second is to control it tightly, securely and secretly. The core content of controlled delivery is to tightly control the drugs and other contraband or property. Obtaining the evidence and arresting suspects are based on the drugs, prohibited products and properties. As a result, controlled delivery can be successfully implemented only if the drugs, prohibited products and properties are controlled securely and secretly. In the process of control, when conducting investigation measures such as hidden identity investigation, technical investigation and video investigation, the investigation department must act carefully, securely and secretly to prevent the action of monitoring from being exposed. The third is to obtain the evidence and use it properly. When implementing controlled delivery, the investigation department should remind the investigator to strengthen the consciousness of evidence. The evidences should be obtained through technical methods and arresting by hidden investigators in the stage of the transporting and delivering the articles involved in the case. When obtaining the evidence, the owner, holder, trader and intermediary of the articles involved in the case should be concerned. Besides, the location, environment, process of transportation and static condition of the articles involved in the case should be also concerned. Farther more, the evidence should reflect the time in which the article involved in the case is transported and traded. The evidence obtained by the controlled delivery should be properly used. On the one hand, the principle of "using at last" should be noticed. On the other hand, the identity of the person who obtains the evidence as well as the technique used to obtain the evidence should be protected.

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RELATIONSHIP ACCESSORIES BETWEEN CRIMINAL LAW AND POLITICAL SCIENCE DEFINITIONS OF TERRORISM[1]

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Abstract: This paper provides an overview and analysis of the debate in political and criminal definitions, with emphasising the type and character of their relationship. Specifically, terrorism, as a socio-pathological notion produces a high degree of social danger, which makes material legitimation of the legislator's predictions of the same category as criminal offence. This process of criminalization of terrorist activity depends directly on the development of solutions in the definition of this phenomenon in the field of political science, because in addition to the objective character of this phenomenon, embodied in the destruction and damage to life, body, destruction of property of great value, it is characterized by a subjective element which implies political orientation of the listed behavior. The political goal which this conduct in itself possesses and which constitutes its differentia specifica establishes a relationship of dependency between politicological definitions of terrorism, which will determine what and in what circumstances is considered a political, aim and criminal definitions, which define the elements of the offense in the national legal systems. The paper defines this relation pointing out the accessory nature of criminal law definition of terrorism in relation to the politicological one, listing the reasons that that underlie this relationship.

Keywords: terrorism, political science definition of terrorism, criminal law definition of terrorism, criminal law, accessory character of criminal law.

INTRODUCTION

The high degree of social risk behaviours that can be labelled as terrorist, which have become common in the 20th and 21st century has become the number one issue for a democratic society based on the principles of the rule of law. Providing conditions for the smooth realization of basic human rights involves the development of mechanisms for the prevention and repression of all forms of illicit behaviour, which can threaten or injury them. In this regard terrorism as a form of political violence and manifestation of violent crime, accompanied by great human casualties and destruction of private and state property, is one of the serious forms of crime, which society must confront by taking a coordinated action of several different forms of response.

As a primarily political concept and phenomenon, terrorism must be obstructed and suppressed primarily by exerting influence on the causes that lead to it. In this regard, a number of measures of general and special social crime prevention occur as important forms of social reactions. The general and specific social prevention system includes a variety of measures and activities that are planned and implemented in different areas of social life, which have an impact on the emergence of crime in a particular environment[3].

Economic, social, educational, and health policies, as well as the nature of the legal and political environment in the society directly affect both the development and the reduction of crime. Taking adequate response may affect the reduction of crime in society in general or in specific areas.

When it comes to terrorism as well as measures that are available to the society, the "measures of social prevention, social, economic, criminal, politics, culture, media, education, etc." emerge as prima ratio [4]

The concept of social policy implies a wide and varied field of public policy whose main objective is to provide an economically viable, socially acceptable level of protection against various forms of social and individual adverse effects on all members of society, and thus to promote equality, social cohesion and inclusion of individuals in political and social life.

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3 Љ. Радуловић, *Криминална политика,* Београд, 1999, p. 228-252.
4 В. Кривокапић, „Специјалистичка едукација као мера супротстављања организованом криминалу", у: *Спречавање и сузбијање савремених обчика криминалитета*, Београд, 2006, p.2

The society is responsible for making the information on basic human right available through the process of education was and raising awareness about the need for their achievement, the conditions for their equal use by all social groups, thus building the capacity of individuals for tolerance, unity, and responsibility.

Measures of economic policies contribute to raising the living standards, reducing poverty and unemployment as factors of dissatisfaction of certain social groups, which later, guided by a sense of discrimination, potentially become closer to the idea of the need to address social problems through political violence.

Through the promotion of culture and the area of information society aims to promote the values of modern democratic states such as the principles of equality before the law, non-discrimination, tolerance, mutual respect, peaceful conflict resolution and the like.

Forms of social reaction to terrorism as a form of unlawful behavior are divided into preventive and repressive ones. Among the preventive measures, in addition to the aforementioned, the countries have at their disposal a number of organizational measures and measures of techno-prevention. They aim to improve the system of measures aimed at deterring terrorist activity in the stage of preparation, thus reducing the percentage of the commission of terrorist acts.

The organizational measures change the conditions that hinder or prevent the commission of terrorist behavior. These include the adoption of certain legal regulations and may be combined with some of the previously mentioned social policy measures.[5]

The techno-preventive measures include the development and implementation of technical solutions, which may result in the reduction of problematic situations. These measures include the use of technical achievements in the process of changing the environment in order to reduce opportunities for the commission of certain prohibited activities.

These measures of social policy, understood in its broadest sense, the organizational and techno-preventive measures should represent a system of measures of social reaction to terrorism, which should result in the prevention of terrorism, as well as socially dangerous behavior.

It is, therefore, the preventive measures that should act on the causes of terrorism, reducing the basis for its origin and development.

However, an increasing number of terrorist acts, their various forms of manifestation, require a social reaction and repressive means, what is considered to be primarily in the domain of criminal law. Criminal law responses to terrorism can be justified by the severity of the criminal offence, because it is a mechanism of social reaction established to ensure the rights of the individual and society, i.e. the values that constitute a prerequisite for smooth performance and functioning of society.[6]

POLITICAL DEFINITIONS OF TERRORISM

The specificity of determining the concept of terrorism is in connection with its complex nature. An attempt to define an idea boils down to extracting the key characteristics that are included in its content and form its specific peculiarities (*differentia specifica)* in relation to other concepts. What makes the determination of the concept of terrorism complicated is the fact that the content of this term has several characteristics that are necessarily inherent to it. A number of characteristics and their synergy need to characterize an event so that it could be described using the term terrorism.

This process of defining the concept of terrorism and its constituent components is further complicated by the fact that its content has changed over time, since it is a dynamic phenomenon, which changes its forms and manifestations depending on the temporal and spatial determinants and which is at the same time of a highly political nature.

The main problem with trying to create a universally accepted definition of terrorism, is reflected in the fact that terrorism as a social phenomenon is primarily a political phenomenon, and its defining exactly is being hampered by different and conflicting political interests.

As D. Simeunović notes, what accounts for the lack of a universally accepted definition of terrorism is, on the one hand, the difficulty arising from the need to impose a politically usable definition, and on the other hand the need to avoid such a definition. [7]

The reasons why it is difficult to define terrorism include the complexity of phenomena, the multiplicity of forms of manifestation, dynamism, and the existence of numerous, sterile juxtapositions and vague

5 More about some of the possible forms of alternative measures of response to socially dangerous behavior, see: З. Стојановић, „Кривично право и други облици реакције на друштвено опасна понашања“, *Наша законитост*, 8/85, Београд, pp. 942-945.
6 More about justification, foundations and limits of criminal justice reactions see: A. Ashworth, *Principles of Criminal Law,*Clarendon Press, Oxford, 1991, pp.19-27.
7 Д. Симеуновић, *Тероризам,* Едиција *Crimen*, Правни факултет Универзитета у Београд, 2009, p. 18

notions of terrorism as a phenomenon[8]. In addition, it has been pointed out that this term sometimes unjustifiably includes ordinary criminal acts, that the definition of the term is directly related to emotions and interests, it is accompanied by a pronounced subjectivity, and that due to the complex nature of this term it is defined differently depending on the type of scientific approach in question (military, politicological, sociological, legal). [9]

As D. Jakovljevic said, "terrorism and its concept is one of those issues that everyone can understand at first glance, but a thorough examination reveals that the knowledge is not so easy, as it was believed when first approaching the problem."[10].

The diverse and numerous attempts to define terrorism made by vast numbers of scientific institutions, organizations and individual countries had different scientific importance and usefulness in the process of identification, classification and description of the concept of terrorism. Depending on the place of origin, the degree of scientific validity and objectives mentioned, the definitions are, according to the widely accepted scholarly view, divided into academic and administrative ones. [11]

Academic definitions represent a set of opinions and attitudes that foreign and domestic science has recorded in the investigation of terrorism. These definitions differ depending on the value, conceptual and ideological approaches to terrorism and can be classified as negative, consensual and abstract. For the purposes of this study, a selection will be made from among the many definitions of world science, focusing on those that are analytically useful for extracting the basic elements of the concept of terrorism.

In his work on "political terrorism" from 1983, A. Schmidt conducted an analysis of nine hundred academic definitions of terrorism and singled out the elements that were present in these definitions, which was later confirmed in a joint work with A. Jongman. [12] The most often repeated elements included the following: violence, force (83.5%), political violence (65%), anxiety (51%), threats (47%), psychological effects and probable reactions (41.5%), differentiation of the victims - the target (37.5%), deliberate, planned, systematic and organized action (32%), methods of struggle, strategy, tactics (30.5%), anomalies in violation of accepted humanitarian rules without limitations (30%), coercion, extortion of consent (28%), desire for publicity (21.5%), arbitrary and impersonal, random character; of non-discrimination (21%), civilians, neutrals, outsiders as victims (17.5%), intimidation (17%), emphasized the innocence of the victims (15.5%), group, movement, organization as a perpetrator (14%), the symbolic nature shares (13%), insanity, unpredictability, the unexpectedness of events violence (9%), the secret clandestine nature (9%), repeatability, serial character of violence (7%), crime - the crime (6%), requests directed at third individuals (4%).[13]

A similar consensual definition resulted from a later analysis of seventy-three definitions given by L. Weinberg, A. Pedazur and S. Hirsch - Hefler, stating that terrorism is (1) politically motivated (2) tactics that involves (3) the threat or use of force or (4) violence in which the pursuit of (5) publicity plays an important role.[14]

The negative definition of terrorism is given by J. Thackrah, who believes that it is "an abstract phenomenon that lacks real substance of which can be discovered and described." [15]

According to K. Tomaševski, the concept of terrorism comprises "various acts of violence and violations of human rights and human life, as well as public, or joint and individual property. [16]

The phrase 'political terrorism' is used by P. Wilkinson, who additionally defines the concept of criminal terrorism, which is defined as a "systematic recourse to terror in order to obtain private financial gain." [17]

According to R. Kerber terrorism is a symbolic act and "can be analyzed as well as other ways of communicating, analyzing its four constituent parts: a transmitter (terrorists), an independent recipient (target), message (bomb ambush or some other terrorist actions) and feedback (reaction of certain circle of listeners)."[18]

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8 Д. Симеуновић, *op. cit.,* p. 17-22.
9 *Ibid.*
10 Д. Јаковљевић, *Тероризам са гледишта кривичног права,* Београд, 1997. p. 25
11 A division of the definition in this context see more: Д. Симеуновић, *op. cit.,* p. 33-66; С. Мијалковић, М. Бајагић, *Организовани криминал и тероризам,* Криминалистичко-полицијска академија, Београд, 2012., p. 299-336; Р. Гаћиновић, „Тероризам у политичкој теорији", *Српска политичка мисао,* 2/10, Београд, p.181-188; Р. Гаћиновић, „Феноменологија савременог тероризма", *Војно дело,* 3/08, Београд, p.48
12 A.P.Schmid, *Political Terrorism*, Amsterdam, North Holand, 1983, and A.P. Schmid, A.J. Jongman: *Political Terrorism*, Piscataway, New York: Transaction Publishers, 2005.
13 С. Мијалковић, М. Бајагић, *op. cit.,* p. 310-311. and Д. Симеуновић, *op. cit.,* p. 34
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17 Quoted by: Р. Гаћиновић, „Тероризам у политичкој теорији", *Српска политичка мисао,* 2/10, Београд, p. 184
18 Quoted from: Р. Гаћиновић, „Феноменологија савременог тероризма", *Војно дело,* 3/08, Београд, p.50

"Every act of terrorism (performed) by politically motivated perpetrators is determined by their attitude towards the government and is therefore political," believes V. Dimitrijević. [19]

Terrorism is, in the opinion of D. Simeunović, defined as "a multidimensional political phenomenon that can theoretically and most generally be defined as a complex form of organized, group, or – less frequently - individual or institutionalized political violence marked by brachial-physical and psychological methods of political struggle which are used usually in times of political and economic crises, and rarely in situations of attained domestic economic and political stability of a society, to systematically try to achieve "greater goals" in a manner inappropriate in the given conditions, primarily the social situation and historical possibilities of those who practice it as a political strategy."[20]

The notion of terrorism, according to R. Gaćinović, involves "organized use of violence (or the threat of violence) by politically motivated perpetrators, who are determined to provoke fear, anxiety, panic and defeatism in order to impose their will on authorities and citizens." [21]

The above listed academic definitions of domestic and foreign authors, given primarily with the politicological aspect in mind, can serve as a basis for creating general assumptions on what features any behavior that is marked as terrorist should possess.

CRIMINAL LAW DEFINITIONS OF TERRORISM

In its attempt to define terrorism, legal science has relied on the achievements of political science, recognising its predominant role in the study of terrorism. This negative social phenomenon, which, because of the high degree of social identification involved, as well as the complexity of the consequences that it entails, is necessarily interesting for legal science, which deals with the study of social relations, in the context of the rights and obligations of individuals and society, and their mutual relations, and which seeks to define it as misconduct, both from the standpoint of international law and in terms of national criminal laws of individual states.

Conceptual definitions of terrorism as a legal phenomenon in terms of a criminal or any other offence only partially rely on the etiological significance of the concept of terrorism, and are directly related to political science definitions of the term, because they represent an adequate basis for predicting certain harmful activities that are illegal and prohibited by the law. Questions regarding criminalization of terrorist activities depend on the defining elements that were developed in parallel during the development of political science and law. In this sense, the paper will move on to discuss fundamental problems in defining terrorism as a political phenomenon, from which its legal substance derives. Therefore, we shall further analyze the political and legal definitions of terrorism, as well as the problems which hinder the creation of a generally acceptable definition.

The need to react to terrorism through the mechanisms of criminal law is directly linked to the consequences that it causes. Endangering the life and limb injuries, property, rights and freedoms of the use or threat of use of violence for the sake of resolving political disputes and problems justifies the means and the punitive reaction. It is a severe form of crime, of political and partly violent character. Social danger of terrorist behavior justifies its criminalization by the norms of substantive criminal law of national legislations, as well as the reaction of the states at the supranational level.[22]

The criminal law of the first attempts concretized response to terrorism thirties of the twentieth century to the present day, continuously evolving mechanisms to counter this form of criminality. Within these attempts were developed various models of prediction of terrorist offenses, which were inherent in the legislature into different techniques prescribing of criminal acts of terrorism. In this sense, legal reaction to terrorism priority was focused on defining the concept of crime, terrorism and related crimes, which is the criminalization as a separate category, provided that serves to protect society from this type of crime, in conjunction with other mechanisms of social reaction. Because of its complex nature science of criminal law has evolved through various attempts to define how certain theoreticians and in the laws of individual states.

The need to define criminal offence of terrorism occurs simultaneously with the first institutionalized and individual efforts of political thought in the definition and explanation of terrorism as a deviant social phenomenon. Defining terrorism as a criminal category coincides with the same attempts to define terrorism made by the theorists of a politicological orientation and uses separate definitional elements of terror-

19 В. Димитријевић, *Тероризам,* Радничка штампа, Београд, 1982, p. 37
20 Д. Симеуновић, *op. cit,* p. 78
21 Р. Гаћиновић, *Тероризам у политичкој и правној теорији*, Медија центар Одбрана, Београд, 2011, pp. 72-73
22 Criminal repression is based on the opinion of Z. Stojanovic, on the basis of equity and proportionality, as well as the satisfaction of victims, highlighting the danger that contains excessive expansion of criminal repression in this area, by: З. Стојановић, „ Кривична дела тероризма", *Ревија за криминологију и кривично право, 3*/10, Београд, p. 12

ism as a basis for the construction of the term, that is, of the crime of terrorism as a category of material and international criminal law, the existence of several problems that have hindered its occurrence.

As a basic problem of determination of terrorism as a criminal act occurred a tendency that the concept of terrorism defines related terms such as terror and terror, that is a great way of defining who is debatable from the standpoint of scientific research. Specifically, the definition of a term implies his explanation using different words and thoughts, and not repeating the same or similar in content terms in defining. Criminal law definition of the term implies a separation of factual description, therefore mandatory characteristics of certain behavior. It is about selecting and determining the constituent features of a specific criminal offense, then typing on illicit behavior as a specific criminal lawlessness. This process involves accurately, clearly and logically correct determination of the characteristics of a particular criminal law term, which may not hold the same or words of similar meaning. So, tautology, which is present in political science definitions of terrorism, was transmitted to the area of criminal law, which has suffered criticism on account of its tautological definition of terrorism as a category of criminal law.

Another problem in determining the criminal definition of terrorism occurred in relation to the multiplicity of forms of manifestation and forms of terrorist activity. A chronological overview of terrorist activities represents the basis for identifying the incidence and variety of terrorist behavior. [23] All of them should meet certain characteristics that might label them as a criminal act of terrorism, it is necessary to carry out the necessary generalization, which involves the analysis of individual behavior and finding a common denominator diverse human activities, which themselves are already criminalized behavior in terms of the provisions of national criminal laws. [24]

Specifying the characteristics of the offense, in accordance with the principle of legality, specifically its *lex certa*, implies precisely defining the characteristics of the offense, and not just casuistic reference to the already criminalized conduct, with additional special features.

The third and most important problem determination definition of terrorism in the criminal sense, we encountered the character of this behavior, which is predominantly political nature. These political problems stood in the way of political science definitions, but also criminal law, because it varies from jurisdiction to jurisdiction, while at the international level could be adopted generally acceptable notion of terrorism as a category of criminal law, because of the different political interests and approaches that individual States have during its determination.

Although the aforementioned problems of defining terrorism as a criminal act were still present a significant set aside a certain number of definitions of individual scientific thought, which could serve as a basis for understanding and solving the problem of defining terrorism as a criminal offense in modern conditions. In this regard as important definitions highlight the following.

According to T. Živanović terrorism whether of a "political character or not, means acts which by their nature cause fear of any evil, acts that are frightening." [25]

For R. Lemkin, the concept of terrorism means intimidating people by perpetration of violence. [26]

Terrorism, according to A. Sotile, is defined as "criminal method that is characterized by terror, violence, with regard to a particular goal." J. Vaciorski under terrorism means "the method of criminal activity which the offender intends to impose terror through its dominance in society or the state to preserve, altered or destroyed the social bonds of public order." [27]

According to H. De Vabres, the most prominent characteristics of terrorism include the following: 1) it is perpetrated by gangs; 2) it involves acts which cause terror: explosions, destruction of railways, trains or buildings, demolition of dams, poisoning drinking water, the spread of infectious diseases; and 3) it creates public danger. [28]

The above definitions originate from the thirties of the last century and a reflection of the perception then custom forms and forms of manifestation of terrorist behavior. How to terrorism as a social phenomenon, developing and aggravated arise and new approaches to its definition, which fundamentally alter the content and meaning, and originates from the last decades of the last century.[29]

23 Terrorism can be classified according to multiple criteria. According to the objectives to be trying to accomplish on the parts of the ideologically motivated terrorism, ethno-separatist terrorism and religiously-founded terrorism, according to the resources classified as classical (conventional), biochemical and nuclear, whereas the methods can be divided into classical, suicide, "cyber "terrorism and narco-terrorism. More on the classification of terrorism, see: Д. Симеуновић, *op. cit.,* pp. 82-85.

24 These are offenses against life and body, against the rights and freedoms of man and citizen, against property, against public security to the people and property against traffic safety and the like.

25 Quoted by: Д. Јаковљевић, *op. cit.*, p. 42

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

29 Regardless of the approach of the history of terrorism as a phenomenon is accepted, whether one this term includes many forms of political violence, who were his forerunners, or as the beginning of his initial, civil revolution in France, modern terrorism occurs in the early sixties of last century when received international character, which have contributed to modern conditions that transformed him into an international phenomenon, mostly technical - technological progress, which has led to the availability of modern weapons

Thornton (T.P. Thornton) believes that terror – and not terrorism – is a symbolic act directed at the political behavior which uses extraordinary means and involves the use and threat of violence.

The concept of terrorism as defined by P. Juilard means "an act of violence that breeds fear and intimidation among the population of a country and that threatens the life, physical integrity, physical and mental health or freedom of possible victims observed collectively."

According to the Tran-Tam terrorism means acts of international criminal offenses committed by means of violence and intimidation to achieve a certain goal.

In the opinion of E. David, the term terrorism is to be defined as any act of armed violence made with a political aim, or a social - philosophical, ideological or religious one, that violates the rules of humanitarian law prohibiting the use of barbaric means and constitutes an attack against innocent targets or targets that are of no military interest.

Hyams defines terrorism as the use of terror by militant policy with the aim of overthrowing the government or coercing the government to change its policy, wherein he makes a distinction between direct and indirect terrorism.[30]

Along with attempts to define terrorism as criminal acts by some theorists, this process took place at the supranational level, under the auspices of international organizations, with the aim of finding the minimum required state approval of the features of terrorist offenses, mostly related to specific events, which resulted in the adoption of a number of documents in the form of resolutions, conventions and decisions.

Although not comprehensive and systematic, they predicted certain unauthorized conduct as criminal offenses, which the national criminal justice systems, the ratification of the above-mentioned documents, must implement, and gradually exerted unification of terrorist offenses sectoral perspective.

History and development of solutions of the legal definition of terrorist behavior is the basis for understanding and encouraging the process of unification criminalization of national legislations, which characterizes today's criminal response.

View the criminal definition or felonies of terrorism in national legislation, without further comparative analysis will be exposed below, because those are the kind of administrative definitions, which have arisen as a result of the impact of sectoral conventions and relevant international documents.

The legislation of the United Kingdom, defines terrorism in several laws: the Law on the Prevention of Terrorism (*Temporary Provision Act),* terrorism is defined as the use of violence for political purposes and any other use of violence to cause fear in the public or a section of the public; [31] the Law on counter-terrorism (*Britain's Antiterrorism Crime and Security Act),* terrorism is defined as the threat or use of threats anywhere in the world or influence anyone to property of any government in the world; the Law on Terrorism (*Terrorism Act)* Terrorism constitutes a serious threat to use force or violence for political, religious and ideological reasons, directed against civilian lives and public property, which tends to using a firearm or explosive substances cause of fear is public, material destruction, impairs health and general security.

In the Russian Federation, terrorism is defined in the Federal Law on the fight against terrorism as an ideology of violence and practice that seeks to influence the decisions of state authorities, local governments or international organizations associated with intimidation of civilians and / or other forms of unlawful acts of violence while under the Terrorist activities include the following activities: organizing, planning, preparation, implementation and financing of terrorist acts; instigating acts of terrorism; the establishment of illegal armed formations, criminal association (criminal organisations) or organized groups for the implementation of acts of terrorism, as well as the participation of these entities in terrorist acts; recruiting, arming, training and use of terrorists; information or other assistance for the planning, preparation or implementation of terrorist acts; popularization of terrorist ideas, dissemination of materials or information on terrorists. The terrorist act, in terms of this Act, means the explosion, arson or other actions aimed at intimidating the population and the risk of loss of life, causing substantial damage to property or environmental disaster or other serious consequences, with the aim of undue influence on the decisions of national authorities, the local authorities or international organizations, as well as the threat of enforcement actions with the same purpose. The Criminal Code of the Russian Federation criminal act of terrorism is defined as the exercise of explosions, arson or other acts to cause a risk of death of people, causing considerable damage to property or the formation of other socially harmful consequences, if these activities are carried out with the aim of disrupting the social security of the population to influence the authorities in the decision making process. [32]

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and the development of media assets that serve as a transmitter of messages, political content, that every terrorist act is trying to send and deliver a wide audience.

30 The definition provided by: Д. Јаковљевић, *op. cit*., p. 45.

31 *Britain's Prevention of Terrorism- Temporary Provision Act*

32 С. Мијалковић, М. Бајагић, *op. cit,* pp. 301, 304

The Criminal Code of Greece under the concept of terrorism includes acts which may seriously damage the country or an international organization aimed at inciting fear among the population, or to compel a state or an international organization to do certain acts or refrain from certain practices, or to damage or destroy the fundamental constitutional political or economic structures of a country or an international organization. These acts include murder, grievous bodily harm, kidnapping, criminal offenses in connection with possession of explosives and chemical substances, endangering food, pollution of water resources, as well as acts violating the fundamental civil, political or any other rights provided by the Constitution or other applicable international regulations. [33]

The Criminal Code of Norway defines terrorism as offense was committed with the intent to seriously disrupt the function of vital importance for society, such as the functioning of legislative, or judicial authorities executed, secure supply of food or water, functioning banking or monetary system, medical institutions, seriously intimidate population and the like. [34]

In Sweden, terrorism is defined as a criminal offense in the new law on criminal responsibility for acts of terrorism (*New Act on Criminal Responsibility for Terrorist Crimes).* It is deemed to include acts which seriously undermine the security of states and international organizations with a view to: seriously frighten the population or particular social group; unjust coercion of public authorities or international organizations that operate in the desired direction or to refrain from certain actions; seriously destabilize or undermine the fundamental political, constitutional economic or social structures of a country or an international organization. Under terrorist acts imply the following crimes: murder, a variety of cruelty, kidnapping, serious facial injuries, arson, causing loss of life, malicious damage, hijacking, acts of violence, sabotage at airports, spreading poison or infection and unlawful use of chemical weapons and other weapons of mass destruction. [35]

The Danish Criminal Code under acts of terrorism includes all violent acts which are intended to intimidate the people of Denmark, its government or international organization, that they force them to act or refrain from certain activities or to destabilize or damage the vital political, constitutional, economic or social institutions. These works are hard to violence, kidnapping, traffic disorders in safety on the roads, hijacking of vehicles, violation of the law on weapons, arson, explosion, spreading of harmful gases, causing flooding, damage to lines or other means of transport, water contamination or contamination of items intended common use, possession or use of radioactive substances. As terrorist offenses, in the aforementioned law, provided they work and which directly or indirectly provides financial and other logistical support to terrorism. [36]

The Criminal Code of the Kyrgyz criminal act of terrorism defined as an explosion, acts of arson or other acts that pose a threat to humans and can have fatal consequences, causing substantial damage or other consequences, with the aim of undermining public security, terrorizing people or pressurize the government. [37]

The above definition of a terrorist offense in the national legislation of individual countries, together with definitions of certain state institutions and legal documents of international organizations, representing the administrative definition of terrorism, which occurred mainly in response to the terrorist events as a single, with no success in terms of a universal definition of a terrorist offense, which would be seen as a single criminal offense against international security and universal valuation code of humanity.

INSTEAD OF CONCLUSION – ACCESSORIES OF CRIMINAL LAW AS A REQUIREMENT OF RESPECT THE BASIC POSTULATES OF A DEMOCRATIC STATE

Legal, political and ideological differences between individual creators of administrative definitions, represented a problem in finding a unified position of the international community on the constituent features of the general criminal act of terrorism, which would prevent the existence of avoiding criminal prosecution of the perpetrators of these crimes, leaving the country in which it is not, or is on the other narrower way criminalized. The international character of terrorist activities is justified aspiration, which in modern terms is achieved in some regional documents that terrorism viewed as a unique category of criminal law, no matter to whom it is directed and what is the state of execution, and what is the state in which the offender is tried.

33 COT Institute for Safety and Crisis Management, *http://www.cot.nl/,* accessed on 11/14/2014
34 *Ibid.*
35 *New Act on Criminal Responsibility for Terrorist Crimes, www.coe.int/gmt,* accessed on 3.12.2014
36 *Danish Penal Code, www.legislationonline.org,*. accessed on 12/2014
37 С. Мијалковић, М. Бајагић, *op. cit.,* p. 303

The recognized need for a harmonized definition of terrorism as a category of criminal law category is a consequence of the increasing number of terrorist attacks worldwide and a prerequisite for more efficiently suppressing and combating terrorism. However, what is certain and what can be concluded from the review of politicology and criminal law definitions of terrorism, is the accessory relationship between political science and criminal law definitions of terrorism. In this respect, the width of the defining political science definitions of terrorism determined the number of illicit activities that make up the objective elements of the crime of terrorism, while on the other hand determined the concept of specific intent and its orientation towards the achievement of a specific goal.

Accessoriness in relation to the aforementioned definition of terrorism can be viewed from two aspects. The first involves criminal repression compliance with the fundamental principles of criminal law, as well as the resultant of several decades of development of criminal science at the global level. These principles, including the principle of priority of legitimacy, which sets the basis and limits to criminal law repression, means that criminal law must be the *ultima ratio* in the fight against crime in society, including terrorism, as one of its severe form. Therefore, in accordance with the aforementioned principle of legality, liberal-oriented criminal law has an accessory character in relation to all long mechanisms of social reaction, preventive, political, social, technical and technological solutions and methods appear as a priority in combating terrorism, which certainly precedes his defining the spectrum of social mechanism that is running.

On the other hand, the relationship between the crimnal law and political science definitions is determined by the specific nature of terrorism, which is based on a political goal or an idea, and which involves determination primarily in terms of political science, which, depending on the specific case may grant or deny the purpose of a specific case the nature of a legitimate political objective.

The existence of numerous definitions, stemming from both individual scientific thought, as well as numerous international bodies and organizations, provides a satisfactory basis for the establishment of a relatively harmonized criminal law definition of terrorism, which will constitute the basis for a more efficient application of criminal law at the international level, which is the only level at which society can combat this socially harmful phenomenon that threatens international security and fundamental human rights.

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THE NEW CONCEPT OF CRIMINAL OFFENSES OF TERRORISM IN SERBIAN LAW IN THE CONTEXT OF ENEMY CRIMINAL LAW

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Abstract: By the Law on Amendments to the Criminal Code from December 2012, which re-systematized criminal offenses of terrorism, introduced, besides the newly-arranged criminal offense of terrorism (Article 391), five new acts and modified other two and hereby created a subgroup of those respective acts within Chapter 34 (Criminal Offences against Humanity and Other Values protected under International Law), altogether marked by, *inter alia*, increased repression and broad criminalization, Serbian Criminal Law has gained a new concept of criminal offenses of terrorism, initiated by requirements and recommendations from international documents. The author aims to point out that this recent legislative approach, put in the context of Enemy Criminal Law, shows much resemblance with this theory and has therefore to be seen from a new perspective.

The paper begins with the basic concept of Enemy Criminal Law in general, followed by its characteristics *in concreto*. The next part deals with criticism that has been raised; regarding, amongst others, to so-called preventive excesses and politicization. Focusing after that on Serbian Law, the new concept of criminal acts of terrorism from the Criminal Code is analyzed and compared to the Theory of Enemy Criminal Law.

Keywords: terrorism, Criminal Code of Serbia, Law on Amendments, Enemy Criminal Law, depersonalization.

THE CONCEPT OF ENEMY CRIMINAL LAW

The concept of Enemy Criminal Law (*Feindstrafrecht*)[2] was developed by German scholar Günther Jakobs, who mentioned it for the first time in 1985 in an article[3] and further endorsed it in 1999.[4] According to him, the act and the state punishment are two sides of a communicative process; they are "means of symbolical interaction", "tools of normative understanding". As long as this communication functions, we found ourselves within a "Civil Criminal Law" (*Bürgerstrafrecht*), in which reasonable personalities ("personas") respect the norms.

Its antipode, Enemy Criminal Law,[5] enters the scenery in the moment the citizen doesn´t follow the rules; he transforms himself into an enemy of the society. He is an individual who "to a not merely incidental extent in his attitude (…), or his occupational life (…), or by his inclusion in an organization (…), has at any rate presumably permanently turned away from the law and in this respect does not guarantee the minimum cognitive security of personal behavior and demonstrates this deficit by his behavior."[6] This can be described as a process of "depersonalization": he/she turns from being a personality to being (just) an individual.[7] The will of the perpetrator, objectified in the offense, has to be negated; otherwise, the impression would remain, that this will can be seen as universalizable, hence universally valid (generally accepted).[8]

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2 The German word „Feindstrafrecht" does not have a satisfying translated counterpart so far. In English, it´s called "Criminal Law for or against enemies" or simply "Enemy Criminal Law". The first option contains some unnecessary ambivalence (for/against) which blurs the logic of the concept. In Serbian, one of the suggested expressions, „Eliminatory Criminal Law" not only lacks the keyword „enemy", but implies elimination in terms of physical destruction.

3 G. Jakobs, Kriminalisierung im Vorfeld einer Rechtsgutsverletzung, *ZStW* 97 (1985), S. 751 ff.

4 G. Jakobs, Das Selbstverständnis der Strafrechtswissenschaft vor den Herausforderungen der Gegenwart (Kommentar), -in: Eser/Hassemer/Burkhardt (Hrsg.), *Die deutsche Strafrechtswissenschaft vor der Jahrtausendwende*, 2000, S. 47 ff.

5 Jakobs admits that this line-up "involves ideal types on both sides and thus sharpened concepts, which are scarcely ever to be found in this purity in reality." G. Jakobs, Feindstrafrecht? – Eine Untersuchung zu den Bedingungen von Rechtlichkeit, *HRRS* 8-9/2006, S. 293. Nonetheless, one exception as far as it concerns Enemy Criminal Law is mentioned also by him – Guantanamo. G. Jakobs, On the Theory of Enemy Criminal Law, p. 5; original German version published as: "Zur Theorie des Feindstrafrechts", -in: H. Rosenau, S. Kim (Hrsg.), Straftheorie und Strafgerechtigkeit, Augsburger Studien zum Internationalen Recht, vol.7, 2010.

6 G. Jakobs (2000), *op. cit.*, S. 47, 52.

7 G. Jakobs, Bürgerstrafrecht und Feindstrafrecht, *HRRS* 3/2004, S. 88, 92.

8 A. Sinn, Moderne Verbrechensverfolgung – auf dem Weg zu einem Feindstrafrecht?, *ZIS* 3/2006, S. 112, 113.

This negation is achieved through "exclusion from the society",[9] a.k.a. depersonalization. Aim of the penalty is therefore "marginalization of the norm-violating meaning[10] of the offense"[11], whereby the identity, consequently the corpus of norms of the society are being confirmed. The Civil Criminal Law has lost one of his addressees who was said to have, on his part, lost his "normative approachability/receptiveness" (*normative Ansprechbarkeit*).[12] The exclusion occurs because the perpetrator offers no guarantee for future legal behavior and thus his personhood lacks a sufficient cognitive foundation. The exclusion "does not come upon him as an undeserved fate; as every orienting normative institution must have a cognitive foundation, he like everyone else has the duty[13] to present himself as somewhat reliable."[14]

CHARACTERISTICS OF ENEMY CRIMINAL LAW

Starting from the concept described above, the following can be identified as characteristics[15] of Enemy Criminal Law: the first to be noticed is the linguistic dimension. Here, a militant vocabulary and terminology ("vocabulary of combat")[16] is used. The primacy of "prevention" and "suppression" (known from international documents) was took over by the more emotional and emphatic "fight" or even a "war" on crime,[17] which in some states, as it seems, has gained supremacy over other social and political topics.[18] The attention of the legislator was directed towards organized crime at first, before it switched to terrorism in the aftermath of 9/11. But, to be precise, terrorism was put in that context by scholars of Enemy Criminal Law even before; apparent, amongst others, through Jakobs´ statement that the terrorist is "the prototype of an enemy".[19] Regaining and protecting the security of citizens is the declared goal, which allows overlapping to a great extent, or even equalizing Enemy (the critized one) and Security (presented in a more affirmative way, hence more accepted) Criminal Law.

Forward shifting (and at the same time expansion) of the criminal zone is the second feature. The look goes from the crime that has been committed (in the past) to preparatory acts and offenses with abstract endangerment (to the future). For example, it isn´t sure that the outcome of a terroristic association will be a committed crime or whether the same result will have the recruitment for terrorist acts. Nonetheless, this doesn´t affect the constitution of criminal liability; it is enough to finish the action which has the character of commission.

The third feature follows the widening of the criminal zone; namely, a non-existing or disproportional reduction of threat of penalty. Baring in mind that the culpability is established already in the "prefield" of the act, where the degree of wrong/injustice is normally minor, the threat of punishment is also expected to be less. An example of disproportionality is the offense of Terrorist Conspiracy (Art. 393a CC),[20] where the perpetrator shall be punished with the punishment envisaged for the act for which the conspiracy was organized, whereby the association is put on the same level as the envisaged (committed) act; or the comparison between Public Instigation of Terrorist Acts (Art. 391a) with imprisonment from one to ten years and the attempt of Murder (Art. 113) with imprisonment from five to fifteen years, including the possibility of mitigation of punishment (Art. 30 [2]).

Last but not least, the fourth attribute of Enemy Criminal Law is the weakening of procedural guarantees, or from the other perspective, the strengthening of state competence in criminal proceedings. In Serbian Law, for example, there are Special Evidentiary Actions (Art. 161-187 CPC)[21]. In Art. 162 (1.1) CDC is

9 G. Jakobs (2004), *op. cit*., S. 95.
10 According to Jakobs, the essential characteristic of the offense is not the violation of the good, but the violation of the norm, most clearly shown when talking about attempt. G. Jakobs (2000), *op. cit.*, S. 49.
11 A. Sinn, *op. cit*. S. 112; see also M. Kraus, *Rechtsstaatliche Terrorismusbekämpfung durch Straf- und Strafprozessrecht*, 2011, S. 146.
12 More about this term: C. Roxin, *Strafrecht AT I*, 2006, S. 740.
13 More detailed G. Jakobs, *Legal coercion and personhood*, 2008, S. 41.
14 G. Jakobs (2010), *op. cit*., p. 6.
15 Seen more from the "security-perspective", Sieber describes the characteristics in a similar way: a) attachment of criminal liability at an earlier point in the unfolding of a criminal offense in the field of substantive law; b) expansion of preventive surveillance measures, reduction of legal guarantees and creation of special competencies in the context of criminal procedure; c) increase in the obligations of private persons to cooperate both in anticipation of criminal proceedings as well as and independent of such proceedings; d) creation of inter-institutional and international forces as part of a new "architecture of security" and e) introduction of new measures in criminal and administrative law that limit the liberty of persons presumed dangerous. U. Sieber, Blurring the Categories of Criminal Law and the Law of War – Efforts and Effects in the Pursuit of Internal and External Security, -in: S. Manacorda, A. Nieto Martin (eds.), *Criminal Law between War and Peace – Justice and Cooperation in Criminal Matters in International Military Interventions*, Universidad de Castilla-La Mancha, Cuenca 2009, S. 40, 41.
16 A. Sinn, *op. cit*., S. 107, 111.
17 Here, the slogan „war on terror" is used most frequently.
18 An overview and comparison of notes of Enemy Criminal Law in the legislation of Germany, Great Britain, United States and Columbia is given by A. Sinn, *ibid*., S. 108-112.
19 G. Jakobs (1985), S. 839-851; G. Jakobs (2004), S. 303, 305.
20 CC – Criminal Code, *Official Gazette of RS*, no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014.
21 CPC – Criminal Procedure Code, Official Gazette of RS, no. 72/2011, 101/2011, 121/2012 and 32/2013.

stated that they can be ordered for criminal offenses which according to separate statute fall within the competence of a prosecutor´s office of special jurisdiction (in this case, it is the Public Prosecutor for Organized Crime). According to Art. 2 (5) of the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and Other Severe Criminal Offenses (*lex specialis*),[22] included are, amongst others, the "main" offense of Terrorism (Art. 391 CC), its four new sub-offenses (Art. 391a-d CC), Financing of Terrorism (Art. 393 CC) and Terrorist Conspiracy (Art. 393a CC).

CRITICISM ON ENEMY CRIMINAL LAW

The first critic voice concerning the concept of Enemy Criminal Law, if it is understood as legitimatizing and not merely describing, is raised upon the general enumeration of some areas of crime (by attitude – i. e. sexual crime; by occupational life – i. e. white-collar crime and drug crime; by inclusion in an organization – i. e. terrorism and organized crime), as there can´t be drawn conclusions upon a normative (un)approachability of someone. We can talk about that if there is no understanding, therefore no (useful) communication, which will be the case for example with persons in a state of mental incompetence (Art. 23 CC)[23] or with children (Art. 4 CC).[24] They are, on the other hand, not excluded from society, but rather excluded from punishment. As long as there is communication in terms of criminal law, punishment maintains its sense.[25]

This kind of restrictive-extensive interpretation (restrictive because it limits itself on certain fields of crime; extensive because it interprets the behavior of the individual within this area in a broad sense) can lead to so-called preventive excesses.[26] Keeping and strengthening trust in the normative order is conceptually open to any kind of reaction. In this sense, it threatens to "justify" every, even the worst and unnecessary way of dealing with the culprit.[27] But who will determine who endangers the normative order of society? The answer to this question leads to the next critical point.

The decision to breach a norm is the decision of an individual, whereas the exclusion from society is always a political decision. She lies in the hands of policy makers and juridical stakeholders.[28] In other words, the determination of someone as an enemy is preceded by a political decision – his construction as an enemy.[29] In this way, to the representatives of society is given the power to, *per definitionem,* expulse the individual from society by marking him, stigmatizing him as a foe.[30] Legal history teaches us that in cases of politicization of law like this, no one can rely on validity of the main principle of legal certainty,[31] as the door to a totalitarian criminal law is being loosened, maybe even opened up.[32] This leads to erosion of (in fact, nonvolatile) human rights[33] (which makes the exclusion from society its *contradictio in adiecto* and at the same time feature of totalitarian criminal law) and to annihilation of the achievements of Enlightenment and Idealism. Talking about time-dimensions, it is interesting to note a contradictory tendency: while we talk about depersonalization in times of peace, in war-time comes to personalization of the enemy.[34]

Dogmatically speaking, from a criminal law with the act in its center (*Tatstrafrecht,* act-based criminal law), excessive subjectivization[35] will disturb the equilibrium and bring us to a criminal law with the

22 Official Gazette of RS, no. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009, 72/2011 and 101/2011.

23 Art. 23 CC: „(1) There is no criminal offence if it was committed in a state of mental incompetence. (2) A perpetrator is mentally incompetent if they were unable to understand the significance of their act or were unable to control their actions due to mental illness, temporary mental disorder, mental retardation or other severe mental disorder."

24 Art. 4 CC: "(3) A criminal sanction may not be imposed on a person who has not turned fourteen at the time of the commission of an offence. Rehabilitation measures and other criminal sanctions may be imposed on a juvenile under the conditions prescribed by a special law."

25 A. Sinn, *ibid*., S. 115.

26 H. Schneider, *Kann die Einübung einer Normanerkennung die Strafrechtsdogmatik leiten? Eine Kritik des strafrechtlichen Funktionalismus*, 2004, S. 84, 341-343; quot. from: M. Bock, Pozitivna specijalna prevencija i nove tendencije u kriminalnoj politici, *Crimen* 2/2010, str. 143.

27 H. Schneider, *ibid.*

28 M. Kraus, *ibid*., S. 153.

29 A. Aponte, Krieg und Politik – Das politische Feindstrafrecht im Alltag, *HRRS* 8/2006, S. 297, 300.

30 M. Kraus, *ibid*., S. 148.

31 In this sense: L.-G. Kutalia, *"Feindstrafrecht" Naturzustand vs. Rechtsbeziehung*, 2007, S. 30.

32 *Stojanović* states that the criminal law is developing from the rule of law to a totalitarian criminal law, instead the other way round, and continues: "As it´s difficult to imagine the existence of totalitarian criminal law in democratic society, dilemmas are raised on the very character of society and state which opted for this kind of criminal law. Are organized crime, terrorism and corruption really forms of crime who peril the basis of society, who can´t be effectively suppressed but by limiting and endangering fundamental rights and freedoms of all citizens? Is there truth in the claim that special measures and deviations from regular criminal law serve primarily for political goals and not for suppression of particularly dangerous forms of crime?" Z. Stojanović, Krivično pravo u doba krize, *Branič* br. 1-2/2011, str. 29.

33 L.-G. Kutalia, *op. cit*., S. 26.

34 L.-G. Kutalia, *ibid*., S. 21.

35 *Ferrajoli* argues that legal reason doesn´t know "friends and enemies", but guilty and innocent. L. Ferrajoli, Il "diritto penale del nemico" e la dissoluzione del diritto penale, *Panóptica* no. 7 (2007), p. 87.

perpetrator as main factor (*Täterstrafrecht,* actor-based criminal law). Here, the culpability is linked to the persons` character, while the offense is only the trigger, not the basis and limitation of the perpetrators criminal liability.[36] Referring of state coercion only to the actor as its object is another feature of totalitarian criminal law.[37]

NEW CONCEPT OF TERRORIST OFFENSES IN SERBIAN CRIMINAL CODE

Terrorism, like the everyday life of people, has modernized; new, complex risks developed, while the logistics of terrorism has become simplified, more flexible and harder to detect. Legal infrastructure of the opponent is being used,[38] in a world more interconnected than ever,[39] with its boundaries becoming more poriferous at the same time. In the quest for "same weapons", adaptation followed adaptation, so that nowadays anti-terroristic measures, among them criminal law, have reached a new level, with widened frontiers and evaluation of effects to be awaited. An "ultimate increase of functional efficiency"[40] of criminal law is expected, in an atmosphere of changed risk-perception and specific fear of crime, often (additionally) induced through media[41] and not always concordant with the actual security situation.[42]

The Serbian legislator also follows this general trend; most evident after the Law on Amendments to the Criminal Code from December 2012, by which he created a subgroup of terroristic offenses within Chapter 34 (Criminal Offences against Humanity and Other Values protected under International Law). It consists of a re-systematized, newly-arranged "main" criminal offense of terrorism (Art. 391),[43] five new – Public Instigation of Terrorist Acts (Art. 391a),[44] Recruitment and Training for Terrorist Acts (Art. 391b),[45] Use of a deadly device (Art. 391c), Destruction and Damaging of a Nuclear Facility (Art. 391d), Terrorist Conspir-

36 More on that: Jescheck/Weigend, *Strafrecht AT*, 5. Aufl., 1996, S. 54, 55.; Lenckner in: Schönke/Schröder, *Kommentar StGB*, 29. Aufl., 2014, S. 3 ff.; C. Roxin, *op. cit.,* S. 181.

37 W. Gropp, *Strafrecht AT*, 3. Aufl., Berlin 2005, S. 91. A less critical approach seems to show Fletcher: "The terms Gesinnungsstrafrecht (attitude-based criminal law) and Täterstrafrecht (actor-based criminal law) are closely associated with National Socialism, yet for Americans the possibility of either of these modes´ structuring the criminal law remains free of historical stigma. Consequently, American criminal law is open to both influences." G. P. Fletcher, *The Grammar of Criminal Law: American, Comparative and International, Volume One: Foundations*, Oxford 2007, p. 28.

38 U. Sieber, S. 353.

39 We especially become aware of the global interlinking when we look at the expanding cyber-criminality. More on that: U. Sieber, Ph. Brunst, Cyberterrorism and Other Use of the Internet for Terrorist Purposes – Threat Analysis and Evaluation of International Conventions, -in: Council of Europe, *Cyberterrorism – the use of the Internet for terrorist purposes*, Strasbourg 2007; S. Manacorda (ed), *Cybercriminality: Finding a Balance between Freedom and Security*, Selected papers and contributions from the International Conference on "Cybercrime: Global Phenomenon and its Challenges", Mont Blanc, Italy, 2-4 December 2011.

40 M. Bock, *op. cit*., str. 143.

41 The role of media is important for both sides: for terrorists who rely on media attention to reach their goals, as well as for the state which generates or expands the fear of people. *Zöller* calls modern media the "elixir of life" of terrorists. M. Zöller, Strafrechtliche Verfolgung von Terrorismus und politischem Extremismus unter dem Einfluss des Rechts der Europäischen Union, *ZIS* 9/2014, S. 403. In the light of punitive populism, it has the same significance for the state. *Hefendehl* calls this "legal policy actionism". R. Hefendehl, Organisierte Kriminalität als Begründung für ein Feind- oder Täterstrafrecht?, *StV* 2005, S. 160.

42 That is how some irrational reactions of individuals and institutions on (rare) big risks (dread risks) have to be seen. Scientific analyses have shown that citizens after terrorist attacks 9/11 traveled, for security reasons, more by car than by plane. Intensified traffic led to more accidents and to more victims in traffic than the number of dead in the hi-jacked planes of 9/11. G. Gigerenzer, Risk Analysis 26 (2006), p. 350.; quot. From: U. Sieber (2009), S. 353. This example shows how irrational human reactions to dread risks lead to huge indirect damages. Additionally, there is a decrease of rights, freedoms and guarantees from the rule of law. U. Sieber, *ibid*., S. 353-354.

43 Article 391 CC: „(1) Whoever, in an intention to seriously threaten the citizens or force Serbia, a foreign country or international organization to do or not to do something, or to seriously threaten or violate the fundamental constitutional, political, economic or social structures of Serbia, a foreign country or international organization: 1) attacks the life or limb or freedom of another person; 2) kidnaps or takes hostages; 3) destroys a state or public facility, traffic system, infrastructure including the information systems, platform in the epicontinental basin, common good or private property in a way threatening people's lives or causing serious damage for the economy; 4) hijacks an airplane, ship or other vehicle for public transport of people or goods; 5) produces, possesses, provides, transports, supplies or uses nuclear, biological, chemical or other weapons, explosive, nuclear or radioactive material or devices, including the research and development of nuclear, biological and chemical weapons; 6) releases contaminating material or causes a fire, explosion or flood or undertakes other risky actions that may threaten the life of people; 7) prevents or stops the supply of water, electricity, or other natural resource which may threaten the life of people, shall be punished with imprisonment from five to fifteen years. (2) Whoever threatens with committing a criminal offence referred to in para 1 of this article, shall be punished with imprisonment from six months to five years. (3) In case of death of one or more persons or serious destruction due to an act referred to in para 1 of this article, the perpetrator shall be punished with imprisonment of minimum ten years. (4) If, committing an offence referred to in para 1 of this article, the perpetrator committed premeditated killing of one or more persons, they shall be punished with imprisonment of minimum twelve years or imprisonment from thirty to forty years.

44 Article 391a CC: „Whoever publicly expresses or disseminates ideas that directly or indirectly instigate a criminal act referred to in article 391 hereof, shall be punished with imprisonment from one to ten years."

45 Article 391b CC: „(1) Whoever, in an intention to commit a crime referred to in article 391 hereof, recruits another person to commit or take part in the commission or to join the terrorist conspiracy, shall be punished with imprisonment from one to eleven years. (2) The punishment specified in para 1 of this article shall also refer to whoever, in an intention to commit a crime referred to in article 391 hereof, gives instructions on how to make and use explosive devices, fire arms or other weapons or dangerous or harmful matter, or whoever trains another person to commit or take part in the commission of such criminal act."

acy (Art. 393a),[46] and other two modified crimes – Endangering of Person under International Protection (Art. 392) and Financing of Terrorism (Art. 393).[47]

Altogether, they are marked by following keywords: legislative-technical concentration, expanded criminal zone, increased repression and combined (de)politicization.

First of all, legislative-technically the regulations on terrorist offenses have come closer. They are not in separate laws anymore, or in different chapters; they are now following each other in the same chapter. The offenses of "national" and international terrorism concentrated even more – they are now merged in one offense in Art. 391 (Terrorism). Both, new offenses and new forms of existing offenses, mark a broadened criminal zone. Culpability occurs earlier than before; certain preparatory actions are upraised to level of offense, as well as specific behavior which would usually not be punishable.[48] Increased repression can be seen not only in higher and wider range of punishment, but also in the fact that four out of eight crimes are punishable with the most severe sanction the Serbian Law knows – imprisonment from 30 to 40 years.[49] Finally, there is combined (de)politicization: dogmatic depoliticization and politicization in terms of criminal policy. The new concept (relocation from Chapter 28 – Criminal Offenses against the Constitutional Order and Security of the Republic of Serbia) means on the one hand that terrorism is not a political crime anymore and hence no obstacle for extradition; on the other hand, it changes the perception of the terrorist, because he is no longer a political delinquent but rather an ordinary criminal.[50] In addition, the applicability of domestic law to perpetrators of particular criminal offenses committed abroad (primary real principle) has expanded and includes the crimes from art. 391 to 393a CC, which means that the "net of law" around terroristic offenses has been strengthened.[51] At the same time, terroristic delicts are put in the center of legislative actions; a sign of politicization of criminal policy.

It is beyond question that one of the most used (head)words in politics and public life lately has been "terrorism". As we can see here, it has gained a lot of importance also in national criminal legislation. If we compare the characteristics of the recent Serbian legal reform on terrorism and the theory on Enemy Criminal Law, we can see that most of them are at the same time characteristics of the Theory as well. Extended criminal zone, repressive criminal policy and the segment of politicization seem familiar and are already illustrated on examples from LACC/2012.

However, the newly-made and newly-broadened possibilities on suppression of terrorism created also potential for abuse, when a repressive criminal legislation can easily be used to fight political rivals, or when an exaggerated interpretation leads to breach of fundamental human rights instead of their protection. It is wrong to label opponents of Enemy Criminal Law and other similar concepts as "criminal pacifists who allegedly shrink back from crime and deny the danger of the spread of criminal activities."[52] What they do is they emphasize the necessity of coercion to be specifically justified; in other words, to find the right balance and to reach in a reasonable manner for a now even sharper instrument like anti-terroristic criminal legislation, keeping in mind the basis and scope of state coercion,[53] principle of proportionality and justice[54] and the minimum of an individuals´ privacy, free of criminal law.

Finally, one important annotation is to be made: this new concept of terrorist crimes has been initiated and stipulated by requirements and recommendations from numerous international documents,[55] which means that the original creator was not the national, but the international legislator.

46 Article 393a CC: "(1) If two or more persons are conspiring for a longer period of time in order to commit criminal acts referred to in articles 391 to 393 hereof, they shall be punished with the punishment envisaged for the act for which the conspiracy was organized. (2) The perpetrator referred to in para 1 of this article who by revealing the conspiracy or otherwise prevents the commission of criminal acts referred to in para 1 of this article or contributes to its detection, shall be punished with imprisonment up to three years, or may be acquitted."

47 Article 393 CC: „ (1) Whoever directly or indirectly gives or collects funds with the intention to use them or knowing that they will be used, fully or partially, for commission of criminal acts referred to in articles 391 to 392 hereof or for financing of persons, a group or organized crime group who intend to commit these acts, shall be punished with imprisonment from one to ten years. (2) The funds specified in paragraph 1 of this Article shall be seized."

48 More on that: M. Steinsiek, *Terrorabwehr durch Strafrecht? Verfassungsrechtliche und strafrechtssystematische Grenzen der Vorfeldkriminalisierung*, Nomos, Baden-Baden 2012.

49 As fifth crime, we can add Terrorist Conspiracy (Art. 393a), for which the offender will be punished with the punishment envisaged for the act for which the conspiracy was organized.

50 Z. Stojanović, D. Kolarić, *Krivičnopravno reagovanje na teške oblike kriminaliteta*, Beograd 2010, str. 74.

51 Art. 7 CC: „Criminal legislation of Serbia shall apply to anyone committing abroad a criminal offence specified in Articles 305 through 316, 318 through 321 and Article 391 through 393a hereof or Article 223 hereof if counterfeiting relates to domestic currency. "

52 M. Bock, str. 141.

53 In Serbian Criminal Code, Article 3 is relevant: „Protection of a human being and other fundamental social values constitute the basis and scope for defining of criminal acts, imposing of criminal sanctions and their enforcement to a degree necessary for suppression of these offenses."

54 In this sense: B. Weißer, Der „Kampf gegen den Terrorismus" – Prävention durch Strafrecht?, *JZ* 8/2008, S. 395.

55 More on that: D. Kolarić, Krivično delo terorizma – uporednopravni aspekti, *Nauka Bezbednost Policija* 2/2011; N. Delić, Criminal Offences of Terrorism in the Criminal Code of Serbia after the Amendment of 2012, *Kaznena reakcija u Srbiji* (ur. Đ. Ignjatović), Beograd 2014.

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ACTUALIZATION OF THE CONCEPT OF "NEGATIVE FACTS" IN CONTEMPORARY CRIMINALISTICS

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Abstract: Criminal investigators during criminal investigation evaluate the facts of the potential probative force - science and profession. Police, due to the nature of the offense, are able to direct their own observation, or indirectly, determine the existence or non-existence of material facts, facts indications and auxiliary facts. The task is criminalists to the detection, identification and clarification of facts; their analysis, synthesis or elimination; raise the level of certainty in the commission of an offense and the offender from the level grounds for suspicion to the level of reasonable suspicion and are, as such, the criminal complaint presented to criminal prosecution or proceedings. It is this process of implementation experience, logic and evaluation has undergone professional nonjuridical assessment, especially in the case, traces - sources of knowledge in pre-trial proceedings, as the facts of circumstantial evidence. Negative facts during the criminal investigation, the theory of knowledge and logic (Interlocking and tapping with criminal law), aim to become just the material facts on which, among others, a judgment will be based. The work will vary and differentiate fact-finding as a result of targeted activities towards discovering and learning about the fact the rules of criminal science and fact-finding in criminal proceedings.

Keywords: facts, negative facts, criminology, criminal investigation, criminal law.

TERM „FACTS"

The term refers to the fact of all the phenomena in objective reality. The fact is thought-sensory activity, determined objectively real existence of certain things, phenomena, processes, events or properties of relations. Fact can be considered as part of the (clip, a fragment of) reality, which is a criminal investigator, abstracted from the universal connection of things and phenomena reflecting it in their minds, therefore, whom he knew. Things, events, phenomena, relations and properties become facts in criminology terms only and precisely because criminologist had realized they added a certain meaning - which helped him interpret the crime. The fact is the object of knowledge and of which differs only by function (instrumentally), rather than a pop-up (phenomenological). Established fact with certainty (possibly a lower level of security) when used to establish other facts, it becomes proof. Facts we want to get to the truth, and we want to say what is true and what is false, but by the evidence in order to:

1) to determine guilt, in terms of process operations; and

2) determining the levels of reasonable doubt, in terms of criminal investigation .

In criminal proceedings shall be determined decisive, i.e. the material facts, facts connection indications and auxiliary facts to verify the evidence. The basis of criminal investigation based on circumstantial evidence. This is a basic matter considering methods of criminology which in the literature are very rare works. If we want to get to the level of epistemological knowledge - meaning that we want to establish or prove that something is - and - it or something like that - and - such. The subject of proof are certain claims about the existence of the fact that something like that - and - such, or that something happened in the past in such - and - such a way. The criminal process theorists and practitioners of crime indicate the means of evidence with which to check the veracity of the existence or non-existence of certain facts, the criminal investigation that was focused on the regularity of fact-finding, possessing knowledge about the issue. This

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operational knowledge of the facts related to a crime, on the means of gathering the facts related to the three important objectives:

1) reaching the truth in criminal proceedings,
2) the protection of fundamental human rights and general freedoms of a man,
3) develop the effectiveness of the legal system through prevention.

Respect for the basic principles of criminal proceedings - the principle of a fair trial in a criminal court, as well as the principle of immediacy, in confirmation of the facts in the criminal proceedings, which is the obligation of all process subjects. V. Bayer believes that it is not enough that the plaintiff only claims that the defendant committed a crime and that it is based on law penalties. He can take advantage of the objective circumstances of reality (e.g. the defendant's personal characteristics). In this way we can determine the legally relevant facts of the case (substantive and procedural law relevant facts), where these phenomena from reality, which consist of Terms of substantive criminal law for the application of sanctions and criminal procedural law for the implementation of procedural actions, call (legally relevant) facts. By facts we mean a set of (complex) of certain facts which must be established in criminal proceedings for making the right decision. So, those are the facts (collection) that underlie the application of substantive or procedural criminal law in a particular criminal case. The facts of the base are a court's decision. It covers only the relevant facts, those on which the decision of the court is based. This expression does not mean the totality of data on a procedural matter (factual and evidentiary fund). In this latter case, we should talk about "state of affairs".

Also, the use of criminal knowledge does not end upon the completion of criminal investigation and fact-finding signs, which indicate that a person is the executor of the crime. In accordance with the principle of truth criminology concrete fortified crime content must fit in criminal proceedings. Although police officers, when acting outside the criminal proceedings, have a certain freedom in the selection and implementation of individual criminal tactical and technical actions and measures in the processing of this case, they must adhere to this principle, which is a general principle of criminal procedure, and as such is bound by an authorized police-employee within their informal operational activities. This principle should follow the work of the bodies of repression from the beginning to the end of the procedure.

During the criminal investigation facts are collected in a deliberate, planned and systematic way, in order to detect, identify, clarify and reporting of crimes and perpetrators, basically in order to initiate criminal prosecution - which is the subject of heuristic criminology. The initial scope and quality of learning facts - indications, depends on the extent and quality of information first. Here is a reasonable doubt triggered by logical thinking operations within the criminal differential diagnosis that subsumes actual facts under abstract legal norm. Further guidance criminal investigations, conducting operational and tactical evidentiary actions and measures will be dependent on the quality of the known facts.

In criminal proceedings, conduct provides the facts. In carrying out the procedural steps facts in criminal proceedings may establish own observation of the proceeding, as well - site investigation. Depending on the level of doubt, grounds for suspicion - founded suspicion, in practical terms is routed to the actual content of activities of criminal investigation, while the syllogistic character depends on the types of process activities; the plan the criminal proceedings, the responsibilities of the executor.

It's hard to argue the scientific identification evidence and the fact that is the subject of proof, since the evidence is not, nor can it be, subject to proof, but only with the help of the instrument and on the basis of which we do. V. Bayer stated that indications have a dual character as they are facts, and evidence. Therefore, they need to be fixed. D. Mihajlovic stated that the evidence is only one fact which is internally connected with the offense. During the procedural steps authority of the criminal proceedings cannot create evidence of its procedural action because it occurred in the interdependence of civil servants and / or agents of execution and / or the object of attack and / or scene. B. Simonovic believes that the source of evidence supports the information carrier and may be material or psychological in nature. In this sense processualists criminal law considered that the evidence of material nature is a source of evidence if the case or matter, and that the psychological evidence if the source is a person.

FACT IN CRIMINAL PROCEDURES

B. Pavišić and D. Modly classified fact in the category of decisive and convex where the rest of the indications and auxiliary facts.

a) Determined or material facts are those which are subject to legal regulations and their union makes particular set of facts.

b) Evidence (lat. indicio) or grounds for suspicion, based on suspicion, are, according to the previously mentioned, the facts and evidence. The suspicion or distrust is established as a fact, then as evidence for de-

termining the relevant facts. These indications are not themselves subject to proof but so logical - empirical reflection can be concluded about the veracity of the material facts.

c) Additional facts are checked and previous evidence, therefore the relevant facts and indications, and they therefore called control facts. Their significance is that their identifying can check the credibility of sources of knowledge of the material facts and circumstantial evidence (grounds for suspicion, i.e. the basis of suspicion). Crime closed circuit indications will be evaluated through the investigative situation and criminal proceedings.

In terms of criminology indications - facts include all the facts that may indicate the existence of a criminal offense, to a person as a possible perpetrator. In addition to heuristic (the revealing) the meaning of the criminal procedure shall be established and other indications of implementing operational measures and actions to the part of police powers that the syllogistic terms, due to the informal nature, are not evidence. Nevertheless they are a source of information for further criminal investigation through the criminal enforcement of rules and police purposes. The difference fact - the evidence in the criminal procedure or criminology terms derived from heuristic - exploratory importance indication of which only a few in the process become evidence - facts in syllogistic segment of Criminal Procedure.

DIVISION INDICATIONS

There are various divisions indications in crime literature. V. Vodinelić indications are classified according to the phases of the offense and their date of origin, including:

1st Evidence before the commission of the crime:
– Moral ability of employees for committing an offense,
– The motive of the offense,
– Expression of the will to commit a criminal offense,
– The character of executor,
– Physical and mental characteristics of employees,
– Suspicious behaviour of employees,
– Misconduct of employees,
– Socializing with someone with criminal behaviour,
– Uncertain way of life,
– Permanent vagrancy, removals,
– Previous convictions executor (recidivism, perseveration),
– Physical and mental characteristics suitable for the execution of works,
– Knowledge, abilities, skills, habits,
– Possession of the means of execution (weapons, tools) of the offense,
– Knowledge of the circumstances that are not known to everyone,
– Ignorance of the circumstances that someone had to be known.

Second indicia during the commission of the crime:
– Presence at the scene of the crime,
– Knowledge, skills, craft experience, skills,
– Knowledge of certain circumstances,
– The motive of the offense,
– Participation in the commission,
– Manner of committing the crime.

Indications third after the commission of the offense:
– Traces of the crime to the perpetrator,
– Participation in a criminal act,
– The benefit of a criminal offense (material effect),
– Suspicious behaviour (lying),
– Contradictions in the testimony,

– Psychological consequences of the crime to the perpetrator.

In the criminology research, i.e. in the heuristic, the revealing sense, indications are organs of persecution (police) are relevant as indicating the existence or non-existence of the crime (object, objective side of the offense, a certain type of criminal act, action, conduct, objective aggravating or mitigating circumstances), and then to indicate the perpetrator (subject, subjective side of the crime, guilt, accountability, intent, negligence, motive, subjective aggravating or mitigating circumstances) and allow its identification. The facts are objectively given, can know and demonstrate and capture the reality of events and the state of the outside world, but also the so-called internal awareness of the psyche - as engrams (psychological signal) and as such are in contrast to the value judgments and opinions of the investigators. The main factors of cognitive processes during the criminal investigation and procedures are to clip reality becomes fact only the emergence of a certain relationship between the subject - object, as well as to the reality that the investigator must be working and thoughtful in indissoluble contact.

The facts cannot be untrue - can be untrue what is factually incorrectly established (intentional, unintentional - ignorance). Thus, evidence of the facts differs in function. The evidence is only a means of knowledge, and the facts are the subject of knowledge. In this process, the facts can be "transformed" into the evidence and then again serve to determine other facts.

NEGATIVE FACTS

The very concept of negative facts is dealt with in many sciences: philosophy, law, logic and others. The authors have different views on the issue of negative facts. Bozidar Markovic believes that the facts can be positive and negative. For crimes committed by omission it is important to prove that one fact does not exist. If the infant died because its mother deliberately did not feed it, it must be demonstrated. Importance of unfeeding in this case is a negative fact. Tihomir Vasiljevic also makes difference between negative and positive facts. He believes that the negative facts that must be proved imply positive and it is sufficient to prove just the opposite positive fact. If broken into the house forcing glass barriers inside and on the floor of the room does not have splinters and traces of glass - that's a negative fact. However, if it is proved that before the arrival of the investigation team a cleaning lady did not clean the room (and there is no glass), then negative fact is indirectly proven as positive fact. This is the reason that Ivo Kobavec believes that the lack of the fact must be established, also, and that there must be in the logic of things and experiences.

Negative facts are extremely important term in criminalistics. They are not only the first warning but also the proof that we are dealing with faking or false declarations of the offense. Knowledge of negative facts becomes an occasion for operational and investigative activity. Here, then, is the significance of negative facts.

Mention the Crime representing classical understanding of negative facts because they think they are negative facts in fact "the absence of facts". Therefore, they considered that the negative fact is the lack of something that should exist. They were "opposed" investigators who in turn represent different explanations and definitions of the negative facts. According to them, the negative fact is not merely the absence and lack, but also the presence of traces at the site of the crime, attacked or another object, which should not exist within specific situations, normal and superior walk things. This group of authors includes: RS Belkin, GG Zuikov, AI Winberg. VS Burdan on the basis of their research says: "Rather a negative fact defined as absent or found traces or phenomena whose existence or absence of normal speed events." Far better define such negative facts from how they do it "classics".

To substantiate this view is an example from practice, and then comment on it. "S. M. from Split, in her bedroom out of the closet is pulls out all the laundry and tossed it on the floor. From her handbag she took out a wallet from which she took a thousand euros and put them in the pocket of her apron in the other room. The cabinet is left wide open and scattered bed. Then she tore some documents and scattered them on the floor. In another example in the village Jelkovac unidentified person allegedly broken into the store. The outer door was secured by a steel lever, where he was a lock "Force". The padlock is removed and thrown in front of the door, and that on it were traces of forced opening. The door is open, and then with a steel lever pushed dent on the attached sheet enters the outer door and the edge of the hair direction. At the very gates there were no clues that would have to be that committed burglary. The simulant is first unlocked the door original key, pulled it open a steel lever pressed recesses on the tin, where he entered the latch locks. The reconstruction of events police officer found that the lever could produce a specified mark on the sheet only when the door was open. " The above casuistry in the first example in a direct way is confirmed by the recently presented the definition of negative facts (e.g. Dysfunctional outrageous mess at the alleged burglary is just as negative facts in relation to the version of the burglary, as well as the non-existence of traces of tampering as it is stated in the second example ("Door Stores").

Therefore, negative or negatively facts or circumstances such facts or circumstances of the criminal event or crime which in the present case does not exist, although according to the current situation the normal order of things (speed things) or mounted versions (superior gait things) must have existed. This term includes those criminal-tactical situations when certain facts and circumstances exist (are present), although according to the usual order of things (walking crime scene) and set versions should not exist (be present). As a rule, the existence or non-existence of the above circumstances indicate that the staging, diving. It is often error executor technical, logical and psychological. In these cases there is no element of natural causal link.

IS THERE REALLY A "NEGATIVE FACTS"?

We can safely say that the processualists and criminal investigators do not doubt the existence of negative facts, but in so far as it appears as a negative fact footprint - phenomena (eg. Excessive clutter). The disagreement begins when negative facts imply the absence of something (e.g. the infant died because its mother did not feed it). Thus, the event took place. The mother's omission here caused the death. And now different authors transferred to the realm of philosophy and logic which does not affect this work, therefore only briefly, to the basic explained. If there was no action, then there is nothing. Nothing is the negation of "something", but she therefore did not become "something". Because of this and logician Marine says. "What does not exist cannot be called a fact. What we call the fact "negative fact" is not a material fact. It is not a scientific rule that one and the same phrase "negative facts" used to denote the real existing and non-existing. This is where the term "negative facts" should be retained to also find more regular expressions just as parole term ".

On the other hand, bourgeois logicians' negation was given the nature of bare denial. According to them, if criminologist says, "It is no trace." This situation should not oppose particular positive finding. In this way, a waiver would not determine anything; a negative judgment would not be in any relationship with objective reality, and that means to be without any cognitive meaning. V. Vodinelić says: "I accept the view that a waiver is not naked negation, just denial, but at the same time establishing something else." When, for example, on the site of the crime giving up some property (the door is no sign of a break and damage) we impart to him any other way (at the door and a dust and earth) as irrelevant. So it is not true that there would be nothing, because "nothing" does not exist. We argue, therefore, that the negative fact is not merely the absence rather than the presence of traces and objects on the scene of a crime and may exist.

It can also be seen as follows. If you suspect denying his presence at the scene of the offense at a critical time says: "But I've never been there!", This pragmatic negative statement witnesses who say they did not see him at the scene actually claim that he was not somewhere else. The negative statement may not reflect the negative facts of the case. Negative exists only in our opinion. It is not uncommon that in cases of feigned burglaries the glass happens to be broken inside. The fact that the glass is broken on the inside is interpreted not only as a fact of breaking the window but as an element of staging burglaries in order to e.g. conceal fraud. Due to the unity of sense and rational in his cognition, criminology rises above what is only just given (broken glass) and through science concludes what is immediately visible. Knowledge of negative facts becomes a cause for investigation, so the search of the residence embezzler find appropriated things.

To conclude, traditionalist, conservative, materialistic attitude towards negative facts speak about non-existent facts that do not exist in reality. Facts that do not exist in reality, classical philosophy is considered non-existent facts. However, the functionalist attitude towards this issue (Knowledge is a function of the truth! - How to get to the truth?) is diametrically opposite and negative facts interpreted in the sense of something that still exists. These are dichotomies imaginary reality. We establish e.g. the fact the lack of firearms by the dead that is not about suicide. But do not take into account the version that the weapons could before our arrival be taken by someone from the scene. In practice there are also cases where the suicide of his work performed as an accident or so. "Suspicious" death (murder feign) to his successors are to come to the enjoyment of their life insurance.

NEGATIVE FACTS AND STAGING OF CRIMES AGAINST PROPERTY

Manipulating (lat. Finger, Germ. Fingieren - misrepresent or you run doing the deceiving; fabricate; pretend; pretend) is an ancient way of content and criminal tactics. Manipulating a criminal offense shall be carried out in order to cover up the commission of the offense. Only critical angle viewing and applying learning about the negative facts will teach criminalists that certainly differ from the actual feigned marking, notice the illogicality that in such cases regularly occur. Executor of the offense, is in conflict situation (offender is located between two negative valences), between a crime and the threat of punishment by the

company. Self-preservation forces him to hide his true and false play a role and act out the role of an innocent person. The perpetrator of the offense creates false information - negative facts. These "errors in the situation" are signals that contain information about staging a specific criminal offense. This information can be:

1) Basic - relate to the subject of proof, e.g. the contents of the conversation;
2) Second supplementary - which tell us about the mental state of simulant, which can be expressions, gestures, tone of voice, etc.

In connection with the faking of the offense and negative facts, there are two basic criminal tactical situations:

a) First there when simulant feigns a criminal offense, and that doing so does not exist any other criminal offense that wants to hide. Here simulant creates "artificial" reflections of fictitious work (e.g. feigned rape to avoid the result of extra-marital relationships, pregnancy, vagrancy, truancy from school, etc.).

b) The second is when there is a real criminal act, but it is hidden (non-existent robbery in order to conceal fraud). Concealing the existence of the crime simulant changes the state of the scene by destroying clues and objects. Dichotomies assumed a form of diversity, and it is such that the various phenomena are found in the relationship of mutual exclusion (feigning a traffic accident in order to abuse and fraud insurance company). Subvariation of this situation consists in the fact that the overall image of the event artificially created only some false traces. For example, a group of burglars shoe upside down women's shoes feigning direction of arrival and departure as well as a half executor.

In this particular "game" faker trying to think like a criminologist. He wants time to focus detective thinks differently. In order to his own purpose simulant had success, it is essential to have good intelligence (ability to cope in new and unfamiliar situations), imagination, expertise, empathy (the ability to put a man in another role), way of thinking, criminalists and knowledge on detection methods. (Most professional burglar wearing gloves because they are familiar methods for detecting traces of papillary lines as well as their significance.) The famous saying is: "There is no perfect crime.". Why? I simulant man - intellectual being certain QI, a man with problems and emotions (fear, hate, excitement, joy, sadness ...). And therefore if the planned staging, he did not arrive consistently perform poorly and is already working on speed. There she will by criminalists must excrete. Simulant at the moment, since the layman, i.e. not "professional", its simulating fails to see even essential, especially to look irrelevant circumstances. The simulant is therefore not able to fake a scene without technical, logical, psychological defects that criminalists revealed.

Yet to be discovered traces of feigned criminalist must develop in ourselves the ability to perceive. In the analysis of events on them should imagine such order as they could or should happen, from the beginning to the end of time and logical order (retrospective consideration of the offense and traseological situations scene, from analysis to analysis times of arrival time's departure executor with faces places). Fake traces should convince the detective that there are traces of the crime or noncriminal events. Because of this success every staging is uncertain. If a person knows that it will be for the police one of the suspects, they will fall into a specific state of a mixture of emotions that humans are reduced to free, logical, creative thinking and reflects the short period of time.

V. Vodinelić states: "The practice shows that the culprit is often content to artificially produce only one of the tracks. Particularly lacking, totally or partially, traces of arrival and departure. Furthermore, simulants are often conspicuous and confused that in the factual complex on the site there is no technical, logical, or psychological justification. While the real perpetrator appreciates very much the time and not take unnecessary actions (wanting to be as soon as possible away from the scene) long simulant treated as a bad actor - dilettante ".

Recidivist: - yes - no	**Emotional state:** - fear - anger - joy - hate - jealous - sorrow	**Physiological state:** - gesticulation - redness - stutter - emotional burst	**Motive:** - property - religious - political - psychopath	**IQ** - low - normal - high	**Education and knowledge**

Simulant give you the most feigned traces (in the example of "intrusion" into the store, simulant did not think that the damage was not made at the door can arise only when the door is in the closed position only, and not how he did it in the open position) . When staging burglaries condition is caricatured, things are thrown around too, the sheets are cleaved, furniture destroyed. This situation never or in most cases could not stay after the "professional". They do not perform unnecessary movements and actions for which there is no reason and interest, he knows where to look, not a noise that would be caused by breaking and scavenging of avoiding detection. It all simulant not be predicted. In an effort to remain undiscovered simulant

makes too. The logic is that the "professional" in the exercise of the offense is determined not to leave traces and inevitably destroys them.

F. Geerds in analyzing the negative fact about trace differs absence of traces and clues that are misleading. In the clues that were left behind at the scene said three categories:

1) The absence of traces on the basis of criminal techniques behind which no traces are left that can be observed even after a long time, or who are not sufficiently "strong" that they could be identified (e.g. used organic poison which traces the fastest disappearing).

2) The lack of clues for their avoidance or removal.

a) For the avoidance of traces it is a special way of performing work that deviates from what would normally be expected so do not arise typical traces. It is a criminal technique where you take certain preventive acts to avoid the usual clues.

b) To remove traces still occur and less or more distinct marks that were subsequently removed and made unusable (e.g. changed number on a hunting rifle restitution can "restore").

3) The third group of missing traces are those which have not found improperly or insufficiently careful performance of testing the scene of the crime.

Misleading traces are divided into two groups:

1) The traces resulting from the staged non-existent work.

2) The traces resulting from the staged existing criminal offense.

But seeing as these marks in connection with the above described criminal tactical situations of fictitious criminal act, it is unnecessary here again to be repeated. Yet we draw attention to two classifications of clues necessary and are not as tightly bound only for the situation manipulating the crime.

In the first division we distinguish between:

1) Fake signs - which are not truly real traces, but they in themselves can hide the true (for Enforcers unwanted) real traces, which are suitable for detecting feigned a criminal offense and perpetrators (e.g. metal splinters of drilling metal locks cash registers located in the interior cash registers, which confirms that the cash register was open at the time of drilling locks).

2) Deceptive traces - traces of which should distract suspicion. Basically, their goal is to bring the body of the proceedings (the police) in misleading and drag them onto the wrong track.

3) The deceptive traces - traces of which have absolutely nothing to do with the offense in question, but are wrongly linked with them. It is a trace of innocent people, randomly generated, without any connection with the offense or the perpetrator - in addition to the space-time correlation with other trace (e.g. traces incurred during the apparitions first aid, unprofessional conduct site investigations, etc.) resulting in noncriminal connection.

In the second division, we distinguish:

1) Hidden traces - traces of which the perpetrator in some way hid (e.g. by hiding the objects of the offense which is the holder of a mark).

2) Destroyed traces - divided into destroyed clues regarding executors and related criminal offenses. Only a trace of destruction can be fully or partially (e.g. the means of execution).

3) Masked traces - aimed at creating a false picture of the way of the offense, the person or the executor of evidence (i.e. move the object to another crime irrelevant place, changing personal appearance executor works - disguise and others.)

4) Counterfeit traces - are false traces that carry false information (e.g. a false alibi).

It will clarify and detecting feigned offense makes finding negative fact (as a result of technical, thought and psychological errors perpetrators). When criminalists noticed a negative fact, it provided them the opportunity to catch the simulant in a lie. Besides the expertise necessary to criminalists in their work benefits the opinion and experience but also knows the characteristics (means and manner of execution) feigned offenses. The easiest way is to do a comparison as does "pro" with what is taking simulant burglar aggravated theft. Dilettantes usually exaggerated gesture, because they think they will not get time to credibility, which cannot be avoided by the observation criminology.

"Apparently he made inroads into the store" Colonial "in Osijek. The manager said, "This morning when I came to open the store I put the key in the lock and in that moment I noticed that the door was unlocked. I quickly removed the padlock and iron rods, which is located across the door. Then I put the key in the keyhole of the door itself and found the door unlocked. " The shop is stated as stolen. The manager said he was missing stamp. Operating by the worker was in the basket with papers. Why would a burglar take it? And why should he left it in the junk? It has neither logical nor psychological justification. Operating worker called the manager to come out into the street, take a padlock with a key and ask the manager

to alter his statement. The manager closed the door and put the iron rods. "Right there a lock was hanging and when I put the key in it, I noticed that it was unlocked." The operating worker said: "I gave him into the hands of a padlock which contained a key and told him to put it in a place where it was hanging unlocked and then to leave a few steps from the door, and then he went to the door as he came up this morning and let him put the key in the lock. " He picked the lock and hung it on the spot. He struggled with a padlock. "What is it?" I asked him. "You cannot remove the key.", replied the foreman confused. "How is it that it cannot be removed? How it is then pulled out a burglar and left you unlocked the lock without a key? "He struggled and continues to, but could not get the key out of the lock. I told him to try to close the lock and will see that you can then remove the key. The manager is closed padlock and easily took the key from him and naively, without a word, holding in one hand a lock, and the other key and showed them to me. I asked him if he was now convinced that this kind of padlock from which the key cannot be removed while it is open and how then could not find an open lock without a key? It was the first blow to the manager. I took a lock in his hands and told him shall take iron rods, and, bending down toward the ground, slowly lowered one end to hang. The door cracked open by itself for about 5 cm. Then he straightened up and walked to the door, pressed the door with his left hand and then put the key in the lock. I immediately raised the question: "This morning, did you press the door with the left hand in order to determine that they are unlocked?" He understood my question and became more disturbed and insecure. Then we went to the store where I was before all took a stamp out of his pocket, which I found in the trash with old paper and showed it to the foreman. The manager was quite confused and blushing. Padlock cannot be opened without the original key, and that it is not damaged, which is not the case. "

You can see that playing a decisive role in the analysis of fact-site events. Often, the clues are in such a place that is, if the lock is closed, unsuitable for mechanical action. Also in practice that the "traces of breaking and entering" found on that part of the door that covers the locking metal cutting. As experience shows states V. Vodinelić: "It is often done" picking "the lock that was previously removed from the door. Size made up holes on glass and wooden partition also is often too small for a man and "stolen things" could go through that opening. The absence of scratches and marks at the door (even though the lock is broken and not the existence of traces of sawing or reminders, can be concluded only if the alleged activity took off before the lock) ". If you suspect that a person has pretended offense, and is at the scene to objects that fit into a store detective feigned ridges are suspicious, the credibility is suspected. If during the search of the apartment of items in a person who has played the theft, it is useful facts.

CONCLUSION

During the criminal investigation principle of suspicion is important for the answers to "fundamentally, the golden question criminology" – What really happened? Crime is the science that deals with the actual facts and phenomena. Activity crime investigator has to detecting, collecting data on to something new and unknown, and their clarification, and that takes place within heuristic (the revealing) Criminology. By collecting data about a particular fact is subject to crime actions. With feigned criminal offenses observing signals, i.e. clues, criminalists speculative reconstruction and traces links and/or disconnect with the assumed facts, checks the version and corrects them during the criminal investigation.

Negative facts are essential to the disclosure feigned offenses. Therefore there is no need for differencing between indications (in terms of the criminology) and supporting facts. In the initial phase of criminal investigation criminalists assesses the facts in the cognitive and formal sense. The negative fact is a signal with information about staging in criminalistics, but does not have to be probative facts in criminal proceedings. The circle of negative facts – indications and their totality, determined criminal investigation. Depending on the current knowledge criminalists current estimates, the current results of treatment (collected evidence; evaluation determined; contradictions known and unknown; consistency of the evidence).

Misleading about negative facts, which expires from the moment while during any criminal investigation, we consider more dangerous than during the trial. The consequences of failure to determine crime negative facts during the criminal investigation may affect the determination and reporting of the type and quality of the offense (e.g. qualified or privileged, in addition to the general; aggravating or mitigating circumstances, etc.). This will influence the application of substantive and procedural law and the rules and methods of criminology (criminal differential diagnosis).

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THE PRINCIPLE OF OPPORTUNITY AS A DIVERSION FORM OF CRIMINAL PROCEDURE

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Abstract: Contemporary trends, criminal procedural doctrine and criminal procedural legislation are increasingly resorting to modalities of deviations from the form of regular criminal proceedings with pretensions of realization of key elements of the reform of criminal procedural legislation, and that is efficiency. Efficiency as an international standard is reflected in all stages of criminal proceedings, and extensive approach to interpretation of criminal charges and the beginning of the existence of the criminal procedure by the European Court, and implies the preliminary investigation and its contribution to the implementation of international standards. Diversion forms of treatment and the opportunity principle as their representative forms imply the following of contemporary trends, but also the critical attitude of professional public towards the reformed criminal procedure legislation of Serbia and explicit principle of opportunity. Accordingly, the authors of this study will analyze the relevant issues from the following perspectives: First, the diversion forms of treatment as an instrument of realization of criminal procedure; Second, the public prosecutor as the main subject of reaching consensual justice; Third, the principle of opportunity against adult criminal offenders; Fourth, the position of the victim and the importance of the concept of restorative justice; Fifth, the principle of opportunity for juvenile offenders. In addition, in order to gain a better overview of the consistency of the European legal order, the authors of this study will analyze the recommendations of the Council of Europe on the simplified forms of treatment and their degree of compliance to the analyzed national legislative frame.

Keywords: Principle of opportunity, the public prosecutor, restorative justice, discretionary right, European standards.

DIVERSION FORMS OF TREATMENT SUCH INSTRUMENT REALIZATION EFFICIENCY OF THE PROCEEDINGS (GENERAL REMARKS)

The effectiveness of criminal proceedings as an international standard exists in all modern systems of criminal procedure, both in continental Europe and in the Anglo-Saxon part. Although the key features of the two legal systems were distinctive for its determination, the convergence of their elements has led to the emergence of a mixed system of criminal procedure, and modern criminal-procedural legislation characterized by the institute stemming from both criminal procedure systems, all with the intention of achieving the appropriate level of efficiency as well as minimum standards for its implementation. Accordingly[1],- for certain simplified forms of treatment (plaintiff and defendant agreement on the recognition of plea bargaining), although the cradle of their origin are countries of the Anglo-Saxon legal system (England, Wales, USA)[2], by introducing the aforementioned institute in the country's Euro-continental legal system, confirming the front aforementioned premise, the convergence of elements such as a globalist tendency towards the realization of criminal procedure, regardless of the legal system in question.

Pretensions towards the realization of criminal procedure, the key determinants of two major distinctions, positive criminal system slowly reduced to the adoption of a new adversarial model of criminal procedure, and the key elements of terminology were manifested as adverse. However, the efficiency of current trends in addition to adverse elements of the new CPC / 2011, retained and inquisitorial[3] (trial in absentia

1 This paper is the result of the research on project: "Crime in Serbia and instruments of state response", which is financed and carried out by the Academy of Criminalistics and Police Studies, Belgrade - the cycle of scientific projects 2015-2019
2 See: Rolando V. Del Carmen, Criminal Procedure Law and practice, Sam Houston State University, Wadsworth Cengage Learning, 2010; Daniel E. Hall, J. D. Ed. D., Criminal Law and Procedure, Delmar, Cengage Learning, 2012.
3 Also, we can see inquisitorial and accusatorial elements in the Swiss Criminal Procedure as: inquisitorial: investigation - non public for reason to uphold the presumption of innocence and to protect the suspect from the public eye; accusatorial: trial stage - oral, adversarial and public.

(in absentia)[4], prosecutorial investigation based on the inquisitorial principle (the importance of confession of the accused, casuistic approach to the scaling of the provisions relating to the meaning of terms, etc.).

In this context, the question is justified, the equivalence relation between the convergence of elements from two large criminal procedure system and achieving the desired efficiency and whether modern tendencies of criminal-procedural legislation may a priori be taken as an adequate legal solution or critical attitudes among experts and validated doctrinal explication guarantor realization of the idea of fairness or achieving justice, but also relieve the courts through the implementation of the quantitative aspect of efficiency.

Accordingly, it is necessary to harmonize the two tendencies of contemporary criminal-procedural legislation, the qualitative aspect of criminal procedure and quantitative, which will contribute not only to the rationalization of the criminal proceedings, but also to the implementation of consistent criminal proceedings, which will successfully meet the challenges of the modern times, and be within the limits of the ideals of justice.

In this context it is necessary to point out that the convergence of elements of the two legal systems must not exceed the lower limit of the realization of justice, which is used to achieve the qualitative aspect of efficiency

If you can successfully align the two mentioned tendencies, then we can disprove the famous Latin maxim Corruptissima Civitate plurimae leges (When the republic is at its most corrupt the laws are most numerous, Tacitus)[5], just as analogous to the topic of work was discussed in the introduction of the institute as a simplified form of treatment, which are in equivalence relation with the ideals of justice.

The introduction of simplified forms, sublimating the diversion forms of treatment in the countries of European law, aimed at relieving the courts of petty crime and achieving the desired efficiency of the criminal proceedings, their de facto manifestations reflect the realization of the preventive aspects of combating crime (general and specific prevention) which in perspective reduces the number of criminal cases before national courts and the number of applications before the European Court concerning the general, the constituent elements of justice and fairness.

The number of applications filed with the European Court pertaining to the violation of the right to trial within a reasonable time[6] requires standardization of simplified forms of procedure in criminal matters at the national level to the quantitative aspect of efficiency realized.

However, in this context, the question arises as to achieve a qualitative aspect that is manifested through the implementation of the other constitutive elements of a fair trial, and with whose consistency can reasonably verify the implementation of efficiency[7] as a key element of the reform legislation criminal procedure of Serbia (CPC / 2011) and standardization of simplified forms of treatment and diversion as representative forms, utterly necessary, justified in the modern, democratic society.

Explicit fair procedure and forms of diversion procedure in criminal matters, with a representative form, the principle of opportunity must exist in the pre-trial investigation, given the extensive approach in interpreting criminal prosecution by the European Court, and the relationship of correlation between the principle of opportunity and qualitative efficiency as an international standard (ideals of justice) must realize that many talk about the diversion forms of treatment and their contribution to the achievement of efficiency.[8]

In concreto, it's not initiating criminal proceedings and the implementation of efficiency, considering the aspect of relieving the courts (courts relief heavy caseloads)[9], while the indirect effects, the principle of opportunity, manifested in leaving the area courts for resolving severe cases, thus unburdened minor crime significantly contributing to the realization of the elements of a fair trial.

4 Questioning the legitimation of trial in absentia is justified, as it is unimaginable in the countries with the Anglo-Saxon legal system, and in ad hoc tribunals which insist on the presence of the defendant during the entire procedure. In contrast to the above-mentioned, the normative framework of Serbia permits this with a restrictive approach, i.e. when there are specific justifiable reasons, which represents quaestio facti (Article 381 of the CPC / 2011), and also the harmonisation with the European standards with this regard, considering that the European Court of Human Rights has not declared unlawful the actions of member states which apply in absentia trials.

5 Klajn, I., Šipka, M., Strani izrazi i izreke, Prometej, Novi Sad, 2008, p. 66

6 See: Eckle v. Germany, decision of 5 July 1982, Series A, no. 51, No 77; Neumeister v. Austria, decision of 27 June 1978, Series A, no. 8. No 21; Uzkureliene and Others v. Lithuania, decision of 7 April 2005; Wex v. Austria, decision of 8 April 2001; Kudla v. Poland, decision of 26 October 2000, RJD, 200- XI.

7 See: Bejatović, S., Efikasnost krivičnog postupka kao međunarodni pravni standard, Zbog: „Krivično zakonodavstvo Srbije i standardi Evropske Unije", Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2010, pp. 184-208; Bejatović, S., Predlog Zakonika o krivičnom postupku i mere za povećanje efikasnosti i pojednostavljenje krivičnog postupka, Jugoslovenska revija za kriminologiju i krivično pravo, Nos 2-3/2001, p. 64

8 See: Đurđić, V., Krivično procesno zakonodavstvo kao normativna pretpostavka efikasnosti postupanja u krivičnim stvarima, Zbor.: Krivično zakonodavstvo, organizacija pravosuđa i efikasnost postupanja u krivičnim stvarima, Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2008, pp. 9-40

9 See: Jorg- Martin Jehle and Marianne Wade, Coping with overloaded Criminal Justice Systems, Springer, 2006.

However, if the institute of opportunity in criminal procedural legislation of Serbia (CPC / 2001) eo ipso implies the implementation efficiency is a factual issue, which must be autonomous and to appreciate in each case, with the analysis of the jurisprudence of the courts and social (formal and informal) control of the suspect which is in accordance with the principle of opportunity, spared the inconvenience of criminal prosecution, which in the present case was not expedient.

As stems from the conceptual definition of simplified forms of treatment, their normative determination is manifested through the omission of certain stages of criminal proceedings or the whole of the previous procedure or with the diversion from the criminal proceedings (diversion forms), and the criteria on the basis of which it will resort to a particular modality deviations of forms of regular criminal proceedings depend on the severity of the offense, the properties of the accused, the complexity of the criminal case, the parties plea on charges (agreements defendant and the prosecutor), etc.

Modern expansionist ideas scaling simplified forms of treatment also leaves room for indispensible consideration of the basic principles of criminal procedure and their implementation in a simplified form that is the principle of opportunity. Specifically, the question is whether defects in the structure of criminal procedure affect the determination to achieve the basic principles of criminal proceedings and whether it is this case we can speak of the realization of efficiency.

If we consider that a legal norm as a factor of criminal procedure, formal condicio sine qua non for its realization, then the de facto realization of the basic principles applying simplified forms of treatment must be put into question. Proven doctrinal explication imply the possibility of restricting fundamental principle in criminal proceedings[10] in the case of the simplified forms of treatment, due to the absence of some of the regular phase of the criminal proceedings must inevitably reflect on the achievements of the basic principles[11] that exist at that stage, or should the elimination of certain principles that dominated in relation to the other definitely affect their implementation, as is the case with the devaluation of truth in CPC / 2011. Accordingly, if it fails, the phase of investigation will be limited inquisitorial principle, while in case of absence of the trial will be determined by the principle of immediacy, oral proceedings.

In this context, regardless of whether it is about structural changes within the criminal proceedings or resorting to extra-judicial instrument for solving criminal cases (diversionary models), the goal is the same: achieving the desired efficiency that will suit based on simplification. Analogously, we can conclude that when it comes to the principle of opportunity as a diversionary form of procedure in criminal matters, although not formally a criminal procedure and the stigmatization of the accused, the de facto general principles are implemented in the pre-trial investigation, where the opportunity principle exists (the principle of immediacy, oral proceedings), although in the determinist scope of accomplishment, extremely legitimate with regard to grounds and ways of simplifying such purposes and achieved by undertaking this process Institute.

THE PUBLIC PROSECUTOR AS THE MAIN SUBJECT OF REACHING CONSENSUAL JUSTICE

The historical genesis of the criminal proceedings (inquisitorial, adversarial and mixed) is manifested through distinctive elements in the structure of the criminal proceedings, through authorized process subjects the rights of the accused and conflicting tendencies as the main objectives, and accordingly, in an inquisitorial criminal proceedings pursued toward efficiency crime prevention, while in adversarial criminal proceedings was a noticeable tendency to protect fundamental rights and freedoms. Contemporary trends in criminal law aspire towards establishing equivalence between the aforementioned tendency, which was basically placed in a mixed model of criminal procedure, and the realization of their consistency and follow the latest reform of the criminal procedural legislation of Serbia (CPC / 2011). The convergence of elements from the front of the two mentioned historical criminal proceedings (inquisitorial and adversarial) and exists in modern criminal procedural legislation and through the principle of legality and officiality (inquisitorial maxim) and the Public Prosecutor (accusatory maxim, separation of functions) as a state body that undertakes a criminal prosecution ex officio. In accordance with the foregoing, in the inquisitorial model of criminal proceedings there were no parties, but all functions were sublimated in the hands of one

10 It should be emphasised that there is no established general rule of determination of general principles in simplified forms of treatment and that in each specific case of introduction of a simplified form, the implementation of general principles will be determined and this issue will be the subject to analysis of jurisprudence, legal policy and legal practices. See: Đurđić, V., Osnovna načela krivičnog procesnog prava i pojednostavljene forme postupanja u krivičnim stvarima, Zbor.: Pojednostavljene forme postupanja u krivičnim stvarima, Misija OEBS, Beograd, 2013, p. 59

11 Fundamental principles of proceedings may be determined as „fundamental legal rules created through a synthesis of procedural regulations of international or internal law from which they stem, aimed at some postulated societal values to the achievement of which the regulation of criminal proceedings should serve." See: Đurđić, V., „Revizija osnovnih procesnih načela na kojima je uređen novi krivično postupak Srbije", Pravna riječ, No 33/2012, 449 (reffered to in: Ibid. p. 58)

authority, the Court, while the adversarial model appears prosecutor, first as private, and in this capacity, can occur only the person who committed a criminal offense, to the creation of awareness of the social interest of repression as a prosecutor could occur and any citizen and filed so-called popular complaint (actio popularis).

Analogously, there are three key determinants arising from the said statement, and imply the public prosecutor and the simplified forms of treatment, or the principle of opportunity, and these are: the principle of legality[12], social interest and the public prosecutor as a subject of undertaking criminal prosecution. Sublimation mentioned three criteria of reaching consensual justice is reflected first in the mixed model of criminal procedure, to be continued in the new CPC Serbia with an increase in the powers of the public prosecutor or the introduction of public prosecution investigation. It may be noted that as the decisive criterion for establishing criminal liability realization requires the state to each offender manifests itself in the public law character of the offense, or in organizing criminal charges as a public complaint. Analogously, most legal systems foresaw the principle of legality at the national level and as a rule, the existence of exceptions (Germany[13], Netherlands, Switzerland, etc.)[14], While there are countries that the principle of opportunity set as a rule (rule) and whose ideas were based on reasons of expediency from the standpoint of the public interest (France).

The introduction of public prosecution as the authority responsible for prosecuting official offenses sets the foundation for its future key role in the simplified forms of treatment, or reaching consensual justice. If this is the simplified form of procedure (agreement of the prosecutor and the defendant) and diversion model of conditional delay of criminal prosecution, then we can say that it is a "real" reaching consensual justice, while in the case of unconstrained opportunity of criminal prosecution was about "unjustly" reaching consensual justice, but pointing out that in all these cases, the public prosecutor is the main subject.

Also, the expansion of human rights after the French bourgeois revolution (1789) is not only a synonym for human rights, but also a great influence on the formation of the French public prosecutor's offices as it exists today in no small number of countries. The case example with Belgium, the Netherlands, Luxembourg, Italy, Switzerland, Germany, etc. In accordance with this fact, we can say that it is in these countries, with the explicit principles of opportunism Chief Public Prosecutor subject to simplified forms of treatment. The influence of France in the formation of public prosecution in the Euro-continental legal system represents a manifestation of equivalence when it comes to the impact of the English Attorney General[15] who is considered a predator of the American Public Prosecutor.

Given that the public prosecutor is a major figure in the American legal system and the large number of contracts, as well as the principle of opportunity that exists as a rule of practice of the Americas (Federal Rules of Criminal Procedure), the public prosecutor can certainly be characterized as the most powerful entity reaching consensual justice, is reflected not only in the number of criminal cases that ended a simplified form of treatment, but also in independence in treatment, which is characterized by the elected prosecutors[16], and not placed in the decentralized[17] structure of the prosecution. More precisely, we consider it extremely important when it comes to the discretionary powers of the public prosecutors and acting in accordance with the principle of opportunity that there are pressures of hierarchical character, which are often politicized, as is the case with some prosecutors' offices[18], and would accordingly and efficiency pros-

12 The public prosecutor is obligated to undertake criminal proceedings when there is reasonable doubt that a criminal act has been committed, or that a person has committed a criminal act which is prosecuted ex-officio (Article 6, paragraph 1 of CPC).

13 See: Structure and organization of public prosecution services in United States, Switzerland, Germany and France. In accordance with that: United States- Federal, Opportunity; Switzerland- Federal, Legality and Opportunity; Germany- Federal, Legality and Opportunity and France- Unitary, Opportunity. See:Gwladys Gillieron, Public Prosecutors in the United States and Europe, Springer, 2013, p. 320

14 It is interesting to note that Poland is among the rare countries which do not stipulate deviation from the principle of legality, so pursuant to that, the input is equivalent to the output, and therefore the determination of reaching consensual justice.

15 During the Middle Ages, a number of the king's attorneys represented the Crown in various courts. The duty of a king's attorney was to protect the king's interest. Therefore he restricted his prosecutions to those cases of special importance to the Crown. In the fifteenth century, the king's attorneys were replaced by a single attorney, the attorney general. He was the only figure that could be described as the public prosecutor. It's interesting that Northern Ireland Public Prosecution is very new and it was launched on 13 June 2005. Ibid., p.41

16 In 1832 Mississippi was the first state to adopt a constitutional provision for the popular election of local prosecuting attorneys. A contrario, District of Columbia, Alaska, New Jersey and Connecticut have conserved the appointive system of selecting prosecutors. Ibid., p. 49- 50

17 Connecticut in 1704 was the first colony to create decentralized prosecutorial system by statute: "Henceforth there shall be in every county court a sober, discreet and religious person appointed by the county court, to be attorney for the Queen to prosecute and implead in the law all criminals and to do all other things necessary on convenient as an attorney to suppress vice and immorality". Ibid., p. 48

18 Constitutional solutions in Serbia proclaim that public prosecutors are elected by the National Assembly at the recommendation by the Government, while the National Assembly also elects members of the State Prosecutorial Council, which means that the prosecution is subject to executive power, while in criminal proceedings, rights of an independent judicial authority (the examining judge) are transferred to the prosecution. Furthermore, the hierarchy framework of public prosecution is not in compliance with the newly adopted adversarial model of criminal procedure, or with reaching the qualitative aspect of consensual justice. (See: Ilić, G., Položaj javnog tužioca prema novom ZKP-u, Zbor.: Aktuelna pitanja krivičnog zakonodavstva (normativni i praktični aspekat), Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2012, p. 160)

ecutorial conduct in reaching consensual justice could be viewed from a qualitative point of view, not only by the number of completed criminal cases.

A contrario, the above stated facts of influence of England on the formation of the American public prosecutor, the public prosecutor in England and Wales is far from the most influential, and the arguments in favor of this statement are: delayed emergence of the professional Public Prosecutor (the Crown Prosecution Service, which is a public prosecution service in England and Wales, created by the Prosecution of Offences Act 1985 and began to operate in 1986. Its head is the Director of Public Prosecutions); still a great influence of the police[19], regardless of segment correlations.

The police is here the main subject of reaching consensual justice, the diversion models or conditional opportunity and the decision to go for minor offenses (minor offenses) does not initiate the procedure, along with the fulfillment of certain obligations. Only England and the Netherlands are those who proclaim the police as the subject of reaching consensual justice within the diversion model, i.e. the possible termination of the procedure, with the conditions, and to fines of up to 350 euros for minor offenses[20]. In accordance with the expressed, we can see the "powerful" figure of the public prosecutor in modern criminal procedure legislation, when it comes to the treatment of the simplified forms of treatment or the diversion model through sublimation ideas consensual and restorative justice, but also, and do not emphasize such a small part of the police in the realization of the goals set.

THE PRINCIPLE OF OPPORTUNITY TO ADULT OFFENDERS

The idea of opportunity is introduced into criminal procedural doctrine in 1860, over Julius Glaser, who today with modern aspirations of its realization expansionist progressing in their modified structural elements with the same equivalent of expediency. However, the historical genesis of the Yugoslav criminal procedural legislation being introduced to the concept of opportunity in the criminal procedure law Yugoslavia from 1964 which states "the principle of legality is contrary to the principle of opportunity.

The public prosecutor in each case the price is it appropriate to start the process, for whose launch INEC fulfilled all legal and real preconditions specified in the law, while guided by political reasons, reasons of impressions that will leave the public prosecution, insignificance of the offense, weightlessness made damage, the fact that the damage was recovered, reasons of procedural economy, the need for benevolent treatment of the defendant from criminal-political reasons related to his personality or the political situation and the like.[21]

Although legally explicit, the implications of the conceptual determination of opportunity, introducing the opportunity to adult offenders in the criminal procedural law as a departure from the strict principles of legality was first proclaimed in 2002 with the adoption of the Code of Criminal Procedure.

We can see the trend of the realization of the idea of equivalence of criminal procedure with the emergence of the diversion model of procedure in criminal matters, to the subsequent expansion of modern ideas and doctrinal considerations increasingly resorted to simplified forms of treatment in general, which is the principle of opportunity inevitably suffered a greater number of changes, all of which from the perspective of following modern trends, the results of which should provide a more efficient criminal procedure.

The event "should" as the results of applying the principles of opportunity in practice and the results obtained are increasingly gaining in importance, especially from the viewpoint of the initial skepticism, both by the public prosecutors in step "encouragement" for the application of the aforementioned institute and in confidence - citizens when it comes to this model.

The explicit principle of opportunity for adult offenders (CPC / 2011) is manifested in two forms of processing[22]. First, the conditioned opportunity of criminal prosecution, when applied delays the mechanism

19 Until 2002, the police retained considerable power over prosecutions in England and Wales since the role of the Crown prosecution Service began only after the police had investigated the case and had decided whether or not to charge a suspect with an offence. The principle duty of the Crown Prosecution Service was to review the files of cases in which it has been decided to prosecute. Following the Criminal Justice Act 2003, the decision to charge an individual with an offence has become a matter for the CPS in all but minor cases. However, about 60% of charging decisions remain with the police. Gwladys Gillieron, op. cit., p.47

20 In the Netherlands, the so-called transactive system has been established. It applies to the prosecution level, but allows police to end cases, in accordance with general guidelines of the prosecutor-generals, by imposing a condition, this being a "voluntary" fine up to 350 euros. Despite the prosecution service having control in a general manner, this could be seen as a sort of discretion at the police level, and the police's binding to the principle of legality is loosened at least as far as minor offences are concerned. Ibid. p. 53

21 Referred to in: Kiurski, J., Načelo oportuniteta krivičnog gonjenja u postupku prema punoletnim učiniocima krivičnih dela, Monografija: "Oportunitet krivičnog gonjenja", Srpsko udruženje za krivičnopravnu teoriju i praksu i udruženje javnih tužilaca i zamenika javnih tužilaca, Beograd, pp. 44-45.

22 It is interesting that German criminal procedural legislation stipulates a number of forms of principles of opportunity, such as: abandonment of criminal prosecution due to the possibility of exemption from punishment; not engaging in criminal prosecution out of political reasons; irrelevance of secondary punishment as a basis for the possibility of using the principle of opportunity of criminal proceedings, etc. (See: Bejatović, S., Načelo oportuniteta krivičnog gonjenja u nemačkom krivičnom procesnom zakonodavstvu, Monografija: "Oportunitet krivičnog gonjenja", Srpsko udruženje za krivičnopravnu teoriju i praksu, Udruženje javnih tužilaca

of criminal prosecution. Secondly, unconditional opportunism of prosecution when criminal charges are rejected for reasons of fairness.[23]

When it comes to the conditioned opportunity of criminal prosecution against adult offenses, the legislator requires several conditions which lead to its realization, and accordingly pursuant to Art. 283 of the CPC the public prosecutor may postpone the criminal prosecution for criminal offenses punishable by a fine or imprisonment up to five years, if the suspect accepts to fulfill one or more of the following measures:

to remedy the adverse consequence resulting from the commission of the offense or to compensate for the damages caused; to pay a certain amount of money to a humanitarian organization, fund or public institution to perform certain community service or humanitarian work; to meet liabilities when due support; to undergo alcohol or narcotics testing; to undergo psychosocial treatment to remove the causes of violent behavior; to fulfill the obligations established by a final decision of the court, or respect the limit established by a final court decision.

This legal provision implies the existence as a conditio sine qua non for the exercise of discretion of the public prosecutor, his assessment that the conditional discontinuance of prosecution practical, acceptance of the suspect, and after that the execution of some of the measures envisaged. The public prosecutor in concreto assesses whether they met the legal requirements for the prosecution, and then whether there is an opportunity to initiate criminal proceedings. The public prosecutor expediency must be viewed from the standpoint of public interest, or whether it is in the public interest to prosecute the offender or not.

Public interest, regardless of whether it is legally defined or not, doctrinally, through higher authorities (Ministry of Justice, etc.), or based on a joint decision, seems the main reason for the discretion of the prosecutor. In contrast, the other constituent elements of the principle of opportunity were modified, both in terms of the amount of penalties for offenses to which opportunism can change, and in terms of the proclaimed commitments with conditional opportunity, the phases in which they exist, to the position of the victim. The first proclamation of principles and a departure from the strict principles of legality were provided for by art. 236 and 237 of the CPC / 2002, as a key distinctive elements in relation to the CPC / 2011, we can observe the following: application of the principle of opportunity for criminal offenses was punishable by a fine or imprisonment of up to three years; then, more restrictive list of measures that the suspect should do (four), requires the consent of the injured party for two planned measures (to pay a certain amount of money for a humanitarian organization, fund or public institution to perform certain socially useful or humanitarian work) deadline for the execution of the measure for six months. The above key elements diversion model, predicted the CPC / 2002, determined the 'sacrosanct' principle of legality, in addition to fulfilling the legal requirements provided for, while the decision of the public prosecutor, as well as discretionary, is not questioned. However, by amending the Code of Criminal Procedure of 2004, the decision to postpone the criminal prosecution, the public prosecutor was enabled to bring only with the consent of the court, which could open a question of its discretion, for it does not specify which court had jurisdiction.

This legal change has caused critical views of experts, especially public prosecutors who are in line with this, the other changes (the introduction of two new measures: the subjection of alcohol or narcotics or subjecting psychosocial therapy) in the shade of the aforementioned. Under an avalanche of negative commentaries, in connection with the necessary approval of the court, the amended Code of Criminal Procedure of 2009[24], finally clears the approval of the court, however, more extensive access to the application of the principle of opportunity is legal explicit providing for its application to criminal acts is punishable by a fine or imprisonment for a term of three to five years (Art. 236 para. 2 CPA) finally 'liberated' opportunism professional, media pressure, which were reflected in the work of public prosecutors, who did not sufficiently apply it[25]. It also expanded the circle and the measures that could be applied to the principle of opportunity, namely to fulfill the obligation established by a final decision of the court, or to respect the limit established by a final decision of the court (Art. 236 para. 7 of the CPC); to pass the driving test, perform additional driver training completely or do another appropriate course (Art. 236 para. 8 CPC). Although the pre-trial proceedings were 'reserved' for the application of the principle of opportunity, CPC / 2009 was refuted. Specifically, the predicted possibility that the public prosecutor may, until the end of the trial, and when it

i zamenika javnih tužilaca, Beograd, 2009, pp. 125-143. Also see the data on the implementation of the principle of opportunity in the German criminal procedural legislation: Drops due to a lack of public interest in Germany (2008 - 2011), 2008 – total PPS case-ending decision - 4, 903, 552 (100%) of which drops due to a lack of public interest- 493, 941; 2009 – total PPS case-ending decision 4, 710, 262 (100%) of which drops due to a lack of public interest - 429, 394; 2010 – total PPS case ending decision 4, 602, 685 (100%) of which drops due to a lack of public interest – 413, 788; 2011 – total PPS case ending decision - 4, 609, 786 (100%) of which drops due to a lack of public interest - 414, 584. Source: Data from Federal Statistical Office. See: Gwladys Gillieron, op. cit., p. 271

23 See: Škulić, M., Krivično procesno pravo, Pravni fakultet Univerziteta u Beogradu, 2014, p. 302.

24 See: Čvorović, D., Kriminalno-politička opravdanost, svrha i oblici načela oportuniteta krivičnog gonjenja, Monografija: '' Oportunitet krivičnog gonjenja '', Srpsko udruženje za krivičnopravnu teoriju i praksu i udruženje javnih tužilaca i zamenika javnih tužilaca, Beograd, 2009, pp. 13-28

25 See: Ilić, G., Kiurski, J. (2013), Zbor.: Pojednostavljene forme postupanja u krivičnim stvarima, Misija OEBS-a u Srbiji, Beograd, pp. 228-247

comes to a criminal offense which carries a prison sentence of over three and five years, if the decision to approve the Council (Art. 24, paragraph 6. CPC / 2009), withdraw from prosecution.

In accordance with the foregoing, we conclude frequent changes of opportunity principle, what was done, and the latest reform of the criminal procedure legislation of Serbia (CPC / 2011). However there is still a critical attitude of professional public in terms of certain elements, particularly when it comes to consistency with European standards. In support of that conclusion, we can state the following: an extensive approach to the principle of opportunity when it comes to the offenses that may be applied. Namely, conditional opportunity, in terms of the offenses for which a fine or imprisonment is up to five years, which increases the possibility of applying principles, as well as when it comes to the time of execution of the determinants of measures, which has been extended to one year and in the form of commands, and to supervise the execution of the obligation is determined by the commissioner of the administrative body competent for the execution of criminal sanctions (Art. 283 para. 2 of the CPC), which is also a newspaper. When it comes to measures, some are just modified, while others are deleted. So, instead of liabilities "to undergo psychosocial therapy", proclaims the obligation of "subjecting psychosocial treatment to remove the causes of violent behavior (Art. 283 para. 1 points. 6. CPC)", and the obligation "to pass the driving test, perform additional driver training completely or do another appropriate course" is deleted. Although the modern doctrine of criminal tendencies aimed at violence as current, the question of why the legislator has limited psychosocial treatment only to violent behavior arises[26]. Also, an important novelty is that the principle of expediency is applicable only to the preliminary investigation procedure, which is a narrowing of the procedural framework for its implementation. Consistency with European standards is mostly manifested in the domain of the position of the victim, whose position and rights are not regulated enough which is rightfully a matter of serious discussion.

In addition to the conditional opportunity, the legislator provides for the unconditional or "real" opportunism, which is regulated in the following way: "in the case of offenses for which a punishment of imprisonment is up to three years, the public prosecutor may dismiss criminal charges if the suspect is due to actual remorse, prevented the damage or the damage is already fully compensated, a public prosecutor, in the circumstances, determines that the imposition of criminal sanctions would not be fair (Art. 284 para. 3 CPA).

DAMAGED FACE AND RESTORATIVE JUSTICE

The criminal policy under the influence of modern reforms in the direction of modifying the traditional criminal justice system, or its responses to crime, are increasingly resorting to the principle, the idea of restorative justice that manifests its strong foothold in the modern doctrine.

Only during the '70s and' 80s of the previous century did the principle of retributive justice, as a principle based on a system of punishment, encounter critical attitudes, which were primarily related to the position of the victim, her relationship with the perpetrator, resocialization of the offender, his stigma, the implementation of special and general prevention and the commitment to achieving justice in a more efficient way of responding to crime. However, the idea of restorative justice did not immediately enter through the front door and was not accepted completely, with the aspect of universality, but rather through the implementation of individual constituent elements that were built not only through legal aspects, but also through philosophical and sociological ones, reaching a degree of autonomy sufficient to affirm the dichotomy that characterizes retributive justice. Nevertheless, it is still not well understood, as the contemporary doctrinal ideas have not yet been established and generally accepted.

As a starting hypothesis "maximalist" restorative justice includes: the dichotomies of retributive and restorative justice; bonding restorative justice model exclusively for diversion or diversion from the criminal proceedings. The proponents of restorative justice argue that the emergence of the causal connection and the criminal acts associated de facto with the perpetrator, the victim and the community of which they are members and models of response to the crime committed, should be required of them, that in models of reparation, reconciliation, settlement, real remorse of the offender by avoiding stigmatization, and hence better results of the resocialization of the offender. Although "maximalist" views on the idea of restorative justice imply the fulfillment of all the aforementioned elements and exclusivity in the field of retributive justice, contemporary ideas suggest the possibility of the existence of restorative elements in traditional systems of responding to crime, though not completely, but through a contribution, is not negligible. Accordingly, we can state that a fine and community service are a manifestation of the elements of restorative justice, not through the highest level of achievement, but enough to disprove the premise of maximalist im-

26 See: Čvorović, D., Javni tužilac i policija kao ključni subjekti predistražne i istražne faze novog krivičnog postupka, Zbor." Položaj u uloga policije u demokratskoj državi ", Kriminalističko-policijska akademija, Beograd, 2013, str. 121; Ilić, G., Predistražni postupak, Pripučnik za primenu Zakonika o krivičnom postupku, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, Beograd, 2013, pp. 222-223

plementation and dichotomies. Idealistic views of realisation the principles of restorative justice are based on the ideas of positivist views with regard to the offender, his return to the mainstream, victim safety, strengthening community through security of individuals, and through this exercise of special and general prevention. Given this concept of restorative justice can best be seen through the diversion models, i.e. the principle of opportunity, "where looking for less coercive means of combating crime, which are directed primarily toward alleviating tensions stemming from the conflict between the offender and the community, provide a better response to the expectations of victims of crime, without producing stigmatizing effects, minimizing the work of the criminal justice system, and thus contributing to its realization."[27] We can see that the key element of restorative justice stands next to the perpetrator and the victim of a crime or the damaged, whose role is extremely important, both in terms of the individual and in terms of the functioning of the community as a whole. Specifically, we can see how important it is to minimize the stigmatizing effects for the offender, and to implement criminal policy through the first special, then the general prevention, so the position of the injured next to the answer to the question who is injured in a criminal offense, to indemnify extremely important to its reintegration, social acceptability and its participation in the final outcome.

The implementation of restorative justice as a set of principles requires position, participation and positive responses from the victim, which is not the case in the criminal procedural legislation of Serbia. Specifically, in CPC / 2011, the position of the victim, in the application of the principle of opportunity, is exacerbated by eliminating, explicitly giving his consent to undertake certain measures. Critical attitudes of the experts of the account status of the victim in the application of diversion model as an alternative non-judicial forms, then consistent with European standards, did not contribute significantly to the reforms in this matter, nor to the compliance with the recommendations of the Council of Europe[28] and the UN Declarations[29].

PRINCIPLE OF OPPORTUNITY TO JUVENILE OFFENDERS

The specificity of the proceedings pending against juvenile offenders is determined primarily according to their age, according to which the distinctive legal explicit in relation to proceedings under adult perpetrators is manifested, as well as in relation to the diversion model as a simplified form of procedure in criminal matters to juvenile Offenders.

The Law on Juvenile Offenders and Criminal Protection of Juveniles[30], besides a number of features that are inevitable when it comes to minors, manifests "peculiarity" when it comes to the opportunity of criminal prosecution, unconditional and conditional opportunism, and proclaiming expanded capabilities in both procedural form and its application to criminal offenses punishable by imprisonment up to five years or a fine. It also strengthens the role of victim in relation to explicit opportunity to adult perpetrators, as well as the possibility of fulfilling half of a diversion order as the basis for the rejection of criminal charges.

In addition to the above statement, regarding the unconditional opportunity, cite Article 58, Paragraph 1 ZM[31] according to which "for criminal offenses punishable by imprisonment of up to five years or a fine, the public prosecutor for juveniles may decide not to require the initiation of criminal proceedings, even though there is evidence of grounded suspicion that the juvenile committed the offense, if it is considered to be expedient to take charge of the proceedings against a minor given the nature of the offense and the circumstances under which it was committed, the past life of the juvenile and their personal characteristics``. Given the sensitivity of the minority of issues, a number of circumstances which must be carefully considered and in order to make appropriate decisions, the public prosecutor may, for their identification, request notification of parents, adoptive parent or guardian of a minor, other persons and institutions, and if it is necessary list persons and minors to be called for the immediate notification (Art. 58, Paragraph 1 ZM). Furthermore, the complexity of the personality of the minor, as one of the criteria by which the public prosecutor decides to initiate the proceedings, can be tested by sending the minor in a shelter for children and youth or an educational institution and to the agreement of the prosecutor and the guardianship authority, with a time determination of up to thirty days (Art. 58, Paragraph 2 ZM). Wider application of the principle of opportunity in addition to the prescribed punishment of imprisonment up to five years for crimes, manifests itself in the case when the public prosecutor does not require the initiation of criminal proceedings for another criminal offense of the minor, unless a punishment or corrective measures in progress, and

27 See: Brkić, S., Krivično procesno pravo, Novi Sad, Pravni Fakultet, 2013, p. 17

28 See: Recommendation Rec. (2006) 8 of the Committee of Ministers to member states an assistance to crime victims (adopted by the Committee of ministers on 14 June 2006 at the 967th meeting of the Minister's Deputies).

29 See: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly, United Nations, A/RES/40/34, 29 November 1985; Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC RES. 2000/14, U.N. Doc. F/2000/INF/2/Add. 2 at 35 (2000).

30 RS Official Gazette No 85 of 06 September 2005

31 ZM means the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles

the punishment or educational measure being executed are inappropriate, given the gravity of the crime, there would be no point in conducting proceedings and imposing criminal sanctions to this offense (Art. 58, para. 3 ZM). Regarding the position of the injured in the process of this kind, there is a higher degree of consistency with the European standards in relation to opportunism towards adult perpetrators, and this proclamation that allows the injured party and the guardianship authority, within eight days of receipt of the notice, to begin proceedings of the public prosecutor, require the juvenile panel of the immediately higher court to decide on the initiation of proceedings (Art. 58, para. 4 ZM). Active role of the injured party is commendable, both from the aspect of implementation of European standards, as well as his understanding of the spirit of restorative justice. In addition to these procedural forms of opportunism, ZM provides conditional opportunism, with the consent of the juvenile and his parents, adoptive parent or guardian, as well as to the readiness of the minor to fulfill one or more diversion orders (Art. 62, Paragraph 1 ZM). The legislature provides the following educational tasks: Aligning with the victim so as to damage, apologize, work or otherwise remove, in whole or in part, the harmful consequences of the offense; regular attendance at school or regular going to work; inclusion, without payment, in humanitarian organizations or activities of social, local or environmental (Art. 7, para. 1 items 1-3 ZM). When selecting the diversion order, the public prosecutor for juveniles shall pay special attention that these conform to the personality of the juvenile and the circumstances in which he lives, taking into account his willingness to cooperate in their implementation (Art. 62, Paragraph 2 ZM). Aspects of restorative justice are manifested in the requirement of the consent of the plaintiff for the application of diversion order referred to in Art. 7, Paragraph 1, Point 1 ZM. If the minor is to fully meet the ordered, whose report shall be submitted by the Custodian, the public prosecutor for juveniles shall issue a decision on rejection of criminal charges or damaged proposal to institute proceedings (Art. 62, Paragraph 4 ZM).

However, the complete fulfillment of diversion order is not necessary in all cases, when the public prosecutor for juveniles dismisses the report or request of the plaintiff to institute proceedings. Namely, if the minor has partially fulfilled educational tasks and started the procedure, given the nature of the offense and the circumstances under which it was committed, the past minors, personal characteristics and reasons for failure downloaded diversion order completely, it would not be appropriate, and may manifest the same effect as when completely fulfilling educational tasks, from which we can conclude that the legislature expanded the application of the principle of opportunity.

However, if the minor does not fulfill the ordered, or does it only partially, but to an extent that justifies the initiation of proceedings, the public prosecutor for minors may apply for the preparatory proceedings to the juvenile judge of the competent court (Art. 62, Paragraph 6 ZM). In this context, it is necessary to point out that when it comes to the conditional dismissal of criminal opportunism and applications, proposals or damaged, the public prosecutor for juveniles shall notify the victim, but he has no right to request the initiation of proceedings (Art. 62, para. 7 ZM). According to the aforementioned, it can be concluded that the statutory explicit in the proceedings against minors[32] implies a different approach to regulating diversion model of procedure in criminal matters, which is considered reasonable given the specifics that are inevitable when it comes to juvenile offenders.

CONSISTENCY OF THE EUROPEAN LEGAL ORDER IN THE APPLICATION OF THE PRINCIPLE OF OPPORTUNITY

The elements of achieving the desired level of effectiveness of the criminal proceedings, as well as the explicit form of the simplified procedure, in accordance with the doctrinal considerations, are the manifestations of each country separately, which derives from their distinctive historical, political and legal heritage. However, despite the European framework determining the minimum standards that must be achieved, we talk about the ideals of justice and the existence of a certain degree of consistency at the European level.

Accordingly, the principle of opportunity could be characterized as a trend of modernity, as it exists in most of the process systems. However, there is a question of its consistency in the European legal order, at least when it comes to meeting the minimum standards. The aspect of consistency can be analyzed both from the standpoint of simplified forms of treatment, as well as from the perspective of the position of the public prosecutor in the criminal justice system. In fact, when it comes to the simplified forms of treatment and recommendations to the European level, then surely a European framework of determination can take the Recommendation of the Council of Europe on simplified forms in criminal matters[33], which implies the importance of discretionary powers in criminal matters, as well as simplified forms in general, with which the country should be introduced in accordance with the historical legacy of the country's consti-

32 See: Soković, S., Bejatović, S., Maloletničko krivično pravo, Pravni fakultet, Kragujevac, 2009

33 Recommendation No. R (87) 18 of the Committee of Ministers to Member States concerning the Simplification of Criminal Justice (adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies).

tution, whereby the key objectives are set in the recommendation, at the level of Europe, relating to public interest[34], equality of all citizens before the law and personalization of criminal justice. In addition to the general guidelines of consistency on the European soil in terms of simplified forms of treatment, it is necessary to achieve a certain degree of consistency when it comes to the role of the public prosecutor in the criminal-justice system, from the viewpoint of its major role in achieving consensual justice, so the recommendations of the Council of Europe (2000) 19, could present minimum standards that are necessary to be satisfied when it comes to the public prosecutor's role in the criminal-legal systems of the Member States or the principles and ethical duties of their office, realizing efficiency in all aspects of action, while respecting fundamental rights and freedoms, thus achieving the principle of the rule of law, which would have to exist in a modern, democratic society. Although the guidelines and the principles of prosecutorial conduct are proclaimed in Recommendation (2000) 19[35], in a general way, they determine the national frameworks through minimum standards to be met by the Member States, including discretionary decisions by public prosecutors in dealing with criminal matters, while leaving room for the Member States, to comply with their historical, political, and legal inheritance, reaching a higher level of consistency on European soil.

INSTEAD OF A CONCLUSION

Although the modern tendencies of the criminal procedure law are increasingly facing the simplified forms of treatment, diversion models and achieving restorative justice, ideals of fairness should not be minimized for the reasons of implementation of quantitative efficiency of the process, but rather through a proven doctrinal explication should strive for equivalence in national frames between quantitative and qualitative efficiency and achieving justice through the application of simplified forms of treatment. In the context of the existence of the principle of opportunity and its contribution to the desired efficiency of criminal procedure in criminal procedural law, the law of Serbia is more than indisputable. However, an explicit statutory continues to imply its still inadequate elaboration, especially from the viewpoint of European standards. Accordingly, the authors believe that the adequate regulatory framework is necessary to be developed in the future reform of criminal procedural legislation of Serbia not only in terms of the principles and simplified forms of treatment, but in terms of bringing the decision of the national criminal legislation even closer to the European framework and resolving these issues.

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10. Jorg-Martin Jehle and Marianne Wade, Coping with overloaded Criminal Justice Systems, Springer, 2006

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35 Recommendation Rec (2000) 19 of the Committee of Ministers to member states on the Role of Public Prosecution in the criminal justice system (adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers' Deputies).

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SIGNIFICANCE OF INDICATIONS FOR DETECTING AND PROVING CRIMES

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Abstract: Some of the legally relevant facts in criminal proceedings cannot be determined directly, by the instruments of evidence, but they can be obtained only indirectly, by establishing other facts. These facts are called indications. In this case, the legally relevant facts are determined indirectly, by previous determination of indications existence. Therefore, they are a source of knowledge about the legally relevant facts, or the evidence of the existence of those facts. On the other hand, indications are the kind of facts (things in reality), which implies that they have a dual character in criminal proceedings. In addition to the indications in criminal proceedings, this term is also used in criminalistics. The beginning of criminalistic activity is inextricably linked to the indications. After learning about the crime (and offender) further work of the public prosecutor and the police is the performance of a number of operational-tactical actions. This activity is based on the grounds of suspicion, which is in criminalistic vocabulary called indications. In criminalistics, apart from the term of indications in the criminal procedural sense, this term also means other facts (grounds of suspicion), which indirectly indicates the crime committed, the offender or other circumstances under which the crime was committed. Indications in criminalistic sense represent a starting point in the so-called heuristic activity. At the same time, they represent a link, which leads to the evidence, or the basis of the evidence adduced learns for new indications. In another case, they serve to confirm or challenge the certainty of the presented evidence. The author deals with the similarities and differences between the term of indications in criminal proceedings and criminalistic, and the significance of which indications are in the process of the judgement factual basis formation, from the perspective of positive legal regulation.

Keywords: the facts, indications, proving, grounds for suspicion.

TERM OF THE FACTS

Since the science of logic primarily deals with the notion of the facts, we should first start from the general meaning. In an ontological sense, the fact is understood as an individual thing, or its existence, attribute or relationship. In an epistemological sense, the facts are occurrences, events, relationships, properties, which are the subject of observation, description and rational interpretation.[2] *Summa summarum,* these are occurrences of reality, which are the subject of cognition.

In the criminal proceedings literature logical definition is often cited, according to which the facts are "thought-sensory activity determined objectively real-existence of certain things, phenomena, processes, events, properties or relations between objects of knowledge.".[3] This definition takes into account the ontological and epistemological component of the term of facts. On the other side is the determination of which facts are considered as external or internal occurrences, events, actions, conditions from the past and present.[4] This definition of the the facts determines solely the ontological side. According to the section of theory, general logic definition is acceptable to the science of criminal proceedings.[5] We believe that the logical definition, since it is general, can be applied to criminal proceedings, in which the facts are established, which does not differ from other phenomena in reality. Since it is necessary to establish the facts by a number of procedural actions of procedural subjects, in determining the notion of the facts, it is reasonable to be taken into account both components (ontological and epistemological). Therefore, the notion of the facts can be determined as the established existence of phenomena (fragment) from the reality in criminal proceedings.[6]

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2 Vladimir Vodinelić, Problems of facts in probative theory of criminal procedural law, Annals of the Faculty of Law, no. 5/1992, p. 371.
3 Bogdan Šešić, Fundamentals of Social Sciences methodology , Belgrade 1974, p. 198.
4 Zagorka Jekić, Proofs and truth in criminal proceedings, Belgrade, 1989, p. 29.
5 Cedomir Stevanovic, Criminal Procedure Law, Belgrade 1994, p. 191, Cedomir Stevanovic, Vojislav Djurdjic, Criminal Procedural Law - general Part, Niš 2006, p. 223, Vojislav Djurdjic, Establishing facts in criminal proceedings, Legal word, no. 37/2013, p. 477.
6 Similar: Vladimir Vodinelić, op. cit, p. 373.

Based on the concept of general logic, the term of the facts is derived, specific to the science of criminal procedure law. But first it is necessary to bear in mind the concept of legal facts from the theory of law. Legal facts are events or human actions, based on which comes to the establishment, change and termination of legal relations [7] From the perspective of judicial logical reasoning, legal facts constitute a minor premise (premissa minorr), which are subsumed under the larger premise (premissa maior), legal norm, as in criminal proceedings is the application of criminal sanction. Some processualist facts seen as the basis of the judgment, bearing in mind that, according to the principle of immediacy, judgment based solely on the facts established at trial.[8] One of the perceptions defines the facts, distinguishing by law. According to this conception, the facts are the subject of perception, awareness or comprehension.[9] In the science of criminal procedural law, the notion of facts in criminal proceedings is also considered as phenomena in the reality[10] that represents the conditions of substantive criminal law for the application of criminal sanctions, or conditions for the conduct of criminal proceedings and the execution of procedural actions.[11] This definition, in fact, specifies the general concept of legal fact. By commission of an offense arises criminal law relationship between the offender and the state. In criminal proceedings establish the facts that affect to the creation of the legal relationship (conditions for the application of criminal sanctions). By initiating and conducting criminal proceedings criminal procedural relationship are also based. The facts related to the criminal procedural relationship is also determined in criminal proceedings (conditions for the conduct of proceedings). This view is criticized, primarily because it does not include the requirements of criminal law relating to the existence of the criminal offense as a prerequisite for the application of criminal sanction.[12] In addition by such a definition indications of facts are not covered, which, indirectly, determine legally relevant facts.[13] Based on the above definition, it can be concluded that, for the purposes of the criminal procedure law, acceptable determination is that the facts are thought-sensory activity by the criminal court established the existence of reality phenomena in criminal proceedings.

TYPES OF THE FACTS THAT SHOULD BE DETERMINED IN CRIMINAL PROCEEDINGS

Defining the procedural facts opens up a number of new dilemmas, first of all, what kind of facts are determined in criminal proceedings. Because every criminal matter is different, as a real event from reality, which occurred in the past, in criminal proceedings various kinds of facts are determined. As we explained, during criminal proceedings is based, runs and stops criminal procedural relationship, which is a kind of legal relationship. With the commission of a crime criminal law relationship is based, also as a type of legal relationship, about which should be decided in the criminal proceedings. Thus, during the criminal proceedings the legal facts shall be determined, because they influence the dynamics of the two aforementioned types of legal relations (criminal and criminal procedure).

Legal facts, which are connected to the legal consequences of substantive and procedural criminal law, in procedural theory is referred to as the legally relevant,[14] or decisive facts.[15] In addition to, in the older works, the distinction between these concepts has been made, and the terminology has been object of the sharp controversy.[16] Today, these concepts are treated as synonyms, but the law gives preference to the term of decisive facts. In Article 440, paragraph 2, of the Code of Criminal Procedure states that the factual situation was erroneously determined when the court has a crucial fact wrongly found, and incompletely established when a crucial fact was not found.

Legally is relevant means to be of importance for the right.[17] Since "right" is a broad term, it is necessary to refine it further. In criminal proceedings, as has been said, the facts are determined, that the substantive criminal law supplements the consequences. It is about general and specific elements of the offense, the

7 Momcilo Dimitrijevic, Miroljub Simic, Introduction to Law, Niš, 2001, p. 232.
8 Bozidar Markovic, About proofs in criminal proceedings, Belgrade, 1921, p. 4, Branko Petric, Commentary on the Code of Criminal Procedure, Belgrade, 1987, p. 132.
9 Quoted by: Zagorka Jekić Simic, op. cit. p. 28.
10 A variation of the above understandings in facts counts phenomena, events, actions and conditions (Heinrich Henkel, Strafverfahrensrecht, Berlin, 1968, p. 262).
11 Vladimir Bayer, Yugoslav criminal procedural law (law of the facts and their determination in criminal proceedings), Zagreb, 1980, p. 4.
12 Milan Škulić, Criminal Procedure Law, Belgrade, 2009, p. 182.
13 Vojislav Djuric, Establishing facts ..., op. cit. p. 476.
14 Vladimir Bayer, op. cit., p. 4, Cedomir Stevanovic, Vojislav Djuric, op. cit, p. 223, Drago Radulovic, Criminal Procedure Law, Podgorica, 2009, p. 150, Vojislav Djuric, KPP, op. cit, p. 245. Škulić talks about facts relevant to a judicial decision on the subject of criminal proceedings, we consider synonymous with "legally relevant" facts (Milan Škulić, op. cit, p. 182).
15 Mleden Grubiša, State of facts in criminal proceedings, Ljubljana, 1989, p. 13.
16 See: Davor Krapac, Procedural aspect of the problem of establishing the facts in criminal proceedings, JRKK no. 3-4 / 1981, p. 527-558, Mladen Grubiša, What does it mean in terms of the procedural establishing of the state of facts (facts) and who is determined to criminal proceedings, Our Legality no. 6/1982, p. 91-110.
17 Bayer points out that the importance to facts gives law (Vladimir Bayer, op. cit, p. 5).

conditions for the existence of criminal responsibility, and the conditions for the application of criminal sanction.[18] These facts are *substantive criminal legally relevant*. In addition, in criminal proceedings facts relating to the conditions for the initiation and conduct of the criminal proceedings are determined, as well as the facts about the way of the performance of criminal procedure acts and the facts by which some procedural issues can be resolved. They can be named as *criminal procedural legally relevant facts.* A set of both of the facts indicates as the term of *factual situation.*[19] The term "relevant facts", which operates the CPC, consider linguistic somewhat unfair, because the adjective "gritty" means a human trait, which means a man whose will is unwavering, who decided to do something or not to do something. As regards the facts that are important to a judicial decision, it would be more appropriate to mark them by the term "decisive facts", ie those on which the court make a decision. Consequently, it can be said that the factual situation is a collection of decisive facts.[20]

In criminal proceedings, sometimes there is a need to check the credibility of a source of knowledge about relevant legal facts.[21] In this case, it is resorted to additional procedural actions, which establish new facts. These facts are called auxiliary facts, because they help in determining the relevant facts. Therefore, it is correct to call them check-facts,[22] because they control the credibility of knowledge sources.

Some of the legally relevant facts in criminal proceedings cannot be determined directly, but it can be obtained only indirectly, by establishing other facts. These other facts, in order to determine the existence of legally relevant facts are not crucial to a judicial decision. They are not legally relevant, because the right does not supplement legal consequences to them. Their importance is great, because they are the only way to determine relevant facts. These facts are called *indications.*[23] In this case, legally relevant facts determine indirectly, by ascertaining the existence of indications first. Therefore, they are a source of knowledge about relevant legal facts or evidence of the existence of those facts. On the other hand, indications are the kind of facts (things in reality), which implies that they have a dual character in criminal proceedings. To determine the existence of legally relevant facts one was usually not sufficient,[24] but several indications (chain indices),[25] After identifying indications, the relevant facts are reached by logical conclusion. In this case, indications is less premise, which is subsumed under a larger premise, in this case under the the rules of general experience, and based on that, a conclusion of the existence legally relevant facts is made.[26] In order to properly determine the existence of the legally relevant facts, it is necessary to link established indications, because their basic properties are dependence and fragmentation.[27]

INDICATIONS IN CRIMINALISTICS

In addition to indications into science of criminal procedural law, this term is used in criminalistics. The beginning of criminalistics activity is inextricably linked to indications. After learning about the crime (and perpetrator), further work of the public prosecutor and the police is the performance of a number of operational-tactical actions. This activity is based on initial information, which in criminalistic vocabulary is called indications. These are facts that with lesser or greater degree of probability indicate the commission of an offense, the offender, as well as other circumstances relevant to the illuminating a solution of the criminal matter.[28] Crime indications are of the greatest importance in the so-called heuristic phase, i.e. during the detection of the offense and the offender. These are indicated by natural and legal persons who reported committing an offense. After that the police undertake activities, aimed at checking indications. Operational police work, actually performs triage indications that have been reached. Unfounded indications rejected and accepted partially or fully established, while further checks eliminate contradictions between indications. Indications are found through searching, or operational-tactical actions (preliminary interview, monitoring, raid). The result of these actions cannot be the basis for the decision in subsequent criminal proceedings. This, however, does not mean that these facts are leaving. They may be subject to

18 Vojislav Djurdjic, Establishing facts, op. cit, p. 480.
19 Mladen Grubiša, What does it mean..., op. cit, p. 95.
20 Vojislav Djurdjic, Establishing facts, op. cit, p. 481.
21 For example, the fact that the witness could clearly see the relevant event is checked by reconstruction. Contradictions between the testimony of the accused and witnesses, or between the testimony of witnesses shall be determined through confrontation.
22 Mladen Grubiša, State of facts in criminal proceedings, Belgrade, 1963, p. 18.
23 The word "indications" comes from the Latin word "indicium," meaning omen, the assumption, sign, symptom, through which we come to know about something that is unknown or hidden (Ludwig Ramshorn, Francis Lieber, Dictionary of Latin Synonymes: for the use of private schools and students, with a complete index, Boston, 1841, p. 387).
24 Notwithstanding the existence of legally relevant facts can be determined on the basis of one indication, for example, in the case of an alibi.
25 This attitude is supported by the case law. The decision of the Supreme Court of Yugoslavia Kz-38/70 of 11.22.1970. year, according to the guilt of the offender can not be determined on the basis of only one indication (indicated by: Zoran Pavlovic, circumstantial evidence in criminal proceedings, Law - Theory and Practice no. 6/1997, p. 55).
26 Davor Krapac, Criminal ..., op. cit, p. 383.
27 Snežana Soković, Proving with indications, Kragujevac, 1997, p. 139.
28 Branislav Simonovic, Criminalistics, Kragujevac, 2004, p. 68.

the determination in criminal proceedings, through the presentation of evidence. Indications can also be collected by investigation activities (interrogation of the suspect, expertise, crime scene investigation) in pre-trial investigation. The result of these actions can be the basis of judicial decisions in criminal proceedings, if these actions are carried out in the manner prescribed by law. Indications provide answers to many questions, during discovering and clarifying the crimes perpetrated by unknown perpetrators.[29] It is, therefore, about the information of the first procedure, to which come the state authorities, responsible for detection of offenses and offenders (not very clear). It is the foundation of a criminal judgment factual background, to which the facts were later upgraded, established at trial with the highest degree of certainty.

Since the indications are various facts, they can be divided according to various criteria. According to the element of the criminal matter, indications can be divided into those that relate to the offender (subjective element) and the crime (the objective element). According to the criminal entity, indications are divided into those that relate to the offender (active subject), and the victim (passive subject). There is a significant division, according to appropriate expertise, to material, mental and moral indications. Material are objects are the traces of the crime. For their determination, as a rule, expertise is not necessary, but the application of professional experience and logical reasoning.[30] On the other hand, in order to determine the mental (behavioral change) and moral facts (analysis of the character and behavior of the offender), it is necessary to carry out the expertise. Full indicational evidence exists only if they are covered material, moral and mental indications. In the case of the lack material indications, the event is wrong, and without mental and moral, it is not explained.[31] Chronologically, they are divided into indications that occur before, during and after the commission of the crime. The indications that occur before the commission of the crime, among other things, are the ability to classify the moral perpetrator, the motive, the manifestation of the will, suspicious behavior, previous convictions. Presence at the scene of the crime, possession of instruments of crime execution, physical and mental qualities, knowledge of the circumstances under which the offense was committed are some of the indications, which occur at the time of commission of the offense. *A posteriori* indications are, for example, traces of the crime, the benefit of the crime, suspicious behavior, false alibi.[32] For criminalistics activity, operative indications are of great importance. These are, in fact, grounds of suspicion, which include methods and resources of committing the offense, motives, professional knowledge and skills of the offender, and many others.[33]

From the standpoint of the court decision about criminal prosecutor application, the divisions to the orientation-elimination indications and to indications of probative force are of importance. Orientational-elimination indications can be found in pre-trial investigation. They are the result of operational-tactical actions, carried out by the police, and may not be factual fundus of a criminal judgment, but are of importance in heuristic phase. Based on these indications are, first, forming versions [34] about the criminal event, and then they check. These indications directed further activity toward solving the crime, but also serve the selection of available information about the criminal event. On the basis further activity toward solving of the crime implemented (not very clear). These are facts, which we denote as criminalistic indications.

Indications with evidentiary power arise as a result of the evidence presentation in criminal proceedings. They are derived from indirect evidence, and they are the basis of a court decision. Unlike the facts based on direct evidence, which are unambiguous and do not require verification, the facts, established by indirect evidence are ambiguous and require verification of different versions.[35] To form a complete factual basis, it is necessary to have more indications, related in a single logical unit, which makes the so-called chain of indications. Indications of probative force can be interconnected to the rank and close connection between the facts and the crime. Indications that have a closer connection with the offense referred to as the main indications, while more distant facts, less associated with the offense, are minor indications.[36] We will mark this category of facts, with the probative force, as the indications in criminal procedural sense.

There is an opinion, according to which the term indications in criminalistic sense is wider than the same term in criminal procedure law. In criminalistics, according to this view, apart from the indications into criminal procedural sense, this term also means the facts (grounds of suspicion), which indirectly

29 Velimir Rakocevic, Indications in Criminalistics, Legal Life No.10 / 2008, p. 138.
30 Branislav Simonovic, op. cit, p. 69.
31 Vladimir Vodinelić, Criminalistics, Belgrade, 1996, p. 117th
32 *Ibidem.*
33 Alexander Ivanović, The role and importance of doubt in the combating and preventing contemporary forms of crime, in: Proceedings of the Second Scientific Conference with international participation - Application of modern methods and tools in combating crime, Brčko, 2008, p.351.
34 Versions are criminal hypotheses that explain the formation, properties, interconnections, relationships and circumstances under which the offense was committed, and other circumstances related to the subject of criminal investigation. The starting point of criminalistics versions are indications. In addition of criminalistics, there are evidentiary, investigational and trial versions. Evidentiary versions are, logically, based on the evidence. Elements of investigating versions are proofs or indications (in the procedural sense of evidentiary facts) and they are characteristic of the investigation stage. Trial versions are based on evidence or indications, in the procedural sense. They appear at the trial.
35 Branislav Simonovic, op. cit, p. 71.
36 Ivo Kobovac, Criminalistics, Zagreb, 1960, p. 108. Quoted by: Ibidem.

indicates the crime committed, the offender or other circumstances, under which the offense was committed.[37] We set out with the view partially agree. Between these two terms of indications there is one significant difference. Indications in criminalistic sense are subject to observation, primarily in the pre-trial investigation by the public prosecutor and the police. They form a necessary degree of belief, based on which the public prosecutor decides to initiate an investigation. Crime indications cannot be evidentiary foundation of judicial decision, because they are not identified in the criminal proceedings, as provided by law. They are diverse, numerous facts, more or less in connection with the offense, which were obtained by the preliminary investigation bodies. When deciding whether to initiate an investigation their screening is conducted. In contrast, indications in criminal proceedings are a matter of determination, that would be an indirect way, determine the existence of legally relevant facts, if it cannot be done in a direct way. In this way, they indirectly enter the factual basis of judicial decision, as opposed to the criminalistics indications. Criminal procedural indications are also mentioned in the reasoning of the court decision, to arguments for the existence of relevant facts. It is, therefore, two different concepts, which have some common points, but not in relation to the narrower and wider. Indications in criminalistic sense can not include indications in procedural sense, while the reverse is possible. Although, in formal terms, cannot be the factual basis of the judgment, criminalistics indications are foundation of the fact, which are later determined in criminal proceedings, with a much higher degree of certainty, or truthfulness.

INDICATIONS AND GROUNDS OF SUSPICION

The term of indications and the grounds of suspicion are often used interchangeably. It comes from the inquisitorial procedure, in which legal value of evidence existed. On the basis of grounded suspicion the so called special investigations were initiated. By indications we imply the facts that enabled the initiation of the criminal proceedings, but also the use of torture against the accused. In modern criminal proceedings, grounds for suspicion represent the lowest level of committed crime, which is necessary for the initiation of pre-trial procedure, or (and) criminal proceedings.[38] In the introductory part of Criminal Procedure Code from 2011, which defines the basic terms, there is also determination of grounds for suspicion. The lowest level of certainty is a collection of facts, which indirectly indicates that the offense was committed, or that a person is the perpetrator of that offense. In this way, the indications and the grounds of suspicion are equal in meaning. In contrast, a reasonable suspicion is a set of facts which directly indicate the offense and the offender (Article 2, paragraph 1, item 17 and 18 of the CPC). The above provisions are controversial because they reaffirm long ago abandoned legal value of evidence. If during the preliminary investigation comes exclusively to the fact that indirectly point to the offense, eventually to the offender, there are grounds for suspicion. On the other hand, for the existence of reasonable suspicion the facts, which directly indicate that a person has committed an offense are necessary. In this way, the possibility of establishing indications in criminal proceedings is completely excluded, because, according to the law, they cannot form a reasonable suspicion, and consequently no reasonable doubt and certainty of the criminal matter. The lowest degree of suspicion cannot be made up exclusively of indications, so these two terms are not identical. The necessary degree of certainty for an investigation is formed of all the available facts, which is acquired by entities of conducting the preliminary investigation, regardless of its type. In an attempt to define the minimum degree of certainty, which was promoted as a requirement for an investigation, it seems that the legislator confused criminalistics indications and criminal procedure indications.

In order to determine the degree of certainty about a criminal matter legislator used the theoretical division between direct and indirect evidence. The criterion for this division is the relationship of evidence to the fact that is determined. By direct evidence the existence of certain facts is directly determined. For example, from the testimony of eyewitnesses, certain facts can be directly determined, because they were his own senses perceived by the witness. The facts, established by direct evidence are unambiguous. By indirect evidence determine the facts, which lead to the legally relevant facts. These are, in fact, the indications. They are ambiguous and based on them a different versions of a criminal matter can be formed. Based on more established indications, logically interrelated in a chain of indications, one may come to the decisive facts. However, in preliminary investigation proceedings, except in exceptional cases, there is no evidence, and it is not necessary to tie the degree of certainty for certain kinds of facts. In addition, a higher degree of certainty, reasonable suspicion, in the CPC figures as a necessary condition for custody. Being associated with a legal definition, the detention could be determined only on the basis of direct evidence evidence. Bearing

37 Alexander B. Ivanović, Alexander R. Ivanovic, Criminalistics Procedure, Danilovgrad, 2013, p. 92.

38 According to Article 295, paragraph 1 of the CPC, the investigation is initiated when there are grounds for suspicion that a crime committed by known or unknown perpetrator. The public prosecutor will issue a decision on dismissal of criminal charge, also if there are no grounds for suspicion that a criminal act done officially. It follows that degree of belief, required to run the pre-trial proceedings and investigations is the same, but thus it is not clear what is reflected heuristic activity of pre-trial proceedings authorities, if entail an equal degree of certainty about the committed offense.

in mind that the only direct evidence is harder to arrive at already in the investigation, the strict application of the legal definition of reasonable doubt would greatly aggravate the order of custody.

Understanding, which equalises the concept of indications with the grounds for suspicion, is also the part of the theory. In the case where the facts suggest the possibility of the crime, or that it is committed by a particular person, then there are grounds for suspicion. In this case, the connection between the facts and grounds for suspicion is established through the indications. If it's between fact and criminal offenses established connection using the evidence, it is a reasonable suspicion.[39] The degree of certainty of a criminal offense and the offender are formed on the facts. Of the greatest concerns are legally relevant (decisive) facts. In addition, once to the relevant facts come through a roundabout way, by indications. If there is doubt about the credibility of the evidence instrumnt, then it is verified with additional facts. Grounds for suspicion, as a result of authorized state bodies activities in pre-trial investigation, are formed on the basis of detected facts about the criminal offense, possibly the offender. These are indications in criminalistic sense. However, in the vocabulary of processualists it is, as a rule, about the future legally relevant facts. These facts have not yet been established, i.e, procedurally fixed, because the criminal proceedings has not yet begun, so there is no involvement of the court. Provided items and traces of crime in criminal proceedings usually become material evidence. Persons who were called by the police to the so called informative talk, in the latter criminal proceedings become witnesses, the accused, and the injured. Some facts from the preliminary investigation may be evidence, i.e, enter the factual fundus the court decision, if they are fixed to the legally prescribed manner (Article 287, paragraph 2 of the CPC). It is about possibility that the suspected is interrogated by the police, under the authority of the public prosecutor, if agreed to this, and if his defense counsel attended to this (Article 289 of CCP). Accordingly, the grounds for suspicion or the lowest level of certainty, forming all the facts, which were gathered in pre-trial investigation, not only indications. The key difference between the gounds for suspicion and reasonalbe suspicion is in its determination. In the second case, the facts are established by the evidence, while the grounds for suspicion they have not yet been established, and we cannot talk about the evidence.

PROBATIVE VALUE OF INDICATIONS

The process of working with indications begins with their disclosure. This may occur spontaneously, when taking usual activities of the police, and may be a result of the planned activities on the discovery of the offense. Discovered facts are fixed and check their credibility. After discovering, an analysis of indications and their selection follows. Then interpretation of the collected facts is performed. It is, in fact, checking the possible versions of the criminal event. Among the collected facts, a comparison is made, seeking to establish the existence of interconnections between them, with the aim of creating a system of indications. During the work with indications specific methods of elimination, diffusion and accumulation is used. The method of elimination is applied when checking a version. This is a refutation of one version, with the existence of other version. From the initial versions, those that are mutually exclusive are gradually eliminated. The method of diffusion is based on negative facts. An absence of certain facts refutes the existence of a certain version. The method of accumulation is characterized by gradual upgrading of facts, in the direction of establishing of legally relevants facts. Discevered indications that are not mutually exclusive, but are connected to each other and gradually complete the mosaic of the same version of the crime.

Bearing in mind that criminal indication predominantly linked to preliminary investigation, as well as to represent the result of informal, operational and tactical actions of the police, the question is what is their probative value. Jealousy towards the possibility that the indications could be evidence in criminal proceedings stems from the time of inquisitorial procedure.[40] In the first stage of the investigating canonical criminal proceedings development, the probative force of indications was unbounded. Even the most difficult, the death penalty, could be imposed solely on indications. In French law, this opportunity is maintained for quite a long time, until the 18th century. Proving by indications was unsuitable because it led to frequent judicial errors. Therefore, the probative value of indications gradually restricted. At a later stage of the inquisitorial procedure, based on indications, milder criminal sanctions could be imposed only in exceptional circumstances, or could impose only criminal sanctions for minor offenses.

Before answering to the question about the probative force of indications, it is necessary to define a proof. Although there are various understandings [41] it can be said that the definition that the proof is the fact dominates, based on which authority of the procedure concludes that there is or there is no legally relevant fact. From the provisions of the CPC it can be concluded that the proofs are documents (objects and computer data, Article 2, paragraph 1, item 26), the testimony of the defendant (Article 68, paragraph 1, item 1), as well as the results of procedural actions, fixed in records of the case (Article 383 of the CPC). From the

39 Zagorka Jekić, Criminal Procedure Law, Belgrade, 1982, p. 189.
40 See also: Snezana Soković, op. cit, pp. 20-24.
41 See also: Vojislav Djurdjic, Criminal Procedure Law - general part, Niš, 2014, pp. 246-251.

above provisions, it can be concluded that in the CPC only certain proofs were stated. It may also be noted that documents are considered as proofs, which include tool with which the offense was committed, objects derived from the commission of the offense and the objects on which there are traces of the crime. So, all of that are typical indications.

On the basis of evidence, which are performed at trial, are just criminal indications obtained during operational-tactical police activity in the preliminary investigation proceedings. If they are tested and confirmed later, the established facts will be complete and accurate. In addition, criminal procedural indications can also be used as evidence in criminal proceedings. The only difference in relation to legally relevant facts relates to the way of determination. In order to prove the existence of the legally relevant facts, what must be established, by means of evidence, is the existence of lot of indications, and they must be connected them into a logical sequence. On the basis of these arguments, it is not difficult to conclude that the probative value of any facts cannot be disputed, if based decisive facts in criminal proceedings can be reached. The support for this contention comes from the essence of the ruling free evaluation of evidence concept. Any established fact are assessed by court freely. More precisely, the value of each fact, prices in relation to legally relevant facts in concrete case. The estimated value of the first facts is done individually and then in the context of other evidence presented, or the facts established. The indications in the detection and resolving of the offense play a crucial role. Without them, it could not get to the initiation of criminal proceedings. They are the basis for determining legally relevant facts in criminal proceedings. From their embryos develop and form the state of facts on which a court decision is based. The authority to determine the facts also by indications, arising from paragraph 2 of Article 16, which prescribes the duty of the court to pay equal attention to establish the facts for the benefit and to the detriment of the defendant. It is not difficult to conclude that the above provision covers all the facts, which could be used to decide about a criminal matter, but also indications.

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THE ROLE OF CONSULAR OFFICERS IN THE CRIMINAL LEGAL PROTECTION OF NATIONALS

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Abstract: In this paper, the authors deal with the legal position of consular officers in contemporary international relations and focus their attention on their activities in the criminal legal protection of the nationals of the nominated state. Taking this into account, the regulations stipulated by the Vienna Convention on Consular Relations of 1963 are of great importance, and the Convention is considered one of the primary legal UN documents in this sphere of international relations. The Vienna Convention serves to provide the complete legal guidelines which determine the status and authorizations of consular officers. This document determines the functions of consular officers and anticipates the regulations which determine the manner in which consular officers perform their duties for which they are reponsible.

A part of the paper is devoted to the specific actions of consular officers during criminal and other procedures, that is, their role in the affirmation of human rights and freedoms in this domain.

Keywords: consular officers, Vienna Convention on Consular Relations, consular functions, legal procedures, protection of human rights and freedoms.

INTRODUCTORY REMARKS

Consular officers, along with diplomatic representatives and special missions, belong to the corpus of foreign authorities which represent the state in a bilateral domain. The origin and functions of consular officers mean that they are significantly different from the institution of diplomatic agents, even though they are both considered to be government officials, as they are part of the state administration and hold the function of representing the state in international relations. Specifically, consular officers do not wholly represent their states' complete relations with the receiving State, but rather their function is determined by specific duties, that is, their local functions. Consuls, unlike diplomatic officers, do not have a position which is diplomatic in nature.[3]

It is not unusual that states, when reasons such as political opportunity were not opportune for establishing of diplomatic relations, protected their interests in specific states by establishing consulates.[4] Apart from that, international practices show that there are a significant number of cases when a break of diplomatic relations had no repercussions on consular relations.[5] The necessity to protect the interests of natural persons (nationals) and bodies corporate in foreign countries cannot be disregarded in case of unstable relations between countries. This explanation is supported by the Vienna Convention on Consular Relations which states that a break of diplomatic relations shall not *ipso facto* involve the break of consular relations.[6]

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3 Gligorije Geršić, *Diplomatsko i konzularno pravo, Teorija o povratnoj sili zakona*, Official Journal SFR Yugoslavia, 1995, p. 28.
4 Difficulties generally appeared in the case of regimes which came to power through revolution, that is, civil war; in this sense the controversial case of the National Republic of China can be used as an illustrative example. It is important to note that in the case of the republics of Latin America, Great Britain and the USA, consular relations were established even before the recognition of sovereign states.
5 Along with the examples which serve to confirm the afore mentioned practice, one which deals with German and Yugoslavian consulates, which continued to work even during the time of breaking diplomatic relations between these two states in 1957. An identical case was recorded during the break in diplomatic relations between Chile and Yugoslavia in 1973, because the democratically elected president of Chile, Allende, was assassinated. During that time the Yugoslavian consulate continued to work. Consular relations were not always foiled even between states which were at war during the Crimean War. See. Stevan Đorđević, Miodrag Mitić, *Diplomatsko i konzularno pravo*, Belgrade 2000, p. 170-171. Furthermore, during a break in diplomatic relations between, amongst others, Germany and France, during the time of the NATO bombings, the consular offices in the Soviet Republic of Yugoslavia continued to work.
6 Article 2 (3) Vienna Convention on Consular Relations

THE DEVELOPMENT OF THE INSTITUTION OF CONSUL

The origins of consular functions and their jurisdiction as we know them today, go back to the second half of the Middle Ages. Popular trade routes linking the cities across Europe such as Italy, Spain and France were homes to merchants who would chose an arbitrator between themselves. This arbitrator would have the role of an official who would solve disagreements which could occur between persons of that profession. During that period, consuls would apply legal norms, customs and trade usages which were put together to create a sea law codex, among which the most significant one is the *Libero del Consolato del Mare,* believed to have been drawn up in Barcelona during the 14th century. The institute of the consul has over time been put into practice beyond European borders.

During the 16th century, consuls were promoted to the position of state representatives, that is, public servants.[7] During the 17th century, Italian consuls were stationed in London and Holland, and English consuls in Holland, Sweden, Norway, Denmark and Italy.[8]

Consuls, working in the state service, became responsible for maintaining inter-state relations and were sources of official information from their native states. Their responsibilities gradually shifted away from the commercial domain and moved towards diplomatic and political activities. As trade politics were of crucial importance and an integral part of foreign affairs, it was clear that consuls were overlooking inherent limitations which were in the nature of their roles, and so increased their participation in international politics. The fusion of foreign policies and trading is evident when looking at the first representatives of the Venetian Republic who were not ambassadors but consuls who had commercial and administrative duties.[9]

However, the legal position of consuls during that time was not unified. Receiving States were generally resistant to the idea of expanding the extent of consular responsibilities, emphasizing the fact that it would be incompatible with the demands for fair and unbiased conflict resolutions which would occur between them and other traders, taking into account that a significant number of consuls were directly involved in commercial activities. Thus, receiving States were resistant to the notion of giving privileges to consuls, which would lead to the discrimination of other participants in trade activities.

Furthermore, during that time in international relations it was considered that consular functions "truncated" their sovereignty in their own state in respect to citizen and criminal jurisdiction. The consular service did not receive much affirmation even with the creation of the first permanent diplomatic missions. Since they had been left without the features and privileges of official representatives of their own government, the primary duties of a consul were reduced to overseeing the trade and maritime activities of their country, which in turn served to indicate the beginning of a modern consular service.[10]

When it comes to the historiography of Serbia, different dates have been suggested to indicate the beginning of consular relations. Namely, starting from 1804, when Serbia was under rebellion and formally under the rule of the Turkish Empire, it maintained consular relations mainly by means of a "Praviteljstvujusceg soviet" (one of the central authorities during the Serbian revolution) and local authorities and later the Ministry of Foreign Affairs with the neighboring country of Austria, but also with Russia, England and France.[11] On the other hand, the beginning of Serbia's consular service may have begun in the year 1836, when the first Austrian consulate was opened in Belgrade or in 1978, when the Berlin Congress declared the hitherto vassal principality of the Ottoman Empire an internationally recognized state.[12]

SOURCES OF CONSULAR LAW

The *capitulation treaties* were the first agreements recorded in history drawn up to regulate the legal regime of consuls. By these legal means, the home state safeguarded personal and asset security of its nationals during the time of their stay on foreign territory. Namely, capitulation treaties stipulated that a consul had full civil and criminal jurisdiction over the nationals who were located on the territory of the state with which the contract was signed.[13] These contracts were mainly signed between European and non-Christian countries from the East and North African continent, by which the Europeans would gain certain benefits, in the sense that they were not to pay the tax rates of these countries, abide by their laws or regulations.[14]

7 Milenko Kreća, *Međunarodno pravo predstavljanja*, Faculty of Law, Belgrade, 2012, p. 140.
8 Lassa Oppenheim, Ronald F.Roxburgh, *International Law: A Treatise,* Volume 1, The Lawbook Exchange, 1920 ,p. 589.
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10 Ilija Mitić, „Povijest evropske konzularne službe i doprinos Dubrovnika njezinom razvoju do početka XX stoljeća" u Đorđe M. Lopičić (ur.), *Studije i ogledi o konzularnim odnosima,* Belgrade 2006, p. 36.
11 Đorđe Lopičić, *Konzularni odnosi Srbije (1804-1918)*, Belgrade 2007, p. 23.
12 *Ibid.* p. 24.
13 Radomir Jergić, *Srpski konzularni praktikum,* Belgrade 2011, p. 23.
14 Ilija Mitić, *op.cit.*,p. 33.

By the year 1900, almost two hundred agreements had been signed between states which contained the regulations determining consular relations. By 1930, that number had risen to nine hundred.[15]

Among contemporary, bilateral contractual agreements which regulated the exchange of consuls, the first agreement was signed between France and Spain in the second half of the 18th century.[16] In this situation, it is interesting to note that by the end of the 20th century, even the Kingdom of Yugoslavia had signed a bilateral consular convention with the United States of America, Belgium and Switzerland.[17] Over time it has become clear that consular relations should be standardized into intergovernmental agreements, which would foresee a universally acceptable solution. In this sense, in July 1911, the first multinational Agreement on Consular Functions (The Caracas Convention on Consular Functions) was signed,[18] after which the Convention on Consular Agents was adopted in Havana in 1928.[19]

The primary principles of rights, concerning intermediary consular relations, are defined in the Vienna Convention on Consular Relations which was held in 1963. It was the first document of universal nature which regulated consular relations, privileges and immunities and so unequivocally contributed to the unification of consular rules. The Convention had 79 articles and was adopted during a conference which was held under the supervision of the United Nations based on the guidelines which were prepared by the International Law Commission.[20] Until its adoption, customary law which was concerned with consular relations was generally defined by bilateral legal arrangements.

Having in mind that it lacked clear definitions and uniformity, the *ratio* of this Convention was the systematization and codification of rules which regulated consular relations. Hence, the Convention on Consular Relations had as its goal to reorganize consular law in a more consistent way. Even though it was successful to a large extent in achieving this goal, its text suffers from ambiguity. A clear indication of this is the Preamble to this document which foresees that issues not categorically resolved in the Convention would continue to be regulated by international customary law. In the same manner, regulations of the Convention would not interfere or oppose other international agreements which regulated relations between states which were the signing parties, nor could the regulations of the Convention prevent states from signing international agreements which would concretize its regulations or widen the scope of their application.[21]

Thus, the adoption of the Convention does not supersede the plurality of the sources of consular law.

TYPES OF CONSULAR OFFICERS AND THEIR FUNCTIONS

According to usual categorization, contemporary international law recognizes two types of consuls: career consuls (*consules missi*) and honorary consuls (*consules electi*). Career consuls, also called professional consuls, are salaried state officials who are not allowed to simultaneously be employed in some other profession.[22]

On the other hand, for the position of honorary consul, people of a good reputation are considered from the receiving State and do not receive any kind of remuneration for this function. The difference between career and honorary consuls is that honorary consuls have a limited diplomatic immunity and are not under full jurisdiction of the receiving country.[23]

One viewpoint significant to our study, indicates that precursors to honorary consuls could be found in the Greek institution of *proxenos*; a trusted public servant with the function of protecting citizens.[24]

The scope of authorizations of trusted honorary consuls was modified to respect practical needs.[25]The Vienna Convention on Consular Relations anticipates that honorary consular officers are facultative in-

15 John Quigley, William J. Aceves, Adele Shank, *The Law of Consular Access: A Documentary Guide*, Routledge, 2009, page.4.
16 The Agreement was signed in Madrid in 1769. France, not long after signed similar contracts with Russia, the USA and England.
17 In 1881, the Kingdom of Serbia signed two conventions with the USA, namely: the Agreement on Commerce and Navigation and the Convention Determining the Rights, Immunities and Privileges of Consular Agents. Four years later, the Kingdom of Serbia signed a convention with Belgium, and in 1888, signed the Serbia-Switzerland Convention concerning Establishment and Consuls. The first half of the twentieth century saw the signing of a bilateral consular convention with Albania (1926) and France (1929).
18 Signing states were Bolivia, Ecuador, Columbia, Peru and Venezuela. The Agreement was signed in Caracas.
19 The Havana Convention was ratified in February 1928, during the sixth Pan-American Conference.
20 The Vienna Convention on Consular Relations was ratified on 24 April 1963, by the *United Nations Treaty Series* Number. 8638-8640, vol. 596, p. 262. The Convention came into force, in accordance with Act 77(1) on the thirtieth day from the day of deposition 22. Ratification instrument, 19 March 1967 published in Službeni listu SFR Yugoslavia – *Međunarodni ugovori i drugi sporazumi,* number. 5/66.
21 Article 73. Vienna Convention on Consular Relations
22 Đorđe Lopičić, „Počasni konzuli“,*Annals of the Law Faculty, Belgrade*, 3-4, 1993, p. 337.
23 Milenko Kreća, *op.cit.,* p. 314.
24 Stevan Đorđević, Miodrag Mitić, *op.cit.*p. 217.
25 Kevin D. Stringer, „Honorary consuls in an era of globalization, trade, and investment" in Jan Melissen, Ana Mar Fernández , *Consular Affairs and Diplomacy,* Martinus Nijhoff Publishers, 2011, p. 65.

stitutions,[26] having in mind that every state is free to decide whether it will appoint or receive honorary consular officers.[27]

Concerning the heads of consular posts, the Convention on Consular Relations defined a distinction between four classes of consular officers, and allocated the posts of consuls-general, consul, vice-consuls and consular agents; however, this allocation does not restrict the freedom for the state parties to determine the title of its consular officers and other employees.[28]

Looking at consular functions, it is possible to purport that all behaviours and actions of a consul are authorized by the sending State and do not oppose laws, regulations and customs of the receiving State.[29] In Serbian literature, special attention is paid to the types of consular functions, which have been determined according to their nature, which differentiates the different consular functions according to their general character, economic function, function of safeguarding the interests and helping citizens of the sending State, having an administrative function in a wider sense and finally having functions such as overlooking trade ships and the civil aviation of their country.[30]

The Convention on Consular Relations offers a definition of consular functions. The Commission for International Law presented views that according to the Havana Convention, it should offer a general synthetic formula for consular functions, whilst further specifying what should be left to national legislative bodies, that is, bilateral agreements between interested states.

From the aspect of our study, especially significant are the regulations as determined by the Vienna Convention on Consular Relations which foresee the functions of consular agents.[31]

SPECIFIC ACTS OF CONSULAR OFFICERS IN CRIMINAL AND OTHER PROCEDURES

Taking into account the specific UN documents, above all else, the Charter of the United Nations[32] as well as the Universal Declaration of Human Rights,[33] which protect human rights and freedoms, consular officers are authorized to, in the shortest time possible, without delay, establish contact with persons, that is, nationals of the sending State, who are under criminal procedures or other activities in the receiving State, and in this way offer them assistance. It is necessary that the consular officers act quickly as human rights and freedoms could potentially be violated.

Apart from these UN documents, the Vienna Convention, which serves as the primary source of consular law, foresees a series of activities of consular officials with the aim of protecting nationals of the sending State. Namely, in accordance with the regulations from the Vienna Convention, consular officers who are based in the receiving State, are authorized and obliged to protect the interests of the nationals of the sending State. These activities are related to offering assistance to the above mentioned persons during different kinds of legal procedures, especially during all criminal procedures.

Specific activities of consular officers when performing their functions in relation to the nationals of the sending State are realized through the cooperation of the official authorities of the receiving State. The receiving State, that is, its authorities, are obliged to provide consular officers the freedom of communication with nationals of the sending State during all phases of criminal procedures. This bidirectional cooperation between consular officers and the receiving State is in accordance with Article 36 of the Vienna Convention on Consular Relations. Namely, the receiving State, in accordance with the regulations of the Convention, is obliged to provide adequate conditions so that the consular officers of the sending State could fulfill their rights, that is, their obligations in regards to the protection of the interests of their nationals. An especially sensitive situation is one in which the nationals of the sending State are deprived of their liberty (persons who were detained, arrested, etc.). In this kind of situation, state authorities shall, without delay, inform these persons of the means by which they can correspond with the consular officers of the State of which they are a national.[34] Furthermore, consular officers shall have the right and obligation to visit nationals of the sending State who have been deprived of liberty (detained, imprisoned or in custody). Apart from visitation, which includes undeterred communication (without the presence of third persons) with persons deprived of liberty, consular officers have the opportunity to establish written correspondence with

26 Article 68. Vienna Convention on Consular Relations.
27 The National Republic of China, for example, did not choose to appoint or receive honorary consular officers.
28 Article 9. Vienna Convention on Consular Relations..
29 M. Levi, „Bečka konvecija o konzularnim odnosima i jugoslovenska praksa"u Djordje N. Lopičić (ur.), *Studije i ogledi o konzularnim odnosima,* Belgrade 2006, p. 82.
30 Milenko Kreća, "Međunarodno pravo predstavljanja", Law Faculty, Belgrade, 2012, from p.160
31 Further reference, Article 5 and 36 Vienna Convention on Consular Relations
32 One of the purposes of the UN is to encourage and promote respect for human rights and fundamental freedoms
33 Further reference, The Universal Declaration of Human Rights UN
34 Further reference article 36 (1b) Vienna Convention on Consular Relations

these persons as well as being responsible for the provision of their adequate legal representation in court. Consular officers perform numerous duties until the completion of the criminal procedures, but this does not conclude their rights as consular officers. On the contrary, they continue their correspondence with the nationals of the sending State by visiting them even after the court has reached its decision and during the time that the person is serving their sentence, but under the condition that this person is serving the sentence under the jurisdiction of the consular officer. It has already been emphasized that duties which are performed by the consular officer, having in mind the interest of the national of the sending State who is under criminal procedures or who has already been sentenced, are done so with the consent of this person. In the situation that this person chooses to reject assistance, these duties could not be fulfilled.[35] In this way, the rights of the sending State concerning the protection of the interests of its nationals remain unfulfilled even in circumstances when the receiving State has fulfilled their international obligations, having in mind a person's consent as being the relevant condition. The actions of consular officers, considering their status, are strictly formal and shall be exercised, "... with the laws and regulations of the receiving State."[36]

Concerning the mentioned consular activities, the consular officers are obliged to refer to the official authorities of the receiving State in order to perform them. Official authorities are primarily local authorities within the consular jurisdiction where the consulate headquarters are located, but also include higher levels of authority, that is, central organs of the receiving State. Cooperation with the central state authorities of the receiving State can be achieved if permitted by laws and other regulations, that is, the practice of the receiving State. Of course, the general guidelines for this kind of cooperation are perceived by documents of an international nature, international conventions and agreements, so it is necessary for the national legislature of the receiving State to be in harmony with international documents. It is important to mention that performing diplomatic-consular functions takes into account a strict adherence to the legal order of the receiving State. Namely, consular officers do not have authorization to interfere with internal affairs, nor to violate the internal legal order of the receiving State. How consular officers proceed during criminal proceedings is very delicate and hence it is important that they behave regarding these regulations.[37]

With all of the above mentioned, it can be concluded that Article 5 and Article 36 of the Vienna Convention on Consular Relations are of considerable importance in regard to the actions of consular officers. These two articles, that is, their content, to put it simply, represent the relation between the general and the specific. Namely, consular functions which are used to achieve distinct rights of the sending State and its nationals, along with a means to protect their interests, have been comprehensively listed in Article 5 of the Vienna Convention. However, consular functions are specified in Article 36 of the Vienna Convention, which were previously defined in Article 5 and which explicitly stated the means of protecting the rights of nationals of the sending State during and after criminal procedures.

It should be emphasized that the rights of person deprived of liberty, as an especially sensitive category of persons, are guaranteed protection under international as well as national legal regulations. Namely, due to the nature of their position, they are at a greater risk of having their human rights and freedoms violated, and are susceptible to procedures and punishments which would harm their human dignity in the cruelest manner.

In this sense, the most significant international acts proclaim a prohibition on arbitrary violations of human rights, detainment and deportation of persons, that is, they affirm the right to legal and efficient sentencing in front of an independent and unbiased court.[38] Also, the mentioned documents apostrophize the basic principals of criminal actions expressed through the principles of *ne bis in idem* (not twice in the same (thing) and *nulla poena sine lege* (no penalty without law).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[39] provides protection to this category of persons from acts of torture as well as other demeaning punishments or actions. In accordance with the regulations of the Convention, an act of torture is defined as inflicting upon a person which has been deprived of their liberty (regardless of the basis and duration of this), any kind of severe pain or suffering, whether physical or mental for such purposes as obtaining from them information or a confession, that is, for the above-mentioned person to be intimidated or to be put under some sort of psychological pressure. For the above mentioned act to be forbidden, it is necessary for it to be carried out by a public official, that is, with their incentive or their explicit or silent consent.[40] Regarding the actions of consular officers during the implementation of this Convention, consular officers in certain cases have the opportunity to, apart from their cooperation with the usual government bodies (judicial and administrative authorities) establish cooperation with specialized institutions which deal with the protection

35 Further reference article 36 (1c) Vienna Convention on Consular Relations
36 Further reference article 36 (2) Vienna Convention on Consular Relations
37 Further reference, Dimitrijević, V „Osnovi međunarodnog javnog prava", Belgrade Centre for Human Rights, Belgrade, 2007.g, from p.167.
38 Further reference, article. 9 i 10 The Universal Declaration of Human Rights UN
39 Further reference, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution UN 39/46 10 December 1984
40 Further reference, article. 1 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

of human rights and freedoms. Hence the national ombudsman is of significance, as this institution by its definition performs all functions of a national institution for the protection of human rights (NHRI-National Human Rights Institutions) and acts like a national preventative mechanism.[41]

Furthermore, the Convention obliges all signing states according to national legal order, to take upon them all legal, administrative and other measures so as to prevent the implementation of acts of torture within their jurisdiction, that is, to regard all acts of torture as specific criminal acts.[42]

Apart from the above mentioned international conventions which enable consular officers to fulfill their functions during criminal procedures, it is important to mention that appropriate national regulations which regulate this area of interest are also of great significance.

For example, the Code on Criminal Procedures of the Republic of Serbia explicitly states that an arrested person has the basic right to "inform without delay their diplomatic-consular officer of the State of which they are a national of that they have been arrested".[43]

Furthermore, in the next stage of these procedures, it is stated that "... the diplomatic-consular officer of the state of which the arrested is a national ... has the right to, according to a ratified international agreement and along with the knowledge of the judge, visit the detainee without the presence of other persons".[44]

Bilateral conventions specify the obligations of signing states regarding the protection of the rights and interests of persons who have been deprived of their liberty and providing them with adequate assistance. Namely, authorized official state bodies are obliged to, without delay, and no later than three days, notify the appropriate consular officer about the nationals from the sending State who have been deprived of their liberty. Furthermore, the state bodies of the receiving State are obliged to inform (pass on) every statement that is sent by the national of the sending State to the consulate of their country, during any stage of the criminal procedures or while serving their prison sentence. Consular officers can visit the nationals of the sending State who have been deprived of their liberty or have had their liberty violated. It is generally assumed that the activities of the consular officer are performed with the consent of the national whose interests the consular officer is aiming to protect.[45]

The realization of consular functions manifests itself through providing other complementary types of assistance to nationals of sending States. In this sense, consular officers have the right to request from the official state bodies of the receiving State to be informed without delay of every event which as a consequence has death, severe physical harm or significant material damage to a national of the sending State, as well as to be consulted in case they need assistance in the search for missing persons who fall into these categories.

In circumstances when urgent action is called upon, consular officers can request from the official state bodies of the receiving States to adopt temporary measures with the aim of protecting the rights of nationals of the sending State. This type of request can be made by consular officers in cases when specified persons cannot single-handedly and promptly fulfill their rights and interests. These activities of consular officers are also subject to be redefined in specific conventions of a bilateral and multilateral nature.[46]

JUDICIAL PRACTICE IN THE AREA OF CONSULAR PROTECTION OF NATIONALS DURING CRIMINAL PROCEDURES

According to the regulations of the Vienna Convention (Article 36), the obligations of the receiving State are clearly specified in that it should in an adequate manner and without delay inform foreign nationals who are under criminal procedures that they have the possibility of consular protection. Disrespect of the specified regulations can in practice lead to significant consequences. In the most drastic cases when the rights of foreign nationals were threatened, the International Court of Justice determined the right to consular protection during criminal procedures. In this sense, the case of *LaGrand* and *Avena* can be used as illustrative examples to show that the International Court of Justice confirmed that it had come to a violation of the regulations of the Vienna Convention and disrespect of the guaranteed procedural rights of persons deprived of liberty.

In the case of *LaGrand*,[47] the Arizona Superior Court (the USA) sentenced the LaGrand brothers, who were German nationals, to death (on account of an attempted armed bank robbery which took place in 1982 and resulted in one employee being killed and others wounded). During procedures, the defendants

41 Further reference, Reif, C.Linda, „Transplatation and Adaptation: The Evolution of the Human Rights Ombudsman", Boston College Third World Law Journal, vol.31, iss 2, from p.290
42 Further reference, article. 4 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
43 Further reference article. 69 Code on Criminal Procedures , Službeni glasnik RS number 53/14
44 Further reference, Article. 219 Code on Criminal Procedures RS
45 Further reference Article. 23 Consular Convention between the Republic of Serbia and Montenegro 14 June 2012
46 Further reference, Article. 24 Consular Convention between the Republic of Serbia and Montenegro 14 June 2012
47 ICJ, Germany v. United States of America, La Grand Case (27.6. 2001)

were not informed of their rights to consular assistance and protection. During sentencing, and under Germany accusations, the International Court of Justice found the USA had not acted according to the regulations of the Vienna Convention, because the German nationals had not been informed of the rights to consular protection during the criminal procedures. At the same time the Court ordered the USA to, during all cases in which German nationals were sentenced to severe penalties without formerly being informed of their rights to consular assistance, reconsider the sentence, that is, the penalties, taking into consideration the violation of rights which are guaranteed under the Vienna Convention.

The court took a similar stance as in the case of *Avena* [48] when Mexico accused the USA of violating procedural rights of approximately 50 Mexican nationals which were sentenced to death during criminal procedures, of which three were irrevocable court decisions. In this case, the USA was accused of disrespecting the Vienna Convention and withholding the right to consular assistance and protection of the Mexican nationals who had been sentenced to death. Namely, during criminal procedures, the Mexican nationals had not been informed in a timely manner of the possibility to use consular protection, that is, the Mexican government was not informed that its nationals were under criminal prosecution.

Both LaGrand and Avena undoubtly request that in case of the violation of an individual's Article 36 rights, the person in question must be given the opportunity to file a claim in a domestic court. This would result in 'review and reconsideration' of his verdict and sentence. The process of review and reconsideration strives to determine if the person concerned was actually discriminated due to the breach of one's Article 36 rights.

INSTEAD OF A CONCLUSION

The obligations of consuls are especially demanding and numerous; as such it is understood that a very delicate approach needs to be applied so as not to obstruct the relations between states which use consuls to maintain relations in a sophisticated manner.

The development of contemporary consular relations should be viewed in the context of improving a quality relationship between states and theier citizens, as well as intensifying foreign political arrangements and diplomacy in general. The determining feature of the institute of consul which resists different stages of international relations should be understood from the perspective of offering assistance and support to the nationals of the receiving State. It is understood that additional acts of the consul are in support of the needs of the sending State, that is, its nationals.

As was explained, the activities of consular officers, in the sense of the protection of human rights and freedoms of nationals of the receiving State, as well as the rights of the legal subjects of the same background, are of great significance. The genesis of their actions demonstrates that there is an increase (widening) of the circle of the jurisdictions of consular officers and it is expected that *de lege ferenda* consular officers will gain even greater significance. The activities of consular officers are especially important during criminal procedures, which, as explained, can have significant consequences on the receiving State in case consular authorisations and rights, that is, the regulations of the Vienna Convention are disrespected. This can be concluded from numerous bilateral conventions as well as from documents of a multilateral nature, that is, the jurisprudence of international courts, which has been covered in this paper.

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THE EVIDENTIARY PROCEDURE AT THE MAIN HEARING ACCORDING TO THE NEW MACEDONIAN LAW ON CRIMINAL PROCEDURE

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Abstract: One of the four basic areas to which the reform of the Macedonian criminal procedure should be pointed, according to the Strategy for Reform of the Criminal Law (2007), was the main hearing, i.e. the construction of the main hearing should be re-organized in accordance with the accusatorial elements so as to enable the defendant to admit guilt and to take responsibility for the criminal act without a trial, and at the same time to ensure quicker completion of the main hearing limited only to the facts important for the choice and measurement of the sentence. Further, the Strategy stated that the burden of proof should be fully left to the initiative of the parties, which means that the trial court should further maintain only the authorizations of control and eventually of complement in relation to collecting and deriving evidence in cases when the parties cannot or do not want to use their procedural rights.

Having in mind the above, the paper shall try to answer the question whether the new Law on Criminal Procedure has fulfilled the expectations set by the Strategy, i.e. whether the provisions dedicated to the evidentiary procedure at the main hearing have met the above targets.

Keywords: Evidentiary procedure; Main hearing; Law on Criminal Procedure; Republic of Macedonia.

INTRODUCTION

The necessity to reform the Macedonian criminal procedure was explained in two documents, i.e. the Strategy for Reform of the Judicial System (2004),[2] and the Strategy for Reform of the Criminal Law (2007).[3] These crucial strategies were followed by creating a new Law on Criminal Procedure (LCP), adopted by the Macedonian Assembly on November 17, 2010.[4] According to its Draft version (Draft-LCP), submitted by the Government to the Assembly on July 22, 2010, abandoning the judicial paternalism and transferring the burden of proof on the parties was the first main benchmark of reforming the criminal procedure. The other five benchmarks set by the Draft-LCP were: to provide active and managerial role of the Public Prosecution Office in the pre-trail procedure, which includes efficient control over the Police; to revoke the court investigation and Public Prosecution Office to take over the conduction of pre-trail procedure; to expedite the procedures by promoting the off-court settlement and simplified procedures; to rationalize the system of legal remedies; and to implement the recommendations of the European Union and the Council of Europe.[5]

Although the novelties considering the investigative procedure and its conduction by the Public Prosecutor are seen as the crucial ones, the first benchmark should not be neglected. Namely, this benchmark coincides with the Strategy for Reform of the Criminal Law, noting that the construction of the main hearing should be re-organized in accordance with the accusatorial elements so as to enable the defendant to admit guilt and to take responsibility for the criminal act without a trial, and at the same time to ensure quicker completion of the main hearing limited only to the facts important for the choice and measurement of the sentence. Further, the Strategy stated that the burden of proof should be fully left to the initiative of the parties, which means that the trial court should further maintain only the authorizations of control and eventually of complement in relation to collecting and deriving evidence in cases when the parties cannot or do not want to use their procedural rights.[6]

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2 See: Министерство за правда: *Стратегија за реформа на правосудниот систем,* 2004
3 See: Министерство за правда: *Стратегија за реформа на казненото право,* 2007
4 Law on Criminal Procedure - new LCP ("Official Gazette of the Republic of Macedonia" No. 150/2010, 100/2012)With the start of application of the new LCP, the old LCP ("Official Gazette of the Republic of Macedonia" No. 15/1997, 44/2002, 74/2004, 15/2005 - consolidated text, 83/2008, 67/2009, 51/2011) shall cease to be valid, except for the procedures that are conducted according to the Article 556 of the new LCP (the procedures initiated prior to the application of the new LCP shall be completed according to the provisions of the old LCP).
5 For more, see: Draft - Law on Criminal Procedure (Draft-LCP), submitted by the Government of the Republic of Macedonia to the Assembly of the Republic of Macedonia on July 22, 2010, page 11 (available on: www.sobranie.mk).
6 See: Министерство за правда: *Стратегија за реформа на казненото право,* 2007

REFORMATION OF THE MAIN HEARING

The removal of the inquisitorial elements in Macedonian so-called mixed criminal procedure is not only relevant for the investigative procedure. Abandoning the Court's obligation to determine the truth *ex-officio*, which unnecessary burdens the judiciary imposing on it practically part of the obligations of the parties, according to the Draft-LCP was a strategic subject that deserved a priority. As noted in the Draft-LCP, the arrangement of the main trial in the old LCP was the result of the compromise between the elements of the accusatorial and inquisitorial model, established as a mixed model of criminal procedure of the XIX century, and that compromise gave the primacy to the inquisitorial maxima and to the right of the Presiding Judge of the Trial Chamber to examine the defendant in order to obtain his/her statement as evidence (inquisitorial elements). Moreover, the systematical changes that were done in the pre-trial procedure, made this stadium of the criminal procedure as a dominant stadium, leading the theoreticians towards the conclusion that the main trial has turned into an ordinary controlling stadium of the procedure, in which the accuracy and reliability of the evidence (previously gathered by the Police or Investigative Judge) have been checked.[7]

The main goal of the reform was that the Court should be relieved from the obligation to clarify the case as its official duty. This function should be fully overtaken by the Public Prosecutor, which will also overtake the leading of the pre-trial procedure, as well as proving the guilt beyond any reasonable doubt, and in the end all of this will help the Court remain independent and impartial arbitrator.[8] Primarily, it is important to provide a greater initiative of the parties in the proposition and presentation of evidence. The Court should be activated only if the defense is incapable of its role.[9] However, this represents a situation in which judges may fall into a moral dilemma whether to remain faithful to their role - to be passive, despite the fact that the deficient evidence of the parties could lead to unjustified acquittal verdicts.[10]

One of the characteristics of the mixed court procedure is the incapacity to establish the material truth while the acceptance of the Anglo-Saxon institutes results in switching the focus from the truth to the procedural fairness. Any theories insisting on fairness are based on the fact that trials are not a safe way to discover the truth, as the truth on what really happened often cannot be established, it is important to ensure a fair procedure for the resolution of criminal cases.[11]

Having in mind the above, the new concept of the main hearing shall assume an active role of the parties, which demands not only knowledge, but also experience, skillfulness, smartness, preciseness and persuasiveness in the preparation and presentation of the evidence in front of the Court. This new system, shall require from the plaintiff to build the case through the answers obtained from the witnesses and expert-witnesses, which assumes his/her skills to develop regarding the formulation of the questions and their systematization into a coherent whole, and also a solid preparation to continue with asking questions about the previously given answers, and all of this within the framework of the prior drafted questions. On the other hand, the defense must be well prepared to challenge the allegations of the prosecution, to discredit its witnesses during the cross examination, to find and propose evidence that would build "the thesis of defense". And finally, during the main hearing the Court for the first time shall get familiar with the case. The Court shall be a passive arbiter who shall follow the presentation of evidence proposed by the parties - that were subject to its previous approval, shall take care the procedure is conducted in a proper way, shall establish an order and discipline in the courtroom, shall respect the reputation and dignity of the participants in the procedure. The main hearing, according to the new LCP, differs from the pure accusatorial procedure of Anglo-Saxon type because the hearing is not conducted as a dispute between the parties in front of the jury that shall reach the verdict about the defendant's guilt while the Court is completely passive. Instead of

7 Namely, the influence of the pre-trial procedure over the main trial in the old LCP was not neutralized, because the investigative material remained as the main source of information during the entire procedure, which in practice meant that in the main trial the reliability of the results of the investigative procedure are being checked. See: Draft-LCP, page 244-245.

8 See: Draft-LCP, page 245

For example, two provisions of the new LCP establish that the burden of proof falls on the Public Prosecutor. The first one is Article 319 Paragraph 1, after the completion of the investigative procedure when the Public Prosecutor determines that there is enough evidence to expect a conviction, he/she shall prepare and submit an indictment to the competent Court. And the second is Article 403, which as one of the grounds when the Court shall pass an acquittal verdict encompasses the situation when the Public Prosecutor or the plaintiff failed to prove beyond any reasonable doubt that the defendant committed the criminal act that he/she has been accused of.

9 See: Draft-LCP, page 245.

As noted by Г. Калајџиев: Воведување на акузаторна кривична постапка со вкрстено испрашување, *Македонска ревија за казнено право и криминологија,* год. 16, no. 2, Скопје, 2009, page 286, in the pure accusatorial system the burden of preparing the case for the court hearing falls on the parties themselves. The Judge generally has a passive role, hears the evidence presented by the parties, provides the procedure to be conducted in a correct manner and announces the decision at the end of the trial. If the parties decide not to summon a particular witness, then no matter how his/her testimony is relevant, the Court cannot do anything about it.

10 See: M. Damaška: Hrvatski dokazni postupak u poredbenopravnom svjetlu, *Hrvatski ljetopis za kazneno pravo i praksu*, vol. 17, br. 2, Zagreb, 2010, page 825

11 See: G. Buzarovska / G. Kalajdjiev / D. Re / M. G. Karnavas: *Cross-examination - a guidebook for practitioners,* Skopje, 2010, page 13

this, the presentation of the evidence at the main hearing is in front of the Trial Chamber in charge to make decision about the guilt, but also to impose a criminal sanction.[12]

THE NEW EVIDENTIARY PROCEDURE

The second part of the LCP is dedicated to the course of the procedure, and it is systematized into five sections.[13] The Section C. encompasses the provisions concerning the Main hearing and the Verdict, more precisely the Preparations for the main hearing (Chapter XXIII), the Main hearing (Chapter XXIV) and the Verdict (Chapter XXV). As regards to the Chapter XXIV, in order to have a greater overview it is divided into:

1) Principle of publicity of the main hearing,
2) Managing the main hearing,
3) Preconditions for the main hearing,
4) Postponement and adjournment of the main hearing,
5) Record of the main hearing,
6) Commencement of the main hearing, and
7) Evidentiary procedure.

Fifteen articles regulate the evidentiary procedure at the main hearing (Articles 382-396).[14] Article 382 of the LCP defines the way of the *presenting the evidence* and their *order of presentation*. First, the evidence of the prosecution and evidence related to the legal-property claim shall be presented, afterwards the evidence of the defense, followed by *replica* or evidence of the prosecution in order to disprove the defense evidence and at the end - *duplica* or the defense evidence in rejoinder. Additionally, during the main hearing, each of the parties with the consent of the other one may withdraw the presentation of the evidence that was previously proposed.

It is not clear why LCP sets a condition according to which when one party asks the evidence to be withdrawn (and this evidence was previously proposed by the same party), the other party has to give consent. Moreover, both parties are free to decide which evidence they shall propose in their lists. Therefore, "the consent of the other party" should be deleted, but at the same time the other party should be allowed to propose that evidence as its own. What would happen if the same witness / expert-witness were proposed by both parties is not defined as well. And in this situation, which party shall do the direct examination and which the cross examination of the witness / expert-witness is neither defined. Furthermore, it is necessary to specify what kind of evidence can be proposed as a *replica* or *duplica*; because it might happen that the right to propose additional evidence is misused thus prolonging the procedure.

Since both parties may give consent that a certain evidence is not disputable (e.g. a written evidence), then its presentation shall not be needed which should also be prescribed by the LCP. This evidence should be encompassed in the case file and by doing this - it would be considered as evidence that was directly presented at the main hearing.

The direct examination, cross examination and re-direct (additional) examination are the three methods of examination allowed by Article 383 of the LCP.[15] The party that has summoned a witness, expert-witness and/or technical adviser in support of his/her case shall conduct the direct examination.[16] The second type of examination is the cross examination conducted by the opposing party.[17] The re-direct examination is the third method that is conducted by the party that has summoned the wit-

12 See for more: Н. МАТОВСКИ / Г. ЛАЖЕТИЌ - БУЖАРОВСКА / Г. КАЛАЏИЕВ: *Казнено процесно право (второ изменето и дополнето издание),* Скопје, 2011, page 414-415

13 The sections are as follows: Section A: Preliminary procedure; Section B: Accusation; Section C: Main hearing and the Verdict; Section D: Legal remedies; Section E: Expedited procedures.

14 Therefore, the Draft-LCP (page 238-239) notes that the rules concerning the evidence are not regulated in detail within the investigative procedure, and the means of evidence are drawn in and elaborated in a separate chapter. LCP has a different concept regarding the old LCP, because the consistent implementation of the outgoing concept does not involve questioning and examining the suspects and the witness in the context of the evidence presentation. As stated in the Draft-LCP (page 245-256), the majority of the proposed solutions in this section are overtaken from LCP of Bosnia and Herzegovina and LCP of Italy.

15 More about the new methods of examination introduced by the LCP see: G. Buzarovska / G. Kalajdjiev / D. Re / M. G. Karnavas: *Cross-examination - a guidebook for practitioners,* Skopje, 2010, page 17-23, 35-46

16 Article 21 Paragraph 1 Item 12 of the LCP states that the term "direct examination" shall mean "an examination of a witness and expert-witness by the party, i.e. the defense counsel who has summoned the witness or expert-witness, representing a manner in which such evidence is presented during the main hearing".

17 Article 21 Paragraph 1 Item 13 of the LCP states that the term "cross examination" shall mean "an examination of a witness and expert-witness by the opposing party, representing a manner in which such evidence is presented during the main hearing".

ness / expert-witness, with a note that the questions asked during this examination shall be limited only to the questions that have been asked during the examination by the opposing party.

Concerning the *manner of examining* witnesses (Article 384), as stated above, the witness shall be examined by the party that has summoned him/her. The questions for the witness by the opposing party or the cross examination shall be limited and shall refer only to the questions that have been asked earlier during the direct examination. The questions of the re-direct examination of the witness by the party that has summoned the witness shall be limited and shall refer only to the questions asked by the opposing party during the cross examination. The questions that contain in themselves both a question and answer, i.e. the leading questions shall not be allowed during the direct examination, except in the cases when it is necessary to clarify some statements of the witness. As of a rule, leading questions shall be allowed only during the cross examination.

This provision should be corrected. First, the title of the Article should be changed, i.e. the word "witnesses" should be deleted since the Article does not refer only to the examination of the witnesses, but also to the defendant (as indicated in the Article 391 Paragraph 2), expert-witnesses and technical advisers. Further, the questions that are asked during the direct examination are aimed at establishing the facts and circumstances related to the criminal act, with note that the leading questions cannot be asked during the direct examination, except in the cases when there is a need to clarify the witness's statement. Regarding the questions of the cross examination, they should not be limited to the facts and circumstances that were previously presented in the direct examination, but also to the facts and circumstances that are important for evaluating the credibility of the statements given in the direct examination. In essence, during the cross examination direct questions should be allowed to be asked, i.e. questions that do not derive from the direct examination, but serve to discredit the value of the statement or witness's perception ability.

After the completion of the examination by the parties, the Presiding Judge and members of the Trial Chamber may question the witness / expert-witness (Article 383 Paragraph 5). This judicial authorization should be more precisely formulated, because it can lead to the old system when the Court proceeded the case. Therefore, the Court's questions should be limited only to further explanation of the answers given by the witness / expert-witness (technical advisers are "forgotten" in this provision of the LCP) to the questions asked by the parties, i.e. in order to eliminate contradictions or ambiguities. This formulation of the LCP provision is contrary to the basic concept of accusatorial system known for the parties' confrontation and abandonment of the principle to establish the material truth, which was typical for the inquisitorial system that was left behind. Moreover, the damaged party should be allowed to ask questions regarding the legal-property claim.

Further, the Court's role during the evidentiary hearing is defined in Article 385 of the LCP and according to this provision - the Presiding Judge of the Trial Chamber shall control the manner and order of examination of the witnesses / expert-witnesses (once again the technical advisers have been forgotten) and the presentation of evidence. He/she has to provide efficiency, the procedure to be economical and if the need arises, to establish the truth. The demand "if need arises, the Court has to establish the truth" is a return to the principle of determining the material truth, and therefore that part of the provision should be deleted.

In order to give a proper respond to these tasks, the Presiding Judge has several *managerial and controlling authorities* and shall rule immediately, with a decision, on any objections raised verbally during the process of examination of the witnesses, expert-witnesses and damaged party at the main hearing.[18] It is not necessary to impose an obligation on the Court to rule with a decision (written act) concerning the party's objection raised verbally during the examination process. The Presiding Judge should only verbally state whether he/she sustains or denies the objection.

Upon an objection by the parties, the Presiding Judge shall prohibit a question and answers to the question that has been previously asked, if he/she considers it inadmissible or irrelevant to the case. Further, he/she shall refuse presentation of evidence if he/she considers it unnecessary and of no importance to the case and shall briefly explain the reasons for it. Furthermore, upon an objection by the parties, the Presiding Judge shall prohibit leading questions, except during the cross examination. Moreover, if a situation known as "a hostile witness" arises, i.e. as the result of the witness's testimony, he/she can no longer be considered as the witness of the party that summoned him/her, but upon the suggestion of this party, the Presiding Judge shall approve a cross examination of that witness.[19]

Further, during the evidentiary hearing, the Presiding Judge shall look after the dignity of the parties, defendant, witnesses and expert-witnesses. In addition, he/she shall take care of the admissibility of the questions, validity of the answers, fairness of the examination and justification of the objections. Hence, the

18 According to Г. Калајџиев / Л. Раичевиќ-Вучкова / З. Димитровски / Т. Витанов / В. Трајановска: Преуредување на главниот претрес во Република Македонија, *Македонска ревија за казнено право и криминологија,* год. 15, no. 2-3, Скопје, 2008, page 228, with the proposed solutions, the Court's functions as manager, controller and guarantor still remain, but the Court is no longer in charge *ex-officio* and actively determining the truth in the procedure.

19 What is meant under "hostile" or "unfavorable" witness, see: Академија за судии и јавни обвинители: *Модул 3 - Главна расправа - Прирачник, Скопје,* 2013, page 38-39

answers validity is not an issue that should concern the Court. On the contrary, the Court should take care of the completeness of the given answers, and therefore that part of the provision should be deleted.

Before *examining a witness*, according to Article 386 of the LCP, the Presiding Judge shall warn the witness about his/her duty to present to the Court everything that he/she knows about the case and that the perjury is a criminal act. Afterwards, the witness shall give a solemn declaration as follows: "I swear on my honor that I will say the truth about everything that I will be asked and I will not elide anything that I might have seen or heard". This Paragraph 2 should be harmonized with the Article 222, which states that the witness may be required to give a solemn declaration (it is not a must).

Further, the Presiding Judge shall warn or fine any participant in the procedure or any other person who threatens, insults or endangers the safety of the witness. Upon a motion by the parties, the Court may order the Police to undertake any necessary measures to protect the witness.[20]

The similar procedure stands for the expert-witnesses (Article 387 of the LCP), with a note that the provisions used for *examining the expert-witness* shall also apply to the examination of the technical advisers. Namely, before the examination of the expert-witness, he/she shall be warned about the duty to present the opinion in a clear manner and in accordance with the rules of the profession and that giving a false statement on the findings or opinion is a criminal act. Furthermore, the expert-witness shall give a solemn declaration as follows: "I swear on my honor that I have performed the expert examination conscientiously and in accordance with the rules of my profession and that everything I declare in that respect is true."

The LCP provides a strict rule as regards admitting the expert-witness's findings and opinion into the evidence. Namely, if any of the parties requests the expert-witness to be examined during the main hearing, then the written findings and opinion shall be admitted into the evidence only if the expert-witness who has prepared the expert minutes has given his/her statement at the main hearing and he/she has been given an opportunity to be cross examined.

Article 388 of the LCP is dedicated to the *exception from the direct presentation of the evidence*.[21] If the establishment of a fact is based on a person's observation, the same person shall have to be examined at the main hearing in person, except in the case of an examination of a protected witness pursuant to Article 228 of the LCP.[22] The examination may not be replaced neither by reading out loud the minutes of a statement that the person has provided earlier, nor by a written statement. However, any minutes of given statements before the Public Prosecutor, may be read or reproduced and presented as evidence with a decision by the Court, if the person who gave the statement has died in the meantime, has become mentally ill, or remains unavailable to the Court despite all the means provided by the law that have been applied in order to locate him/her. Besides, any statements given by the witnesses during the investigative procedure and statements obtained through the actions of the defense during the investigative procedure may be used during the cross examination or to disprove any of the findings presented or in reply to the disproof, in order to evaluate the validity of the testimonies given during the main hearing. With the decision by the Court, any minutes of statements provided during the evidentiary hearing in the investigative procedure, may be presented as evidence by reading or reproducing them.[23] And finally, if following the start of the main hearing, indications emerge upon which can be concluded that the witness was exposed to violence, threats, promises of financial rewards or other benefits, in order not to testify or to give a false testimony during the main hearing, any statements given in front of the Public Prosecutor during the pre-trial procedure, with the decision by the Court, can be presented as evidence. Having in mind the composition of this Article, it

20 The Court shall inform the competent Public Prosecutor if a criminal act that is prosecuted *ex-officio* is committed during these activities.

21 Академија за судии и јавни обвинители: *Модул 2 - Истражна постапка - Прирачник,* Скопје, 2013, page 57, emphasizes that such LCP setup, regarding the evidence that during the pre-trial procedure, are collected by the parties themselves, the way they have been collected, logically leads the court main hearing to be changed too, so all evidence on which the Court will make its decision, must be presented at the main hearing. Therefore, Articles 399 and 400 of the LCP should be mentioned since they are dedicated to the evidence on which the verdict is based upon (Article 399) and the evidence on which the verdict may not be based upon (Article 400). The Court shall base its verdict only on the facts and evidence presented during the main hearing. In addition, the Court shall be obliged to conscientiously evaluate each piece of evidence individually and also in relation to all other evidence and, on the basis of such evaluation, to draw a conclusion whether a certain fact has been proven or not. On the other hand, a verdict shall not be based solely on a statement of an endangered witness, obtained through the use of the provisions on hiding his/her identity or appearance, for the purpose of his/her protection or persons close to him/her. Further, a verdict shall not be based solely on a statement presented in accordance with Article 388 Paragraph 2 and 3 of the LCP.

22 Regarding the protection of an endangered witness at the main hearing, see: Article 228 of the LCP. For example, the special manner of examination may include hiding the identity of the witness, and in certain cases, hiding the appearance of the endangered witness (Article 229 and Article 230 of LCP).

23 The evidentiary hearing may be held during the investigative procedure (Article 312 Paragraph 2 of the LCP), in the following situations: 1) if it is likely that due to an illness or death of the witness, it shall not be possible to examine him/her at the main hearing; 2) if an expertise is required, and the evidence regards a person, object or location whose condition is susceptible to unavoidable changes; or 3) if there are concrete circumstances that indicate that the witness is exposed to violence, threats, promises for financial rewards or other benefits, in order not to testify or to give a false testimony. As noted by Академија за судии и јавни обвинители: *Модул 2 - Истражна постапка - Прирачник,* Скопје, 2013, page 58, the evidentiary hearing is an act of providing certain evidence before the commencement of the main hearing, evidence which later shall not be able to be provided, or its providing shall be followed with great difficulties.

should be amended with one more paragraph, i.e. the same as with the prosecutor's evidence. Namely, one more exception should be provided - the minutes of the defense's actions should be presented as evidence with a Court's decision, if the person who has given the statement has died or become mentally ill.

Considering the *procedure with the examined witnesses and expert-witnesses*, Article 389 of the LCP states that they shall remain in the courtroom, unless the Presiding Judge decides to let them go or to remove them temporarily from the courtroom. Upon a motion by the parties or *ex-officio*, the Court may order the examined witnesses and expert-witnesses to be removed from the courtroom and later on to be called back and examined again in the presence or absence of other witnesses or expert-witnesses.

Further, the situation may occur in which the witness has to be examined but he/she cannot appear before the Court (Article 390). If, during the main hearing, it is ascertained that the witness cannot appear before the Court or his/her appearance would be significantly difficult, if the Trial Chamber believes that his/her testimony is important, the witness may be ordered to be examined through a video-conference link pursuant to Articles 82 and 83 of the LCP,[24] or the witness may be examined outside the main hearing by the Presiding Judge or another member of the Trial Chamber. In essence, this Paragraph should refer to the Article 350 which regulates the examination of witnesses outside the Court.

Additionally, the Presiding Judge or another judge member of the Trial Chamber shall conduct any crime scene inspection or reconstruction that might be necessary to be conducted outside the main hearing.[25] This provision should be reformulated, i.e. the Court upon a motion by the parties may decide to conduct a crime scene inspection or reconstruction outside the main hearing. At the same time, the Article 390 does not apply only to the examination of a witness who cannot appear before the Court, but also to the crime scene inspection and reconstruction. Therefore, its title should be supplemented with "crime scene inspection or reconstruction".

During the main hearing, *the defendant may also be examined*, with a note that he/she shall be examined upon a proposal by the defense (Article 391). Having in mind that the defendant might not have a defense counsel, the Paragraph 1 should be reformulated, i.e. the defendant's examination should be conducted upon a proposal of the defense counsel, and if he/she does not have a counsel - upon his/her request. The examination starts with the questions asked by the defense counsel and then the questions are being asked by the prosecutor, damaged party and co-defendants in accordance with Article 384 of the LCP. Paragraph 2 should also be supplemented, i.e. the examination should begin with questions of the defense counsel, and if the defendant does not have a counsel, than by giving his/her statement.

If during the main hearing, the defendant does not give a statement or gives a different statement for certain facts or circumstances, the Public Prosecutor may request the statement that was given previously in the procedure to be read or reproduced in accordance with Article 207 of the LCP.[26] As an exception, the Trial Chamber may decide to temporary remove the defendant from the courtroom, if the co-defendant or witness are refusing to make a statement in his/her presence or if the circumstances are showing that in his/her presence they will not speak the truth. After the defendant returns to the courtroom, the statement given by the co-defendant or witness will be read back to him/her.

What happens with the *minutes on evidence material* during the main hearing is defined in Article 392 of the LCP. Any material evidence such as minutes on crime scene inspection, receipts for the seized and returned items, books, files and all other non-repeatable items at the main hearing shall be entered into the main hearing minutes. This type of evidence shall be read, unless agreed otherwise by the parties. Further, the evidence shall be submitted in original and as an exception - a certified copy or transcript of the original may also be used as a proof. In addition, these provisions should encompass not only the material and written evidence, but also the electronic evidence and videos, with a note that the party that proposed it may present the evidence by showing, reading or reproducing it.

Having in mind that the Public Prosecutor is *dominus litis* in the criminal procedure, he/she has the authority to *amend and extent the indictment* in accordance with Article 393 of the LCP. Namely, if the Public Prosecutor believes that the presented evidence shows that the facts of the case as presented in the indictment have changed, he/she may amend the indictment at the main hearing. In such an event, the main hearing may be postponed for the preparation of the defense case and there shall be no confirmation of the indictment. Additionally, if the defendant commits a criminal act during a session of the main hearing

24 The above mentioned provisions regulate the conduction of the evidentiary hearing with the assistance of a video-conference (Article 82) and the performance of the video-conference (Article 83).

25 The parties and the damaged party shall always be informed about the time and place of examination of the witness, i.e. the time and place of any crime scene inspection or reconstruction, with an obligatory presence of the parties during such actions.

26 The Article 207 of the LCP defines the recording of the defendant's examination. Namely, the defendant's examination conducted by the Public Prosecutor, or in his/her presence, shall be recorded with a visual-audio recording device. The defendant shall be separately advised on the recording, and he/she shall be warned that the recorded statements may be used during the procedure. The manner how to perform the recording shall be prescribed by the Minister of Justice upon previously obtained opinion from the Public Prosecutor of the Republic of Macedonia. See: Regulations on the manner of performing the visual-audio recording of the examination of the defendant by the Public Prosecutor or in his/her presence ("Official Gazette of the Republic of Macedonia" No. 8/2013).

or before the criminal act committed by the defendant is discovered during the main hearing, as of a rule, upon an accusation by the authorized plaintiff, which may be delivered verbally, the Trial Chamber shall expand the main hearing as to encompass that criminal act as well. An objection shall not be allowed against such an accusation. In order to prepare the case of the defense, the Court may adjourn the main hearing and after the parties have been heard, it may rule for a separate hearing to be held for the new criminal act.

After the *completion of the evidentiary hearing*, Article 394 of the LCP provides an opportunity for the parties and damaged party to put forward motions for additions to the evidentiary hearing, due to new circumstances established during the main hearing. Moreover, upon a proposal of the parties or *ex-officio*, the Court may ask for a super-expert examination for the purpose of eliminating any discrepancies in the findings or opinions of the experts or other competent professionals.[27] On the other hand, if there are no motions for additions to the evidentiary hearing, or if the motion is denied, the Trial Chamber, i.e. the Presiding Judge shall declare the completion of the evidentiary hearing.

After the completion of the evidentiary hearing, the Court shall invite the prosecutor, damaged party, defense counsel and defendant to make their *closing arguments*. The rule defined in Article 395 of the LCP has to be applied, i.e. if several prosecutors are pleading the case, or if the defendant has several defense counsels, they shall all be allowed to make their closing arguments, but shall not be allowed to recur and their arguments may be time limited. At the end (Article 396 of the LCP), following the closing arguments given by the parties, the Presiding Judge shall declare the *completion of the main hearing* and shall enter the time of the completion into the minutes. This is followed by the Trial Chamber's reiteration to confer and vote, in order to reach a verdict. Entering the time of completion of the main hearing into the minutes is a technical mistake, i.e. it is a "left over" from the old LCP. Namely, under the Article 374 of the new LCP, the course of the main hearing is being audio or visual-audio recorded, and if there are no technical conditions for such recordings, then the Presiding Judge may order a stenographer's record to be maintained. Therefore, the Presiding Judge should only pronounce the time when the main hearing has ended.

CONCLUSION

Having in mind the above, as important features of the main hearing, the following should be noted:

– Abandoning the obligation of the Court to determine the material truth and to collect evidence *ex-officio;*

– Introducing pure accusatorial elements (towards the parties), but without a classical jury;

– The activity of the parties opposed to the passivity of the Court during the evidentiary hearing;

– Stressing the procedural fairness rather than determining the material truth;

– Greater opportunities for equality of arms and emphasized contradictions.[28]

If these features are implemented in practice, than the goal to have a fair trial shall be accomplished, i.e. the defendant shall have the right to a fair and public trial before an independent and impartial Court, in an contradictory procedure, with a possibility to challenge the accusations against him/her and to propose and present evidence in his/her defense. At the same time, the perceived deficiencies in the new LCP should not be neglected. The provisions of the LCP should be amended by improving their content and by doing so – the same difficulties during its implementation that have already arisen or shall arise in the future may be resolved.

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27 The super-expert examination shall be determined by the Court electronically by applying the rule of random selection from the Register of expert-witnesses, in the presence of both parties, i.e. the plaintiff and defense counsel.

According to the Article 2 Paragraph 1 Item 2 of the Law on Expertise ("Official Gazette of the Republic of Macedonia" No. 115/2010, 12/2014, 43/2014), the super-expert examination is an examination of a higher level, i.e. professional and critical expertise of two contradictory examinations, which may be conducted by a team composed of at least three experts in the relevant field from the state administration body, higher educational institution, scientific institution or professional institution, and entity for expertise that employs at least three experts in the relevant field.

28 See: Н. МАТОВСКИ / Г. ЛАЖЕТИЌ - БУЖАРОВСКА / Г. КАЛАЏИЕВ: *Казнено процесно право (второ изменето и дополнето издание),* Скопје, 2011, page 412-413. According to the authors, the reform of the main hearing due to its transformation into a central stadium of the procedure, during which the evidence shall be presented in a contradictory manner and through the activities of the parties, is an important aspect of the new concept of criminal procedure.

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CRIMINAL SANCTIONS FOR MINORS – SITUATION, APPLICATION, SUCCESS

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Abstract: Legal reaction of society regarding juvenile delinquency is characterized by certain circumstances which are the result of the generally accepted view of children as perpetrators that still are not completely formed, socialized persons, and are with different biological and social characteristics when compared with adult criminals.

Generally speaking, minors commit crimes because they are educationally neglected. That is the reason why they should be sanctioned by the use of educational measures, with the possibility of penal sanctioning using retribution in small number of cases.

According to the above said, for years the legal status of minors, i.e. children in conflict with law, has been different from that of adult perpetrators in the Republic of Macedonia as well as in its neighboring countries. In the beginning, the difference of their status was in more lenient punishments, and later in the use of different sanctions for minors. Repressive elements are reduced with the use of measures directed to the minor's development, rehabilitation and strengthening of factors in the controlled environment.

The paper examines sanctions for children in the Republic of Macedonia, analyses their compliance with international documents, and of course the level of benefit from them in the area of reducing juvenile delinquency and recidivism among minors.

Keywords: child, crime, sanction, rehabilitation, recidivism.

INTRODUCTION

Unacceptable behavior of young people has always attracted special attention of society. Historically, this appearance was present in every model of social life. Development meant modifications and changes in phenomenological sense and also in etiological. Overall, the direction of these changes was going to more often and more drastic manifestations of criminal activities of minors, which was the result of complexity of life in modern societies.

Very close to those changes was the ethical background of society and its legal attitude towards children's behavior. Through years of development, a community goes from sensitivity to the smallest outbursts of minors and rigorous sanctions to more tolerant point of view and humane reaction.

The treatment of children as offenders, traditionally, is different from the treatment of adults. This kind of division is the consequence of their different psychophysical condition, age and maturity. The system of penal sanctions for children, improved with new sanctions, allows an individual treatment and accentuated special prevention as main goals of criminal legislation.[2]

The paper examines the Macedonian system of penal sanctions for minors and specially focuses on their use and its outcome in crime suppression and fight against recidivism.

We shall use the term children instead of minors in this paper, because a new Law for justice of children was brought after 2013. Regarding this Law, a child is every person till 18 years of age.

THE MEANING OF THE TERM PENAL SANCTION

Criminal Codes of certain countries in most cases do not contain a definition of the term penal sanction, but that definition is given by jurisprudence. What is penal sanction? The answer is found using definitions by different legal theorists, depending on the period of defining, society, scientific orientation of the author, etc.

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1 susak.ivona@gmail.com
2 Бужаровска, Г, (2008) , *Системот на санкции според законот за малолетничка правда, Малолетничка правда - од идеја до практика, р.*298

Thus, B. Petrovic and D. Jovasevic define penal sanctions as legally determined measures of reaction by society, used by the state organs in order to protect society, i.e. the most important social goods and values from all forms and kinds of crime. Historically analyzed, these two theorists think that a society starting from the oldest times has been trying to protect itself from different forms of crime by undertaking different measures. Of course, again historically seen, among those measures the most important were punishments, which for a long time, till the beginning of the XIX century were the only kind of penal sanctions (monistic system). Penal sanctions first arose as a coercive measure used by the state as representative of society, against an offender. They actually are the reaction of society against a perpetrator for committing a crime with which damage was inflicted. Such a reaction has a goal to prevent the offender of committing other crimes in future, but also to influence other potential perpetrators and make them refrain from crimes.

Defining a penal sanction, Lj. Lazarevic starts from the conclusion that despite the fact that with the crime was applied damage to society and a certain individual, the application of penal sanctions does not depend on the will of an individual. Protecting the interests of a community with penal sanctions against crime offenders, the state protects its citizens and their interests at the same time. According to this, penal sanctions are a repressive reaction of the state as the representative of a certain society in order to protect it and protect individuals from harmful consequences of crimes.[3]

Other legal theorists use similar access in defining the term. Thus, G. Marjanovic defines penal sanctions as coercive measures imposed on a perpetrator for a certain crime by a court in the legal procedure[4] in order to protect society from crime, and which contains limitation or subtractions of the offender's rights. V. Kambovski and M. Krstanoski, under penal sanction understand a legally institutionalized form of state repression which is used when a norm contained in legal disposition is not respected.[5]

Analyzing all mentioned definitions, we can conclude that penal sanctions are state, i.e. coercive measures with repressive and preventive character, which is imposed on crime offenders in legal procedures based on the court decision, in order to protect society from crime, and to limit or shorten certain freedoms and rights.

SYSTEM OF PENAL SANCTIONS FOR CHILDREN

A special approach which is an attribute of the new Law for justice of children is the result of their psychophysical condition, age of a child and its maturity as characteristics. This approach accents the welfare of children and provides protection of its interests and his/her proper development.[6] That is why it is a tendency of the legislator to give advantage to preventive, protective and educational measures, and use punishments as an exception.[7]

It is a general conclusion that modern flows of sanctioning minors in the Macedonian criminal legal system are based on international instruments for juvenile justice which should be understood and created as a formal component of the wider approach of suppression of crime.[8] The best interests of children are encompassed in one of the basic principles of the UN Convention on the rights of children for creation of the system which in its focus has treatment instead of punishment, and an approach which does not contain punitive elements and consequences, but gives help, care, proper development and socialization of youngsters.

The procedural rights of a child and insisting on the principle of proportionality in sanctioning lead to actions for saving children from "their saviors". Such a notion is the result of severe punishing of children in the past, their treatment as criminals with sanctions which were not appropriate to their age and maturity.[9]

Consequently, the specifications of the Macedonian system for children's justice are concentrated on using one of these sanctions: educational measures, punishments and alternative measures. Under the conditions regulated by the Criminal Code of the Republic of Macedonia, one of these security measures can be used: mandatory psychiatric treatment and keeping in health facility; mandatory psychiatric treatment on freedom or mandatory treatment of alcoholics and addicts. The Law for justice of children provides special conditions for imposing sanctions in accordance with the children's age: on a child of 14 to 16 years of age for an action which is defined as crime, educational measures can be imposed, and to child between

3 Митровиќ,Љ.(2012), *Систем казнених санкција у Републици Српској – Докторска дисертација, Правни Факултет Ниш*, стр.17
4 Марјановиќ, Г(1998), *Македонско кривично право, Општ дел*, p. 261
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6 Законотзаправданадецата - "Службенвесникна РМ" no.148 dated 29.10.2013, Art.13
7 Ibid, Art.15
8 Especially UN Documents: The United Nations Standard Minimal Rules for the Administration of Juvenile Justice ("The Bejiing Rules"), General Assembly resolution 40/30, 29 November 1985; The United Nations Rules for the Protection of Juveniles Deprived of their Liberty("The Havana Rules") , General Assembly resolution 45/113, 14 December 1990; The United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), The General Assembly Resolution 45/112, 14 December 1990;The Convention on the Right of the Child, The General Assembly Resolution 44/25, 20 November 1990
9 Conclusions and resolutions, 26th Conference of European Ministers of Justice, Helsinki (7-8.04.2005) www.coe.int.

16 to 18 years of age, for action defined as crime, educational measures can be imposed, in exception also punishment or alternative measure, and he/she can be released under the general conditions of the Criminal Code.[10]

In the cases of offenders who are children, the state can impose one of these educational measures: a) disciplinary measures: rebuke or sending to a children's center; b) measures of reinforced supervision: from parents or a legal guardian, foster family or from children's center and c) institutional measures: placement in an educational institution or correctional home.[11] On children between 16 and 18 years of age, a punishment can be imposed: a) prison for children; b) fine; c) ban on driving a vehicle of certain type and category and d) expulsion of an alien.[12] From alternative measures for legally responsible child above 16 years of age, three measures can be used: probation with supervision, conditional suspension of criminal procedure and community service.[13]

The Beijing Rules generally determine the basics of the system of sanctions: besides excluding death penalty and physical punishment, restrictive possibilities for prison are determined. The content of the system gives priority to rehabilitation and individual prevention, against retribution and general prevention. This philosophy is expressed through the article which gives to court many different measures with flexible application, with one main goal - avoiding institutional measures.[14]

Regarding the use of these sanctions, the Macedonian legal system has given wide possibilities and freedoms to court in the choice of the most adequate measures. The chosen measures should respond to a child's personality, the type of crime, and its consequences, necessity of a child's education, correction, development, and a child's best interest.[15]

Starting from the idea of family as the most natural environment for a youngster's development, measures fulfilled in a family are mostly used nowadays. Rule 18.2 points out the importance of a family which, according to article 10, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Therefore, Rule 18.2[16] requires that the separation of children from their parents is a measure of the last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example the child's abuse). Furthermore, rule 19.1 proclaims that the placement of a juvenile in an institution shall always be a disposition of the last resort and for the minimum necessary period.[17]

The Macedonian practice in application, i.e. orientation in application of the measures for children as perpetrators, can be analyzed through statistics for the structure of used measures.

Sanctions to sentenced juveniles for period 2009 - 2013[18]

	Educational measures							Punishments	Total
	Disciplinary measures		Measures of reinforced supervision by			Institutional measures			
	Rebuke	Center	Parent	Foster family	Center	Correctional Home	Educational institution	Prison for children	
2009	85 11.3%	/	367 49.06%	/	266 35.5%	12 1.60%	3 0.40%	14 1.87%	748
2010	107 19.56%	/	245 44.78%	/	164 29.98%	15 2.74%	7 1.28%	9 1.65%	547
2011	92 12.74%	/	393 54.4%	/	215 29.78%	18 2.49%	2 0.28%	2 0.28%	722
2012	57 10.25%	/	298 53.60%	/	173 31.11%	19 3.41%	2 0.36%	7 1.25%	556
2013	80 16.91%	/	221 46.72 %	/	160 33.82 %	10 2.11%	2 0.43%	/	473
Total	421 13.82%	/	1524 50.03%	/	978 32.11%	74 2.42 %	14 0.45%	32 1.05 %	3046

Source: State Statistical Office of the Republic of Macedonia

10 Законотзаправданадецата - "Службенвесникна РМ" no.148 dated 29.10.2013, Art.34
11 Ibid, Art.37
12 Ibid, Art.50
13 Ibid, Art.60
14 Камбовски, В., Велкова, Т.(2008):*Малолетничка правда , Документи на Обединетите нации, Закон за малолетничка правда, Со коментари*, p. 136
15 Законотзаправданадецата - "Службенвесникна РМ" no.148 dated 29.10.2013 (Art. 35,36)
16 The United Nations Standard Minimal Rules for the Administration of Juvenile Justice ("The Bejiing Rules"), The General Assembly Resolution 40/30, 29 November 1985
17 Камбовски, В., Велкова, Т.(2008):*Малолетничка правда , Документи на Обединетите нации, Закон за малолетничка правда, Со коментари*, p. 136
18 State Statistical Office, www.stat.gov.mk

Presented knowledge opens an area for these general findings:

– First, prison sentence for children is rarely used for children as offenders. Its participation in the structure of sanctions in the period 2009 - 2013 is between 0.28 and 1.87%. It is a good practice and it is in accordance to the Law intention for control of the use of this measure. Concretely, it is practically socially accepted - educational model in correction of children;

– Second, two educational measures - placement in a discipline center and reinforced supervision by a foster family are not used at all. Regarding the placement in a discipline center, we should mention the fact that Macedonia did not have discipline centers until 2011, although the measure was and is provided in the system of sanctions. But, although one is opened now[19] the situation has not changed, which is an indicator for marginalization of the problem of suppression and prevention of juvenile delinquency. The zero cases of use of the second measure implies at least two questions: finding an alternative for this measures and determining of the reasons why families do not accept to take care of children which are in need of reinforced supervision. If the usefulness and necessity of such a measure is determined, then a process of socialization of population is needed, so the general population can accept children with impaired social behavior;

– Third, the most common sanctions are reinforced supervision by a parent or legal guardian and reinforced supervision by the social authority. Between 2009 and 2013 they were used in 30 - 50% of the cases. A dominant sanction is the supervision by a parent or legal guardian with 44.78 to 54.4% with the increasing tendency. And the reinforced supervision by the social authority with 29.98 to 35.5% and the tendency of decreasing;

– Fourth, in the group of measures which are rarely used are the educational institutional measures. They participate with 1.5% of the total number of used sanctions. A correctional home is used in 1.60 to 3.41% of the cases, and more rarely (0.28 - 1.28%) placement in educational institution;

– Fifth, generally analyzed, the percent of institutional measures is low, which is in accordance with international documents.

IMPLEMENTATION OF SANCTIONS FOR CHILDREN

The implementation of sanctions is the last and the hardest phase in the process of criminal law reaction against perpetrators, after which its success or failure can be estimated. In this social reaction, especially sensitive is the sanctioning of children, because every wrong or inappropriate treatment can cause permanent and irreparable consequences in their life.

Taking into account the structure of sanctions used by courts in cases of children, special attention should be paid to the measure of reinforced supervision by a parent or legal guardian, its real possibilities and potentials for its use. Are parents in condition to fulfill the goals of this measure?

According to the data of the research for the efficiency of measures used in the cases of children, conducted by the Institute for social, political and legal researches, all parents do not have potential for the execution of the measure of reinforced supervision by a parent or legal guardian, wherein additional help and education are needed.[20]

In the process of the use of this measure, additional help is given by the Center of social work. Most parents are insecure and confused, especially when they see reasons for their child's actions only as the negative influence of their friends and environment. But, current practice has shown that the program for the use of this measure is needed, subjected to yearly check and a need for the parents' responsibility.

Macedonian Centers of social work have good organizational and other experiences in the work with minors, using standard and checked methods. But, as in every area, there are also difficulties of the material and technical nature and lack of personnel. Furthermore, indisputable is the fact that without knowledge, the execution of sanctions will become a routine without innovation and an expert's ambitions.

Reinforced supervision by a foster family is one of forms of non-institutional actions, which is used not only as a sanction for children, but also as a part of the system of social protection. This form of protection is used by all centers of social work in the Republic. The accommodation of children in other families is used in situations when parents do not have possibilities to take care of their children or in the cases when correct development and child's security in the family situation is endangered. Hence, foster families offer care for children without parents and parental care, children with special needs and children with social and educational problems.[21]

19 The Discipline Center is opened in the public institution "25th of May", and children who will be placed there, will be placed in different rooms from the other children.

20 Институт за социолошки и политичко правни истражувања-Скопје(2007),*Студија -Малолетничкиот криминалитет во транзицијата во Република Македонија.*

21 http://www.mtsp.gov.mk/voninstitucionalna-zashtita-56c8ab2d-ed7f-4dec-82b1-7b61a3ab4b9f-ns_article-zgrizuvacki-semejstva.nspx

The role of foster family can be given to every family which fulfills lawful conditions.[22] In the Republic of Macedonia, this form of protection has been used for more than 30 years. In this moment there are 180 foster families where 288 children from 3 to 26 years of age are treated, from which 80 children are with obstacles in development, and the others are without parental care.[23] But beside this data, foster families are not used as the place for children offenders.

Institutional measures are used for children for whom non-institutional protection and correction are needed and are realized in educational institutions and correctional homes (closed system). Such measures are used because children need to be away from the family, neighbors, friends etc. The use of these measures only when measures in open environment could not be used should not be the practice and rule.

Many authors working on institutional measures are oriented to the necessity of the individualization of home treatment, freed of severe norms and restrictions. However, the differences come to the fore with the question *in which part the institutional protection can resemble the family protection?* Oto Wielfert emphasizes that this can be explained with the necessity of children to experience all important functions which can be lived in a complete family and are important for the development of a young person.[24] Young people in those institutions should find protection, security, help, understanding, and their own obligations, as well as share success and care for themselves. But this utopia situation, defined in international documents, is totally different in our country.

There is a general impression that the measure of sending children into a correctional home is used with difficulties, beyond the standards defined for the rehabilitation of this category of offenders. Namely, the Correctional Home in Tetovo still functions as part of other penal institution and in inappropriate conditions.[25] It can be concluded that the conditions in this correctional home do not give complete and comprehensive educational and rehabilitation process for minors. In the Home, officials work 24 hours followed by three days' rest. Because of this kind of a schedule in service, there is the absence in the educational process from official people which is negative for the minors' behavior. Moreover, there are limited possibilities for activities with which minors will fulfill their free time and thus reduce possibilities for conflict situations.

Foregoing is connected with excessive physical and sexual abuses between minors.[26]

Some defects are found in part of health protection of minors in the Correctional Home. Namely, there is still shift work by one medic, who cannot regularly and timely fulfill his obligations, especially in emergent cases, serving solitary confinement, and also during the receipt and dismissal of a minor resulting in a few days' late medical checks in some cases.[27]

In addition, a big problem is the absence of the coordination between the institutions where the child had been before he / she was sent to a new one. An example for this is the connection and communication between the Public Institution "Ranka Milanovic" - Skopje and the Public Institution Intermunicipal Center for Social Work as an authority of custody, because of which lack, the employees in the Correctional Home do not have information about the social history of a concrete child and the used measures in his / her rehabilitation.

The Educational Institution "Ranka Milanovic" - Skopje is part of the institutional system of social protection, and is used as the measure of *sending in a correctional home.* It functions as an institution for the accommodation of children and young people with educational and social problems and impaired behavior.[28] The researches for this institution show that it does not fulfill the goal of its establishment, contained in article 45 of the Law for justice of children. This article prescribes that a child can be sent to an educational institution for providing supervision by experts, because of his/her education, rehabilitation and correct development. Namely, in this institution, spatial, educational, health conditions for minors are not corresponding with international rules. [29]Therefore, the question is what is the perspective of this educational institution, and in which direction it goes and how to meet the necessity for different treatments of children in that institution. On the other hand, what is the utility of heterogenic structure of children with different levels of delinquent behavior, especially those who are manifesting wandering (street children)?

22 The process of choosing a foster family for fulfilling its foster function, the Center is conducted by many criteria regarding their age, education, marital and family status.

23 http://www.mkd.mk/makedonija/spasov-vo-makedonija-ima-180-zgrizhuvachki-semejstva-no-ima-potreba-za-novi

24 Вилферт,О.: Одгојни домови, јучер, данас и сутра, Београд 1981, стр.8

25 Since26.12.2001, Correctional Home in Tetovo functions in an object which is part of the Penal institution Prison in Skopje, settlement SutoOrizari in Skopje, and since 04.10.2010, this institution is dislocated in Veles, the building of the Prison in Veles, where these locations are reserved for male population, while females are accommodated in the Female Part of the Prison in Idrizovo. (Which is not in accordance with the Havana Rules, that rigorously are providing separation between minor and adult offenders)

26 http://ombudsman.mk/upload/Predmetno%20rabotenje/2014/Informacija-VPD%20Tetovo.pdf

27 These acts are not in accordance with article 34 from the Rules in the Correctional Home and article 2 from the Guidelines for medical treatment during the receipt of judged minors in the institution stating that a doctor must check every child and determine his/her health condition during the receipt in the institution and after his/her release, and that a doctor has an obligation to perform the first medical check at the moment or in the course of 24 hours since the receipt.

28 Закон за социјална заштита(Консолидиран закон, Јануари 2015) чл.118,119,120

29 http://ombudsman.mk/upload/NPM-dokumenti/2013/Posledovatelna%20poseta%20JU%20Ranka%20Milanovik-17.09.2013.pdf

Prison for children, as a penal measure with the element of retribution is fulfilled in the Penal Institution in Ohrid, especially for male children. Prison is in the competence of the Ministry of Justice and accommodates all perpetrators of crimes punished by at least 2 years of prison, recidivists and all children between 16 and 23 years of age (sentenced with prison). The prison is located in the city center, which is a general problem, because offenders accommodated there can be seen by people living in the surrounding buildings. Those situations can have humiliating effect and can disrupt the guaranteed right of privacy for people who are arrested. The half open ward of the prison meets the international standards for accommodating offenders, while the closed part fulfills minimum standards and is in need of equipping and better hygiene. The conditions in solitary confinement are inhuman and degrading and do not fulfill minimum international and domestic standards. There is no educational process in the prison, any professional works and training for certain occupations. Additionally, there is no regular doctor, medical personnel who will take care for confidentiality of the data from health documents and therapy.[30] Problems are often, because of limited material possibilities that are not allowing new forms of socialization, as computer trainings and modern occupations, improvement of spatial conditions for engaging and accommodating of children. Moreover, the need of continuous improvement of personnel and new staff is accented.[31]

Using this analysis, we can conclude that the use of sanctions for children in Macedonia is based on a concept which in practice has many deficiencies of objective and subjective nature. However, there is a general conclusion that better results can be reached with the change of elements in their content and methodological access, and with different valuation and relation of society to these questions. This is the result of slow changes in the sectors and insufficient coordination of activities in the system of children's justice, whose consequences are recidivism and failure in protection of minors. It is confirmed through the high rate of recidivism between minors.

Therefore, this paper takes into account more important tendencies and examples, and starting from that point of view, it can be used for the review of practice and for the elimination and removal of some contradictions, problems and deficiencies.

CONCLUSION

Socially unacceptable behaviors which are a permanent shadow on young people in time and space is an argument justifying the importance of the system of repressive and preventive reaction against criminal and deviant acts of minors. They, with bigger or smaller success oppose those actions, but never eliminate them. Such a condition imposes the necessity of permanent monitoring and correction of measures, and also, search for new ones which will be more efficient in the suppression of deviant behaviors.

Regarding the use of educational measures, i.e. rehabilitation of children offenders, it is found that their realization has deficiencies from objective and subjective nature. More serious deviations from legal regulations are found in the institutions that are implementing institutional measures and in the use of prison for children (the plan of primary education, vocational activities, fulfillment of their free time etc.). Part of those deficiencies is present during the use of measures of reinforced supervision from the centers for social work, especially because of their sectors closure. The consequences of insufficient and inefficient rehabilitation generate high rate of recidivism.

Additionally, a significant indicator is the previous experience which shows that better results in children's rehabilitation can be fulfilled, only if problems in social development and behavior are determined in time.

Of course, this paper does not analyze all possible aspects of scientific interest for this phenomenon, but it gives directions for new, future researches. It builds a road for the development of scientific and theoretic thought for a child's position in criminal law, fixing it humanistic and preventive development, reshaping the politics of retribution, repression of punishments in preventive reactions against crime, as an only reasonable, rational and effective method in the suppression and prevention of crime.

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30 http://ombudsman.mk/upload/NPM-dokumenti/NPM%20zatvor%20Ohrid%2017.11.2011%20mkd.pdf

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THE LAW OF EXECUTING CRIMINAL PENALTIES IN THE FUNCTION OF PREVENTION OF CRIME

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Abstract: The law of executing criminal penalties is a third constitutive part of the criminal law which logically follows the substantive criminal law and criminal procedural law. The purpose of the stated penal sanctions is being accomplished in the process of execution with the aim to protect most important social goods, values and crime prevention.

The law of executing criminal penalties – executive criminal law, as a branch of positive law system and a part of law is a system of legal regulations (of legal and sublegal kind) which determines the proceedings, method and conditions of the execution of stated criminal penalties as well as non-institutional sanctions. Elementary and general principles of execution of criminal penalties or some specific issues related to execution of sanctions which are closely related to regulations of criminal sanctions in the criminal law are in the criminal legislation.

This paper analyses normative regulations and compliance with international standards, organisations, principles, method and execution process, execution of non-institutional sanctions, as well as effects in the prevention of crime. It includes experiences and practice of execution of punishment of deprivation of liberty and execution of non-institutional sanctions in Serbia as well as other countries with rich tradition of criminal law.

Keywords: law, execution of penal sanctions, prison sentence, non-institutional sanctions, crime, prevention.

INTRODUCTION

Preventive function of criminal legislation focuses on the purpose of punishing along with the necessity of determining conditions under which the criminal law is being used. Even though preventive effect of criminal law is its key application, this doesn't mean that it is justifiable to aim towards applying criminal sanctions on everyone who has done (any) criminal offence. It is enough to do this to the extent that threatening with punishment is serious[1]. Criminal legislator today cares more about very wide and very austere criminal repression which generally leads to serious and damaging consequences for an individual as well as the society. Repressive penal politics don't provide significant effects in the field of prevention, but lead to further weakening of the system of the criminal law. The more severe the punishment, the less is likely for it to be applicable and vice versa. This is why there is no justification for giving up on the idea of criminal law based on general and special prevention. Even though retribution today cannot be a legitimate goal of the criminal law (at least not the main and the only one), it has one advantage over prevention: it contains a self-restricting mechanism. Retribution (or revenge) as a goal of criminal law establishes proportionality as a measure of repression. Prevention, on the other hand, doesn't include a mechanism which would limit the repression of the criminal law. From the aspect of prevention, this could be a success achieved regarding battling the crime. Since there is a huge dissatisfaction today regarding results achieved by the criminal law while doing its major task, there is a constant expansion and strengthening of repression of criminal law which endangers the criminal law itself[2]. Criminal law is a system of all the regulations which are determining which actions can be called criminal offence in a specific country and which punishments and criminal sanctions and under which conditions can be applied on offenders. Criminal law is comprised of substantial law, procedural law and executive law – the law of executing criminal penalties.

The law of executing criminal penalties is a system of legal regulations which are determining the procedure, method and conditions of execution of criminal penalties. Executive criminal law is in the function of application of criminal (substantial) law, i.e. it enables the final analysis of its application. The elementary and general principles of execution of criminal penalties or some specific issues related to the execution of

1 Stojanović, Z. (2011) Preventivna funkcija krivičnog prava, CRIMEN (II) br. 1. pp. 3
2 Stojanović, Z. (2011), Ibid, str. 5.

sanctions which are closely related to the regulations of criminal law are in substantial criminal law. In order for criminal penalty established in criminal law to fully realise its purpose set by the criminal code (function – protection and security of the most important social goods and values), it should be adequately executed by the appointed governmental institutions (institution for penalty administration). This points to the utilitarian character of the executive criminal law which finds its justification and *ratio legis* in social usefulness. Executive criminal law is therefore a part of a unified legal system of the country, but the one which in that sense has a special purpose. Its purpose is to provide protection, maintenance and development of social and economic relations as well as social and political regulation of the country.[3]

The expression law of executing criminal penalties originates from the main source of this branch of law – Law on Execution of Criminal Penalties. In literature several names have been used: law of executing criminal sanctions, executive criminal law as well as penal law, but the use of word penology is often used in the field of science. As a discipline of science, penology studies all criminal sanctions, method and procedures of their execution, i.e. the relations between them and effects of re-socialisation of the punished individuals. The efficiency of the prescribed and executed criminal penalties is directly manifested on the scale of criminality and relapse within a specific country. Stated criminal penalty functions as a preventive measure in the sense of disabling perpetrators to commit new criminal offences during the time of serving their sentence of deprivation of liberty, or while the certain security measures are in action. In that sense, sanctions which make perpetrators "visible" also have certain effect, or they pose a threat of turning into a heavier punishment in the event of committing a new crime. Nevertheless, special-preventive effect with regard to the sentenced individual doesn't lead to any significant global effect even during the time of serving the sentence of deprivation of liberty. Even the argument that the small number of people is committing a big number of crimes doesn't contribute a lot. Many researches show that crime rate isn't correlated with the rate of perpetrators sentenced to prison and that it can remain unchanged regardless of how many perpetrators are serving the sentence of deprivation of liberty[4]. According to a rule, their place is being taken by the new perpetrators and the number of them often overrides the number of those who were disempowered and prevented from committing crimes by the means of the prison sentence[5]. Even though this points towards the inefficiency of general prevention, the fact remains that preventing sentenced perpetrators from committing more crimes does not influence the scale and dynamics of criminality. It is widely understood today that special prevention, and not just the one which stems from the idea of re-socialisation, cannot give serious contribution to achieving protective function of criminal law. This doesn't reduce the importance of application of criminal penalties on accomplishing protective function of criminal law, but not so much because of special as because of its general prevention.

SOURCES OF LAW OF EXECUTING CRIMINAL PENALTIES IN SERBIA

The division of sources of the law of executing criminal penalties can be achieved according to several criteria. One of the basic criteria in dividing sources stems from the hierarchy of legal acts, and it is primarily applicable to the internal legal system of a certain country. The biggest lawful power certainly has a constitutional norm which obliges that every law and other legal acts must be in line with the Constitution, followed by legal acts related to the field of execution of criminal penalties and sub-legal acts which are further expanding the norms from the law which regulates this specific field. The Constitution of the Republic of Serbia[6] contains norms which are significant for execution of criminal penalties. They are contained in the part that deals with human rights, in the second chapter which is called "Human Rights and Freedoms" and some of them are: non-existence of the death penalty, forbidding torture, inhuman or degrading behaviour or punishment, subjecting to medical or other scientific experiments without consent, ban of slavery, treatment similar to slavery and forced labour, contrary to the right to freedom and security[7]. The part of the constitution that deals with treating of persons deprived of their liberty contains special rules: persons deprived of their liberty must be treated with respect and dignity and every violence or use of force is strictly forbidden. When we speak about rights regarding deprivation of liberty without the decision of the court, it is especially underlined that such person must be urgently handed to the appointed court within 48 hours or otherwise set free. This part of the Constitution also speaks about custody, its length, the right to just trial, special rights of the offender, legal security in penal law, the right to rehabilitation and restitution, the

3 Jovašević, D.& Stevanović, Z. (2007) Osnovne karakteristike izvršnog krivičnog prava, Revija za krivično pravo i kriminologiju, Institut za kriminološka i sociološka istraživanja, Srpsko udruženje za krivičnopravnu teoriju i praksu, br. 2. Beograd, str. 101.

4 Ch. Silberman claims that even in the event that all the perpetrators would be inprisoned, at least some of the new perpetrators will try to use economic advantages of commiting crime. J. Senna, L. Siegel, *Introduction to Criminal Justice*, New York, Los Angeles, S. Francisco,1984, p. 33.

5 J. Senna, L. Siegel, *Introduction to Criminal Justice*, New York, Los Angeles, S. Francisco, 1984, p. 33

6 Sl. glasnik Republike Srbije br. 83/2006.

7 Ignjatović, Đ. (2006) Pravo izvršenja krivičnih sankcija, Pravni fakultet Univerziteta u Beogradu, Beograd, str.80.

right to appeal or using other legal remedy against the decision which decides about his or her custody, and about the person's rights, obligations or legally founded interests. The Constitution also speaks about the specific state institution explicated in the Ombudsman as the independent state institution which protects the rights of citizens and controls the work of administrative bodies, including the bodies that deal with the execution of criminal penalties, among others. Constitution in this way protects basic human rights of the persons deprived of their freedom and they are very important for accomplishing the principle of legality in the work of governmental institutions competent for the execution of criminal penalties.

Substance related to criminal penalties is regulated in the Criminal Code[8] and in the Law on Juvenile Criminal Offenders and Legal Protection of Minors[9]. These norms define the system of criminal penalties which can be applied to adult and juvenile offenders. Criminal law in Serbia recognises four types of criminal penalties: punishments, precautions, security measures and education measures. Punishments can be: imprisonment, a fine, work in the public interest and deprivation of the drivers licence. Law on Juvenile Criminal Offenders and Legal Protection of Minors contains a sequence of norms which are important for the execution of criminal penalties for juvenile criminal offenders.

One of the main sources of the executional criminal law is the Criminal Procedure Code[10] which more specifically defines criminal penalties and states that the crucial element of criminal penalties is the fact that they can be proscribed only the court in charge in the procedure which is started and executed according to the Code. Moreover, the Criminal Procedure Code also emphasises the rights of individuals deprived of their freedom: they should be informed on the reasons for their deprivation of freedom and other details of the accusation, the right to get a lawyer, the right to use their native language, the right to healthcare, the right to get a reimbursement for the unauthorised deprivation of freedom etc.

The main source of executional criminal law in the Republic of Serbia which is based on the principle of legality is the Law on Execution of Criminal Penalties[11] (ZIKS). It regulates execution of criminal penalties, custody and other measures stated by the court, as well as labour organisations of the appropriate institutions within the Bureau for Execution of Criminal Penalties[12]. This Law regulates, unless specific law doesn't suggest differently, the procedure of execution of criminal penalties for adult individuals, rights and duties of these individuals, organisation for Administration of Execution of Criminal Penalties, supervision of its work, execution of penalties proscribed for economic crimes, deprivation of properties gained by means of criminal offence or economic crime and application of custody measures. In the procedure of execution of criminal penalties towards juvenile offenders, just like in the procedure of execution of imprisonment sentence, provisions of this law are being applied unless other special law doesn't suggest differently[13]. By executing criminal penalties their general and main purpose is being fulfilled with the aim of successful re-integration of convicted perpetrators in the society[14].

Second important source of this branch of law is the Law on Juvenile Criminal Offenders and Legal Protection of Minors (ZOMUKD)[15]. This Law regulates the field of execution of criminal penalties for juvenile offenders (educational measures and juvenile custody). The Law of Executing Punishments for Criminal Offences of Organised Crime[16] regulates the procedure for executing imprisonment punishment for criminal offences which are, in relation to the Law on Organising and Jurisdiction of Governmental Administration in Supressing Organised Crime, Corruption, and other Hard Crimes[17], consider organised crime, organisation and jurisdiction of governmental administration in the procedure of executing the punishment, the status of the convicted and supervision of execution of imprisonment sentence. Regulations of this Law are also applied on execution of imprisonment sentence for other criminal offences (terrorism, serious violations of international humanitarian law on the territory of former Yugoslavia since January 1991 etc.).

The next source of execution of criminal penalties law is the Law on Execution of Non-institutional Penalties[18] which regulates procedure of execution of non-institutional penalties prescribed in the criminal, misdemeanour or other legal procedure, which are being executed in the community, there is a purpose, content, method of execution, the status of the individual in the procedure as well as supervision of execution is being proscribed. Regulations of the Law on Execution of Criminal Penalties are applied to execution of criminal penalties thereby, unless this law suggests otherwise. The purpose of the execution of non-insti-

8 „Sl. glasnik" RS. Br. 85/2005,88/2005- ispr., 107/2005- ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014.
9 „Sl. glasnik" RS. Br. 85/2005.
10 „Sl. glasnik" RS. Br 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014.
11 „Sl. glasnik RS. Br. 55/2014
12 Jovašević, D& Stevanović, Z. (2007) Osnovne karakteristike izvršnog krivičnog prava, Revija za krivično pravo i kriminologiju, Institute for Criminological and Sociological Research Belgrade, Serbian Association for Criminal and Legal Theory and Practise, pp. 107.
13 Čl. 1. ZIKS-a (Sl. glasnik RS. Br. 55/2014.)
14 Čl. 2 . ZIKS-a (Sl. glasnik RS. Br. 55/2014.)
15 SL. glasnik RS Br. 85/ 2005
16 „Sl. glasnik" RS Br. 72/2009 i 101/2010.
17 „Sl. glasnik" RS Br. 42/2002, 27/2003, 67/2003, 29/2004, 58/2004, 45/2005,61/2005, 72/2009, 72/2011-dr. akon, 101/2011-dr. zakon i 32/2013.
18 „Sl. glasnik" RS. Br. 55/2014.

tutional sanctions is a protection of society from crime with the aim of re-socialisation and re-integration of convicted individuals.

Sources of executional criminal law are also the Law on Economic Crimes and the Law on Misdemeanour as these laws proscribe the notion, types, purpose and the length of sanctions which are imposed on perpetrators of economic crimes which are being executed under the same conditions and in the same procedure as well as the sanctions which are aimed at perpetrators of criminal offences. Finally, sources of the law on execution of criminal penalties are also sub-legal acts in the form of rule books and regulations.

International regulations are very important sources of the law on execution of criminal penalties. Literature contains several divisions of international sources of executional law and one of them is made according to the nature of the source. The first group includes normative sources which are sources in the narrow sense and it comprises all international regulations – bilateral or multilateral agreements, conventions, declarations etc. and their contents affects conditions of living for the perpetrators of criminal offences while they are being sanctioned. Apart from these sources, there may also be decisions of regulatory bodies which are controlling application of adopted and ratified regulations internationally. As such, these institutions usually are: international bodies which are not judicial – various committees (for human rights, elimination of racial discrimination against torture, etc.); international judicial bodies such as the European Court of Human Rights etc.[19] Standards and decisions of mentioned committees, commissions and other international bodies and institutions are sources of binding principles for work of national judiciaries and in the wider sense they can be categorised as sources of law on execution of the criminal penalties.

NORMATIVE AND ORGANISATIONAL REGULATION OF THE SYSTEM OF EXECUTION OF CRIMINAL PENALTIES IN SERBIA AND COMPLIANCE WITH INTERNATIONAL STANDARDS

The field of execution of criminal penalties is a very important and very delicate phase of the process of control and prevention of crimes. The process of execution of criminal penalties over adult individuals in the Republic of Serbia is regulated by the Law on Execution of Criminal Penalties. Execution of criminal penalties which are imposed on juvenile perpetrators of criminal offenses is regulated by the Law on Juvenile Perpetrators of Criminal Offences and Legal Protection of the Minor, and execution of non-institutional sanctions is regulated by the Law on the Execution of Non-institutional Sanctions.

Regulations of the Law on Execution of Criminal Penalties refer to the substance of execution of criminal penalties of the institutional character, types of bureau, internal organisation of the penitentiary system, method of management, work of economic units within the bureau, position of individual deprived of their freedom, working and legal status of the administration in prison, the purpose of criminal penalties, organisational form within the state administration, affiliation etc.

The Law on Juvenile Perpetrators of Criminal Offences and Legal Protection of Minors contains regulations which are being applied on juvenile perpetrators and are related to substantial criminal law, bodies which are applying it, criminal procedure and execution of criminal penalties on these criminal offenders.

The Law on Execution of Non-institutional Sanctions is regulated by the procedure of execution of non-institutional sanctions prescribed in the criminal or misdemeanour proceedings or other judicial proceedings in the community is prescribing purpose, content, method of execution, position of individuals in the procedure and supervision of the executor.

The Law on Execution of Criminal Penalties, Law on Juvenile Perpetrators and Law on Execution of Non-institutional Sanctions determines goals of execution of sanctions, determines the method of treating convicts and are also actively including perpetrators in the realtisation of the program. From this aspect, solutions from the law are contemporary and surely provide a frame for the concept of re-integration of perpetrators into social environment which legislator chooses.

Sublegal acts further develop concrete and operational solutions given by the law, certain procedures and conditions for the realisation of some of the solutions provided by the law, but other issues important for the functioning of penitentiary system i.e. the system of execution of criminal penalties as a whole as well as execution of non-institutional sanctions are also being regulated.

Modern-day international standards for the execution of the punishment of deprivation of freedom were established by the sequence of universal and regional documents. Among documents established on the universal level the most important ones are: Standard minimal rules of the UN on treatment of prisoners (1955), UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984), Body of Principles for the Protection of All Persons under Any Form of Custody or

19 Ignjatović, Đ. (2006) *Pravo izvršenja krivičnih sankcija*, Belgrade: Faculty of Law of the University of Belgrade, pp.21-22.

Imprisonment (1988), UN Rules on Protection of Juveniles Deprived of their Liberty (1990) to name a few. Some regional documents are of utmost importance for European countries and they include European Prison Rules (2006), European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), European Convention on the Transfer of Sentenced Persons (1983) and European Convention on Human Rights (1950).[20]

After adopting new European prison rules, further development of European standards of protection of rights of persons deprived of liberty was primarily focused on protection of juveniles, namely, on making of standards which would be the equivalent to those established on the universal level with the rules set by the UN for protection of the juvenile deprived of freedom. Recommendation of the Committee of Ministers of the Council of Europe[21] on European regulations for juveniles who were sanctioned or punished[22] establishes among other things standards of protection of rights of juveniles deprived of their freedom. The exclusivity of deprivation of liberty of juveniles as well as the principles of legality, the principle of social integration, education and prevention of recidivism, the length of sanctions, principle of the best interest of juveniles, principle of proportionality, principle of individuality, principle of minimal intervention, principle of non-discrimination are some of the of the general principles.[23]

Sanctions in the community as alternative punishments of deprivation of liberty are becoming more and more important on the European continent over the past few decades. Standards of their execution are included in several recommendations of the Committee of Ministers of the Council of Europe such as the recommendation on European rules and sanctions in the community which suggests that there is a need for the member countries to consider the possibility of replacing short prison sentences with alternative for certain criminal offences or criminal offences to which the non-institutional punishments or sanctions can be applied. This is why the majority of European legislation introduced modified institutional sanctions[24] which are being executed within the community.

The law of execution of criminal penalties is being reformed in Serbia over the past few decades with the aim of the alignment of all contemporary solutions which are accepted in this field by the members of the community of scientists and experts and through relevant international documents. Almost all European solutions were therefore implemented into the Law on Execution of Criminal Penalties, Law on Juveniles, Law on Execution of Non-institutional Sanctions and all other regulations which are regulating this field.

The body appointed for the execution of both institutional and non-institutional criminal penalties is the Administration for the Execution of Criminal Penalties within the Ministry of Justice. The Administration organises, proceeds and monitors execution of the imprisonment, juvenile custody, the punishment of work in the public interest, conditional sentence with protective surveillance, measures of security of the obligatory psychiatric treatment and care within a medical institution, obligatory care of drug addicts and alcoholics, as well as disciplinary measures of sending perpetrators to the correctional institution (further named as criminal penalties). The Administration carries out custody and other measures for securing the presence of accused persons during the criminal proceedings in alignment with the law and carries out other duties prescribed by the law. The Administration is included in the processes of social re-integration and acceptance of convicts[25]. The Administration also organises and conducts programs of continuous professional training of the staff and internal organisation and competence of organisational units within the Administration is prescribed by the government. Bureaus and the Centre for the Training of Employees is being stablished by the government which also determines the type, departments and the centre of the bureau, i.e. the headquarters of the Training Centre through the founding act. The bureaus are structured so that they can organise five services depending on the capacity: the treatment service, security service, service for training and employment, service for protection of health and service for general affairs.

The competence over execution of criminal penalties and consequently prison system in Serbia is dedicated to the department of justice – the Ministry of Justice which is conducting the services of the public administration which are related to the "execution of criminal penalties".[26] The Ministry of Justice realises its competence over the prison system through the Administration of Execution of Criminal Penalties as the internal organisational unit of the Ministry of Justice. Mechanisms which are controlling the Administration are under the jurisdiction of the Ministry of Justice, i.e. the Minister. Department of justice has a general jurisdiction over the execution of criminal penalties, but other departments have certain jurisdictions over specific criminal penalties. In this way disciplinary measure of the bureau type, referral to the

20 Simeunović-Patić, B. & Stevanović, Z. (2009),Evropski standardi u izvršenju kazni, Kontrola kriminaliteta i evropski standardi: stanje u Srbiji, Institut za kriminološka i sociološka istraživanja,Beograd, pp.177-178.
21 CM/Rec (2008) 11
22 Adopted on 5th November 2008.
23 Simeunović-Patić, B. & Stevanović, Z. (2009),Evropski standardi u izvršenju kazni, Kontrola kriminaliteta i evropski standardi: stanje u Srbiji, Institut za kriminološka i sociološka istraživanja,Beograd, str.185.
24 Stevanović, Z. & Igrački, J. (2013) Usklađenost primene alternativnih krivičnih sankcija u srbiji sa Evropskim standardima, Kriminal, državna reakcija i harmonizacija sa evropskim standardima, Institut za kriminološka i sociološka istraživanja, Beograd, str.300.
25 Čl. 12 ZIKS-a
26 Član 9. Zakona o ministarstvima (Službeni glasnik RS. Br. 44/2014.)

correctional institution is under the jurisdiction of the department for work and social affairs, execution of security measures, in part which is related to adoption of legislation that regulates execution of the measure and expert monitoring is under the jurisdiction of the Ministry of Health.[27] Apart from the departmental ministry which has full jurisdiction over prison system, there are important jurisdictions regarding control and inspection duties which belong to courts, violation bodies, inspections dedicated for special fields, in alignment with the Law on state governance as well as with the Law on Inspectional Surveillance and other positive regulations which are regulating supervision of the work of the bodies and organisations.

The efficiency in the prevention of crime is shown, from the position of the Law on Execution of Criminal Penalties, by the scope of reintegrated offenders into the community after the execution of the penalty, but also by the level of recidivism, the scope of accomplished treatment etc. The treatment is efficient if it leads to: reduction of the percentage of return, desired changes in behaviour, desired changes in personality and desired changes in the environment of the treated individual.[28] Špadijer-Džidić and the group of authors are stressing out that the success of re-socialisation of juveniles can be assessed on the basis of: recidivism, alcoholism, vagrancy, begging, gambling, loitering, rude behaviour, external appearance, success in school, taking part in deviant groups etc.[29] With the ambition to find more efficient method of fight against crime, new forms of punishment are being sought for more intensively (more financial punishments, alternative sanctions etc.), so as to personalise the punishment, unload prisons and economically rationalise the punishment system. It is obvious that institutional re-socialisation isn't affecting the change of behaviour pattern of offenders in the desired scope and they are quickly returning of the criminal pattern of behaviour, often with significantly more brutal criminal offences.

CONCLUSION

The Law on the Execution of Criminal Penalties is a relatively independent branch of the positive legal system and a part of criminal law which is a system of legal regulations which are determining the prosecution, method and ways of execution of institutional or non-institutional criminal penalties. Executive criminal law is the final stadium of its application and it is a part of penology – science which approaches the execution of criminal penalties in a multidisciplinary way. It studies legal and non-legal aspects which are related to the execution of criminal penalties. When the preventive function of this law is being discussed the focus is mainly on the accomplishment of general and individual purposes of sanctions with the aim of a successful re-integration of the convicts into the society. Over the last decade, opinion that institutional execution of criminal penalties does not affect prevention of crime in the desired scope is being prevalent and it shows the high level of recidivism.[30] Such situation cannot be explained by the unsuccessful re-socialisation, dominant influence of negative informal structure of prisoners in prisons, but also incapability of prisons as institutions to change patterns of behaviour of convicted individuals. Complex situation is becoming even more intricate considering the fact that the "criminal infection" in prisons becomes more and more present, formal system becomes increasingly weaker and less efficient, which questions realisation of the basic functions of prison. Harsh penal policy and disproportionate use of prisons are not helping prevention of crime.

Inefficiency of the concept of re-socialisation and a large percentage of recidivism as well as the increasingly widespread criminality of various types on a global level brings about changes in sentencing and consequently more and more alternative sanctions are being used. These alternative measures include: mediation or reconciliation of victims and perpetrators which is often being followed by restitution, restitution or compensation which is being manifested through paying for the damage, reparation of destroyed buildings, working for victims as a corrective measure, work in the society, referral to the day centres, increased supervision, electronic surveillance (electronic bracelet or telephone calls), intensive programs of supervision etc.

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29 Špadijer-Džidić, Ignjatović, I., Radovanović, D. (1975), *Kriterijumi merenja uspešnosti resocijalizacije maloletnih delinkvenata,* Zbornik Instituta za kriminološka i sociološka istraživanja, Beograd, str. 271-310.

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CRIME SCENE INVESTIGATION, PLANNING AND VERIFICATIONS OF INVESTIGATION VERSIONS

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Abstract: Crime scene investigation is one of the most important and urgent investigative actions which is undertaken at the crime scene in order to find the offender, and mark and tag the evidences of crime. The essential task and goal of investigation is achieved through an investigation actions of authorities in proceedings of first intellectual perception of „crime scene "and subject activity. This action has its criminal process foundation in all Criminal Procedure Act, where, unfortunately, is defined briefly trough single or few sentences. Such legal approach of defining a crime scene investigation sufficiently explain the character, content and, specially, performing technique of this highly important investigation action.

Such situation leaves a great void and space but also a need and inspiration for Criminalistic Science to operate the overall aspects of crime scene investigations. Since this is a kind of criminal forensic activities for organized and oral-directed investigation team, it is necessary to detail the tasks and ways of functional cooperation of all participants.

This paper will address and analyze one important segment of the crime scene investigation regarding crime versions as key thought-logic in out processing procedure in police work, especially in process of bonding intellectual and physical action in the crime scene while transition from thoughtful to rational has decisive role and importance. This raises the questions about the content, process of planning and eventual verification of the crime versions on the crime scene, with instructions not to go out the legal framework of the crime scene investigation and also to prevent the process of subjectivism in the final conclusion.

As there is a difference of opinions regarding this important issue in criminal investigative activities, this paper will fist present previously determent traditional views followed by possible proposals and up-to-date opinions. Content of this work will be supported with the experience of an investigative practice.

Keywords: crime scene investigation, crime version, planning, version verification, intellectual act, clues.

CRIME SCENE INVESTIGATION AND CRIME VERSIONS

Investigation is the source of sequences, material facts and information content, that represent excellent „opportunity" but also the need and obligation for an „investigative team" to proceed with a planning of criminal investigative versions while still in stage of carrying out the crime scene. In our opinion, a process of planning versions is one of the essential content of the crime scene investigation[1]. Without version planning within framework and crime scene investigation, it's impossible to ac hive dialect formula: „Not only from the object to the mind, but also, vice verse, from the mind to the object". This formula is of great importance for undertaking all activities at the crime scene, as there are situations when some clues and objects are not enough visible and obvious for conclusion without involvement of an intellect, while some other situations at crime scene, where clues are invisible, exactly express the necessity of action from formula „from the mind to the object[2]".

Observation (active, targeted, organized, planned sensory perception) exercise more functions in crime scene investigation process. First function of the crime scene investigation is finding and fixation of those supporting information which are necessary to set and verify crime version. Many prosecutors and crime

1 Vodinelic V, Criminalistics – detection, proving, Skopje, 1985. Thus, investigation is investigative actions which consist not only perception (review) and study (examination) of material objects in order to detect, locate and fix probative information, but creation of investigation crime versions in order to establish relevant facts in criminal justice field. page 489.
2 Vodinelic V. Criminalistics – detection, proving, Faculty of National Defence and Social Self-Protection, Skopje, 1985. page 489

investigators would accept this formulation but are confident that by the end of the crime scene investigation, a legal authority that carry out the investigation is not guided with any kind of crime version[3]. However, the relationship between „empirical", and „rational" is much deeper and more complex than it seems to them.

Contrary to this believe, investigation authority starts to plan versions at first contact with a crime scene, and those versions have a distinct heuristic function.

Versions are created while receiving the first operating - evidential information of criminal event. In the course of further investigation, versions are constantly planned, verified[4] and rejected, significantly influencing the course of carrying out the crime scene investigation. Mr. G.N. Aleksandrov points out: a first version is planned only after the crime scene investigation is based on the collected facts[5]. If all necessary heuristic versions are planned from the beginning of crime scene investigation, they will lead to discovery of new facts that wouldn't be discovered without their participation, or it would happen quite spontaneously and accidentally. Versions appear as a kind of signposts – routers for carrying out investigation and are its integral part. Versions allows crime investigator to establish necessary relationship between observable (registered) and undiscovered facts. Obtained evidence information will confirm the velocity of the planned version or deny it[6].

An intellectual process here has adopted the form of criminology version, which is not only reflection of the external world (experience of the mechanical materialists) but at the same time, within the crime scene, a means of detecting reality of criminal event and expression of an active attitude towards criminal event. Surely, the sensory organs of prosecutor – criminologist have great significance during investigation and their first perceptually noticeable fact is subjected to logical analysis[7]. „Opinion, starting from concrete to abstract, does not withdraw, .from truth, but approaching... all scientific (accurate, serious, not meaningless) abstraction which reflect the nature, deeper, faithfully, entirely. From living perception to abstract opinion and its path to practice is called dialectical path to knowledge of truth, the knowledge of objective reality. Truth is not an initial impression. The totality of all reality parties and its mutual relationship compile the truth"[8]. The impossibility to separate sensory and rational in crime scene investigation (can not disclose what is not in theoretical sight). The opinions of Mr. G. N. Aleksandrova and Mr. Jan Pesaka,[9] where they state that the data, (evidential information) found during the crime scene investigation which is not completed, cannot be a base for planning version, is essentially wrong. On the contrary, such information/data allows theoretical modeling of investigation versions to the investigator to create new, competitive versions.

During the crime scene investigation, a certain versions are theoretically assumed, recorded and observed. New facts and circumstances can be found by performing such action[10]. A similar opinion is shared by Mr. B. M. Saver and Mr. A. J. Vinberg[11]: „On-site investigation is investigative activity focused on the study of overall mechanism[12] and circumstances of the event. During the investigation, series of actions are undertaken, both theoretical and psychical. Fixation of crime circumstances, finding clues and their fixation, exclusions, will later be subject to other evidential actions (forensic analysis, reconstruction, criminology experiments[13], etc)

Criminal act which is the crime scene subject (in reciprocal action of the perpetrator toward object of criminal offense) creates crime remains (clues and objects of criminal offence have many properties and characteristics)[14]. During the crime scene investigation authorities of investigation team do not perceive and fix all properties and characteristics[15]. Necessarily, during the crime scene investigation, investigator

3 They pay tribute to pure empiricism which behaves like it supposedly builds on „immediate"data which provide sensory perception. (V.Vodinelic).

4 It is questionable whether the crime scene investigation can be carried out at the same time while performing the verification of the crime versions. We believe that it is possible to verify „some" assumed facts and circumstances whose verification process will determine further course of investigation, quality of crime scene investigation, with no ambition to get an answer to all gold question of criminology (to clarify crime scene).

5 Mr. G.N.Aleksandrov predicts that investigative versions are used trough investigation as (theoretical) instrument without which the new facts cannot be found.

6 Mr. G. N. Aleksandrov. Nekotorie Voprosi teorii kriminaiističeskoi versii, Voprosi Kriminalistiki, 1962 s3,p. 9-10.

7 Logical process does not exsist without psychological and cognitive, and vice verse.

8 The truth is realised only in their totality and relation.

9 Jan Pesak, Sledstvennie versii, M, 1976, p. 151.

10 For example, detecting feigned offences by applying the comparative method.

11 Criminology, Belgrade, 1947 page. 94.

12 The totality of criminal events best dispenses trough obtaining answers to all or most of the golden questions in criminology.

13 Rarely happen in the course of criminal proceedings that active participant propose and perform crime experiment as a possible act of proving with no criminal procedural meaning but with criminal investigative value (isolated case is a recent example of case under name „General Djukic" which was carried out without court orders on the military compound in Nikinci).

14 By studding the found clues and objects from the crime scene it is necessary to get the answers to a certain gold questions in criminology, especially in relation to the place of crime execution, method of execution, the means, motive, even a perpetrator and possible accomplices.

15 In mechanism of sensory perception comes „channels" of sensation in the images, but also the „filters" which keep the awareness of considerate worker from collecting irrelevant facts („chaff""). „The perception of the man is already physical and intellectual. It is not limited only to sensory basis. We do not perceive the „structure"but objects that have particular meaning. (V.V)

must merge sensory (empirical) with logical thinking, analysis, synthesis of abstraction, generalization, analogy and comparison, and evaluation of relevant facts and their relationship. Without this logical processing, a connection between material and criminal act cannot be found, neither connected with other collected information evidence relevant for solving specific criminal offence.

While the investigator observes[16] a crime scene[17] he or she creates – plans versions which direct them to the new evidential information. When they are discovered and found, the investigator evaluates that information while creating new versions in order to detect further evidence. Negative circumstances cannot be detected but by application of comparative method.

The second function of observation at the crime scene[18] is verifying the staged versions, which must be performed during the crime scene investigation and not later, as it is considered by Saver, Vinberg and many other criminologist – theorist in the West and East, and especially among huge number of forensic experts – practitioners. Crime scene version is checked trough practical actions during the investigation[19].

The third function of observation at the crime scene is in comparison (comparability) of results from the crime scene with results of other procedural actions in order to eliminate false evidence information and creation of synthetic solid evidences. This function is usually manifest after the completion of crime scene investigation or in its dynamic phase, if there are other evidences. The court psychologists explain that information "grouped in thinking patterns (versions), receive grammatical - logical form[20]". Criminalists - forensic expert meets an enormous number of operating and supporting information at each crime scene investigation. Overall information is not required from total of available information to create "cognitive model of crime event". It is necessary to simultaneously collect information relevant to criminal event from totality of available information and create a "cognitive model of criminal events[21]". "The mutual connection of information individual elements can be understood right through creation of cognitive model of past events[22] which also treat crime scene version as ideal information - logical model". The "probable" model[23] represent transitional link between the real facts of objective reality and logical thinking of investigators. It operates in two opposite directions: 1. From reality to explanation (version); and 2. From version to reality. According to Mr. V.Vodinelic, probable model perform three functions during the crime scene investigation: a) systematizing existing information, b) finding the missing information, and c) essential selection and rejection of unnecessary information[24].

Significant criminologists point out that number of planned version [25] (it is mandatory to plan multiple versions[26]) is an important methodological guidance during inspection (and entire criminal procedure), able to guarantee objectivity, versatility and completeness of entire procedure. An investigator can search for evidential evidences and sensory perceive in all directions during the crime scene investigation only with planned version.

Function of planning version as cognition method and be identified and fully explained trough information theory[27]. There exists a dialectical unity of opposites: orientating by created versions, the investigat-

16 Observing the scene is done according to the principle "do not touch or move anything, until the crime scene is not photographed, described and sketched", which is done in a static phase of investigation, where the offender can be already formulated trough investigative versions based on obtained information about a crime. Details shown in Criminology of V. Vodinelic. Modern administration, 1984. Page 397.

17 Even in a static phase of crime scene investigation criminalists must create "a mental constructions", based on available clues, objects, facts and circumstances, which will appoint "operational investigative" courses of action in a dynamic phase.

18 Authors of this paper, as experienced investigators, are joining the criticism of probation version during the inspections, because these acts would violate the essential concept of the crime scene as a kind of "registration" activities. However, at the same time we do not exclude the possibility of cognitive modeling of specific criminal act, as grounds for new plans and version, which will be verified trough other investigative actions during and after the completion of the crime scene investigation.

19 The question is whether, by verification of versions during the crime scene investigation, we enter the content reconstruction of events, which represent the related, but different action for proofing. (Case where capsule found at the crime scene do not matches the caliber of gun considered as used in homicide). This statement gives rise to a certain conclusion, but not to concrete verification of facts and circumstances during the crime scene investigation).

20 Mr.A.V.Dulov Sudebnaja psychology M 1967 P.253. „A crime scene investigation is not only activity of fixation the facts. .. Also require creation of cognitive model on past criminal events. "More significantly words: "As much as it seems paradoxical at the first glance, fixation of facts in present cannot succeed without creating a model of "past events". This excellent article initiates the quality of reconstruction of criminal events.

21 Cognitive reconstruction of crime event.

22 Mr. Dulov defines activity of investigators on the crime scene "as a process of creating a cognitive model of criminal event through discovery and use of various information types and their fixation process".

23 Probability of criminal events cognitive model is quite understandable, and must be subject to changes in accordance with newly discovered facts, crime clues, the offender, and not to represent so-called favorite version of investigator (investigation team).

24 Mr.J.M.Luzgin Metodologičeskie problemi rascledovanije, M, 1973, p,92. Formulates the same thought as follows: "... sensory is incomprehensible without logic which directs and defines. Perceptual and logical are intertwining in investigators activities and form a unique process in which logic determines the content of activities.

25 At the same time we found in some Criminology textbooks an authors understanding for a need to plan as many versions as possible, while we consider it is unnecessary, incorrect and unacceptable in terms of efficiency and quality of entire process of discovering, clarifying and proving criminal offense and the offender.

26 The plurality version provides their competitiveness, and through process of dialectical elimination ensures the "survival" of crime scene version that has realistic chance to survive.

27 Mr. Vodinelic V, (detailed in study „What is disclosure and what is unveiling the crime offence and offender" RSUP Croatia 1990).

ing team search only in directions that created versions suggest. The investigator goes in depth of criminal matter, consciously limiting him. The crime scene investigation is not conclusion on the spot, as many French writers think[28]. Any obviousness still does not explain anything and (that can exists and surely exist at staging a factual situation on the crime scene), is achieved through planning and checking the version[29]. The crime scene investigation may not be considered complete until all imaginable - planned versions[30] are not verified at crime scene spot.

The existence - lack of connection between individual evidential information and criminal event, as well as supporting information, usually is not immediately clear at the beginning of the crime scene investigation. The investigator will be forced to analyze disclosed information within investigation process and later as part of all perceived evidence information. "This analysis is carried out simultaneously with a collection of facts, because both processes are closely related and dependent on one another. We partially agree with those theorists who believe that the investigative version can be created on basis of a single fact, provided that likely assumption can be performed on that single fact[31].. Urgent, immediately taking action during the initial stages of the investigation has the task to ensure o provide fast retrieval of tracks and objects of the offense, without which there are no conditions for making reasoned investigative version. In the theoretical discussion of known criminologist there are opposite opinions regarding the needs and possibilities of planning and checking the version during the site investigation[32]. They "prohibit" investigation authority to create a version of facts and their relationships during the crime scene investigation. It is widely believed that the investigators, in order to ensure the objectivity of inspections, must refrain from all reasoning, [33] considering that it is investigator to completely fix the situation (situation, appearance) of the crime scene[34], considering that their opinions supposedly do not "unite" with perception activities.

However, starting from fact that investigation is an unique action, and in case of failure of finding relevant facts, clues, and even "timely" conclusion on the spot, we are losing a unique opportunity for obtaining valuable information about evidence that would later be very difficult to find or not even find, it is considered useful in course of investigation to create conclusions (versions) to some extent, at least on key issues such as criminal act and the offender.

As a result of these strategies in investigation, a countless records, mostly resembling to inventory lists[35], appears all over police warehouse. All items from crime site are listed and described in these records, according to that Latin phrase „super-fluens non nocet"[36]. Mr. S D. Gellerstejn is correct in his saying; „No act of perception is not free from the influence of traces of past experience and it is not performed outside connection with a perspective in task itself, a meaning and ultimate goal"[37]. Selectivity and orientation to goal categorically impose the need for planning version (i.e. planned opinion) that is happening right on the crime scene[38].

The investigator - criminologists are not forbidden to think and concludes and will not fix on all observed facts at the crime scene if he knows his job, but will allocate (using the method of elimination) and fix only those details that are, according to his (temporary) versions, relevant to a particular criminal matter. Investigator assessment of the relevance of this or that fact observed on crime scene has a value of probability[39], meaning capacity of investigative - prosecutable versions. Moreover, even the actions in the

28 Prosecutors and criminalists, such as Gorphe, Garraud, Locard, Sannie, Bisehoff, Ceccaldi, Gayc-t, Goddefroy, Lambert, Lećhat, Louwage, Vitu and others.

29 We point out the problematic nature and the possibility of checking all versions during the crime scene investigation.

30 Certainly significant methodological instructions in famous sentence of Mr. DJ Mendeljev "it's better to have any working hypothesis, even if eventually it proves to be untrue (this certainly has a great chance to be incorrect), but not to have any (detailed in criminology - detection, the proving, Faculty of Security and DSZ Skopje, 1985. page. 493).

31 Mr. A.Svensson, 0 Wendel,Tatortuntesuphung, Lubeck, 1956. As well as quite a few other prosecutors and criminalists, Mr. A.Svensson is of opinion that there are no planning versions until the completion of the crime scene.

32 Reasoning, judgment, i.e. assumption on important issues at the crime scene must be absolutely in the function of finding relevant clues and obtaining answers to the question about the possible perpetrator.

33 Such a request, consciously and more often unconsciously, starts from Kant's famous phrase that our senses do not deceive, because "they can't reason".

34 If there is no option to find an answer to the question of who is the perpetrator than it is quite understandable to get an answer of the criminal offense spot; execution time, and even an answer to some other golden question in criminology.

35 Impersonal invetory on crime scene spot without any logical, especially causal reasoning. Specifically, as the Criminal Procedure Code states, it is important to find and fix "important" fact at the crime scene, and it is referred only to the facts that are important to clarify the specific event and not to overall facts no matter what role they will have in the further course of investigation.

36 Totally "picture" the crime scene with the words and images is meaningless job, which is not used to determine the objective truth in criminal proceedings (it is unnecessary to describe in detail the tree under which the murder is executed, if his general appearance is not essential for a particular crime).

37 S.D.Gellerštejn, Deistvija osnovannie na predvoshišenii i vozmožnosti ih. modelirovanijav ekspertize, Sb. „Problemi iiiženernoi psiholog!". L 1966, p 146

38 There is a certain danger that investigator, through such "excessive" mental process doesn't include certain "seemingly" irrelevant facts, which later will be shown as essential.

39 Mr. Modly D, Korajlic, Crime Vocabulary, Tesanj 2002. (Probability - possibility that our representations agree with the factual situation in the outside world, the chance that some fact is occurring, or will occur, that some event has occurred or that will occur, for which we towards certain features that are causally or logically connected with this event, we assume that event has occurred or may occur.

investigation, such as description in records, photographing, sketching, exclusion – temporary seizure of objects, clues and other actions, express in fact versions of the relevance of the facts, which are locked during the site investigation.

Planning criminal investigative version while conducting site investigations requests from police investigators - prosecutor to be in a constant process of stressed and systematic thinking in his sensory observing[40]. Psychologists have experimentally found that high efficiency observations is provided with an existence of clearly formulated tasks and clearly defined objective,[41] as well that observation process is gradually developing [42]. Planning a criminal investigation version, as one of the crucial organizational - tactical principles of the crime scene [43] allows criminal investigators - prosecutor to not only fixes the obvious facts (those in unambiguous, obvious connection with criminal incident, the offender) but not to overlook the essential, but slightly observable circumstances, because for their discovery and explanation is necessary intensive reflective work, which is blended with a rich reproductive imagination of investigator - prosecutor, representing sort of cultivation of "little things[44]".

Finally, we consider, argumentative and proven, that reasoning cannot be removed out the entire contents of the crime scene. Professor V.Vodinelic states that analysis of observed material objects is the essence of the crime scene. In relation to sensory perception, a role of logic is consisting to identify existing in this hidden information. This manifestation of hidden information in observation process is carried out continuously, presenting the design of the observed and forms basis of extending the observation.[45] Relying on starting data, planned version is required not only to explain, but also to discover all aspects of relationship between them in visual, spatial and chronological content.[46]

In first stage of the crime scene, investigation team collects evidential information through sense perception process of facts, circumstances and mental reconstruction of event, which every criminologist - investigator, as well as other members of the investigation team; mentally create at the first contact with the "crime scene". In the second stage of the investigation, investigators perform analysis and synthesis of this information, and on this basis plan version that explain the criminal event in objective and subjective contents[47].

In the third stage of the crime scene investigation the team studies each version in the light of the established or assumed facts. Some versions, which are not in accordance with the facts that are established on crime scene, are rejected, and eventually start to explore new versions which are formed under persuasiveness of new, established facts.

If investigation team, in second stage of the crime scene, is not able to create at least two basic versions, it is necessary to re-dedicate to the collection of evidence information[48]. In contemplative work of third stage, the contradictions[49] may arise in practice which is a warning that investigator should go back to the first and second stage of the crime scene investigation.

Crime scene shouldn't be left until these versions are not verified with provided factual material, as well as authentication of all heuristic versions. In the end, it is necessary to confirm that every aspect of investigation is used-up, and that is no other options available. This three stages division of the investigation was done from the standpoint version. If we try to compare this division to the distribution of the static and dynamic stage, a second stage occurs at the latest before the end of the dynamic stage (before taking signals). In this case it's about time for inductive generalization, analysis and synthesis of facts. A version are not stated in the crime scene investigation record nor any rating of the facts [50], while content of the records – and

40 The necessity of sensory and intellectual activity through the integration of these two segments and creating some truth in the consciousness of the investigator is necessary methodological activity.

41 Mr. N. D. Levitov, Psychology effort, M. 1963, p 34-36: P. A Sevarev, Uurtracija i opiti v kurse psihoiogii, M. 1949, p. 55-57; E. J. Ignjatov.M. D Gromov, Psihologija. M, 1965,p. 122-123.

42 Irradiation happens at the beginning - a spilled and foggy perception, then concentration, - a bit clearly, but not analyzed observation, and at the end of this process, differentiation and accurate observation occurs.

43 Criminal rules in planning version are: versions are planned on the basis of known and defined indications, at least two versions are planned at once, the versions are planned in generally, even a special versions, number of planned version is inversely proportional to the number of available indications, cognition of new facts - indications, further planning of new versions is carried out (detailed in the Master's thesis - "planning and verifications of criminal versions in operational work, with special emphasis on experience in BiH - RS" Mr. Matijevic M, Faculty of Security,Skopje, 1999).

44 The cult of little things in criminology means "care" about "insignificant", tiny observations, facts.

45 The information contained in available facts and circumstances of the crime scene are usually "locked", i.e. hidden, and is necessary to decode it, decrypt with analytical - synthetic method, through the process of planning and verification of crime version.

46 Creating a version is intellectual process, which runs under the general laws of logic

47 Answers to the gold criminology questions gives objectively subjective orientation to each investigator on the quantity and the quality of the information obtained.

48 This raises the serious question of the result of the crime scene from which the "investigative team" returns without having any version of the crime event.

49 Contradictions in the found facts on the crime scene gives to an investigators a signal that their mental reconstruction activities on the crime scene is contrary to the finding of facts at the crime scene, and that at least two versions must be planned in accordance to the same facts. One version is not a version, it is a claim.

50 Any subjectivity reasoning is unacceptable as investigation represents an objective picture of events.

that should not be forget - is derived from highly complex cognitive activities of investigating team, which is not possible without evaluation of notable facilities on crime scene investigation. Versions of investigation team shall be expressed in a choice of operating - supporting information carrier which will be taken, packed and transported in dynamic phase for further study i.e. expertise, examination etc.

CRIMINAL-TACTICAL PLANNING RULES OF CRIMINAL JUSTICE VERSION

Planning of criminology version includes organized and directed activity of operational and investigative worker to predict all the relevant facts and circumstances, which are necessary to clarify the specific criminal event. Crime versions must be planned in accordance with certain rules defined by the criminal sciences, a practice adopted on the basis of overall teachings of planning and verifying of criminal version, as in operational work and investigation it is relevant and acceptable to perform planning criminal investigation version during the crime scene investigation[51].

Versions must be properly placed only on the basis of proven and established indications. In the process of operational investigative activities, crime investigators and operative workers collected numerous information and data which are different in quality terms of the degree of suspicion of fraud. For this reason, the question is when, that is, where in qualitative phase of the existing knowledge are acquired conditions for accession to the planning process of the operational version. Some crime theorists and practitioners consider that, if there is a general suspicion of the existence of a criminal offense, or the person listed as criminal offender, can post versions in order to undertake specific operational and tactical measures and actions i.e. for or their verification.

Mr. V.Vodinelic[52] notes that the investigator already creates a version when there is a general suspicion (e.g. Experience shows that marijuana is widely used in night clubs, which provides a general suspicion that in any club can be found dealers and users of narcotic drugs). In essence, this may be so-called prognostic versions that will be used for making criminal forecasts. When it comes to planning version during the site investigation we believe that it is necessary to, during the crime scene investigation, create capacity grounds for suspicion that a criminal offense is in question, which would give a qualitative value of data and information. From the standpoint of expediency, i.e. rationality, by acting in the course of the crime scene, we thoroughly analyze the need and advantage of working on the basis of the planned version, which basically give the investigative team the possibility for a kind of "psychological modeling" of a crime scene[53].

We believe that consideration of this issue is very important to determine the moment when, and in what situation when will acquire sufficient arguments to approach setting up version as well as their practical verification. We believe that the available fund of knowledge, which is a general doubt, a necessity to be lead to a degree of suspicion that meet the essential crime and criminal procedural conditions for taking concrete measures and action in accordance with the provisions of the Criminal Procedure Code and related crime scene investigation.

Number of planned versions is depending on the number of available signs which are collected with the very first operational investigative activities[54]. As the crime scene investigation site is very rich with content for the finding material facts, circumstantial, and other facts and circumstances, it will affect on the number of planned version. So-called mental-version of the crime scene is usually created at crime scene. The mental-version may be based on existing material facts from the crime scene, but also can be based on other facts and circumstances known to the investigator. Logical reasoning concerning the planning of criminology version indicates that the available number of indications is inversely proportional to the number of planned version[55]. This conclusion indicates the necessity for investigators and team members to search at the crime scene greater capacity of evidence, which would than formulate a smaller number of "certain" version.

Criminal investigation should not be limited only to one, even if it is "very certain version", as required plurality produces a new quality. In this context, it is important to realize and accurately fix the fact at the crime scene that would be used in possible later reconstructions, experimentation, and evaluation of individual segments and contents of criminal events. It is possible to plan contradictory version of events on the crime scene, in the case where above-mentioned versions arise from the available facts and circumstances

51 Confirmation of these findings can be found in the teachings of professor V.Vodinelic regarding crime scene investigation and criminal versions, where contrary to some beliefs, the acceptability and necessity of planning version during the crime scene investigation is confirmed.
52 Vodinelic V. Criminalistics - detection, proving, Tom 1. Faculty of National Defence and DSZ, Skopje, 1985. page 218.
53 This issue has certainly two important aspects: a) the qualitative aspect of the value for data and information, b) aspect of expediency, i.e. rationality of taking operative measures and actions.
54 Investigation is often a source of numerous facts and knowledge of crime scene and the offender.
55 Vodinelic V. Quote, page 218.

which can provide site investigation. Planning only one version at the crime scene and its "forcing" even with the investigating confirmation does not mean that investigative team is on the right track. It could be some kind of mistake, which may be a result of fictitious crime[56]. Because of all this details, the existence of significant ambiguity indications is crucial, which essentially requires planning of more competitive version. The entire system of all planned version in one general version make so-called framework of the crime scene (prosecution version, defense version). Assumptions about the direct and indirect evidence (the truth of evidential facts, relationship of indicative facts toward subject to proof is called special versions. Logic rule of relations for these versions requires their mutual consent. The planning process of general version represents a significant inductive form of collection and generalization of facts, in particularly clues and traces of crime. This activity is often realized exactly at the crime scene. A general version primarily defined during crime scene investigation, and within them special versions, that presume the certain answers to gold questions.

In particularly we are talking about creating a version of subjective side of the crime offence (who is offender, the motive of the crime, guilt, etc.).

The appearance of the crime scene will often give in the first perception to an experienced and learned crime investigator a realistic answer to the first and foremost golden question (what happened?). It is clear that without a correct answer to this question, investigator cannot go into further planning and assuming the answer to the other questions. We cannot consider the question of guilt[57] or any other questions until we do not have an answer to the first golden question (what happened?).

The system of versions is made up of subsystems of versions. In order for subsystem versions to create system version, they can't be contradictory to each other. Specifically, it is about statement contradictions. Therefore, a question arises - what is the contradiction? What can be contradictory? How to solve a contradiction with fact? What is a result of resolving the contradictions? Crime investigator plans versions based on a known facts, only after a detailed and careful analysis of each individual fact and of all available to that moment facts together. This analysis is performed in parallel with the collection of facts; as stated above, both of these processes are interrelated and interdependent. Thus, investigators while executing searches or inspection fixes only those facts that are, in his opinion relevant (directly or indirectly related to the criminal matter). The same procedure is conducted for examination of witnesses when a judge selects from a crowd only those witness allegations which he believes are related to the criminal event. This sensitive version issue for relevance of facts is complicated by knowledge that there are some facts among those whose connection with a criminal offense at the time of fixing was unclear and unobservable. Such facts may be seen as important evidences in the course of further operational work, as later created circumstances for the first time shed light on them. To avoid this potential danger of irreparable informational deficit, it is necessary to comply with rules that currently non-existent obvious connection of established facts in the criminal event should not be interpreted as a lack of connection at all, leading to its elimination from complex relative facts, but rather to create controversy about likely connection (despite the non-existence of obvious evidence of connection). Investigation team has to fix all available facts, not just those that are obviously related to the criminal event, but also those facts reasonably assumed that could be in some way connected with the crime or the offender. Very important criminal tactical rule applies to the data on which versions are based, which cannot contradict each other nor planned versions. If available facts contradict each other and contradiction cannot be eliminated, a results of a criminal investigation activities (crime investigation), will "tap in place", i.e. it will enter into "dead end". Sometimes it happens that investigator becomes stuck in so-called "favorite version" which is contradictory with available facts concerning the crime offense and offender, acting on theory of "worse for the facts" underestimating and ignoring such facts, stubbornly continuing to "swear" to his favorite's assumptions, despite available and relevant facts. This is a way which leads to misapprehension that can cause negative and serious consequences to the quality of investigations and verdict[58].

Criminal theory and investigative practice argument indicate that it is necessary to plan every reasonably possible version, regardless of whether they confirm or deny the existence of the crime and the offender. Versions must be created in all criminal incidents, without exception, even in cases of so-called obvious and solved cases[59]. In the course of the investigation it can be placed more realistically acceptable versions, but at least two.

The Criminal Procedure Code stipulates (order) planning at least two versions (the existence of criminal offense, absence of criminal offense, version where the suspect is the offender, but at same version where suspect is not an offender), that is, that he is innocent. Investigation is a source of a series of precise and realistic material and other facts which enable planning of likely, but also probably versions of crime. Planned

56 Simonovic B, Criminalistics, Faculty of Law Kragujevac, 2004, page 318.
57 The first assignment of the crime scene is to answer the gold question (What happened?).
58 Vodinelic V, Criminalistics – detection, proving, Faculty of National Defence and Social Self-Protection, Skopje, 1985.
59 A famous example of an eyewitness, witness - and a knife in the body of the murdered. (More details in Criminalistics, Proffesor V. Vodinelic).

versions must be based on real facts[60], which mean it cannot be fruit of productive imagination[61]. Planning of each version must contain some bases in facts. These bases are totality of facts, which allows criminal event to be explained in several ways. All explanations must be not only practically possible, but probable. An investigator is already creating versions when there is a general suspicion (e.g. goods shortages cause smuggling). In this case, the investigator creates versions based on facts received anonymously or trough public gossip, or when the report of observer contains information that observer has met with a person of interest to the police. Operational activity that would limit itself to only one assumption (then it doesn't deserve the name 'version' as plurality of versions is its essential elements) will not be in accordance with the principle of objective truth, or with criminal tactical principles of objectivity, thoroughness and methodical planning. Conducting criminal investigations with trace of only one assumption would be contrary to a request for a full and comprehensive investigation of facts. It is not enough that investigator - prosecutor has access only to data belonging to the object of proving and original holders of operational or evidential information, while others have access to evidential facts. In addition, investigators must be familiar with ways of execution of concealing the crime, mechanisms foundation, clues characteristics and objects of criminal offenses. Especially important is a value of sources of operational and supporting information (clues, statements). The process of discovering is demanding the settings of not only all probable, but also all possible versions.

If, during a crime scene investigation, an investigator comes up with new facts or circumstances which are relevant for the creation of new versions of crime scene scenario or the offender, it is necessary to include those new facts in the comprehensive plan of criminal investigation. With discovery of new facts and circumstances of crime event, an investigator is provided with additional opportunities to subscribe and start planning new - additional versions with a respect to certain gold criminology questions. Overall, a primary task of crime scene investigation is to find and fix all relevant facts which can be used for further investigation, i.e. planning version with all the elements of criminal offense and the offender[62]. The conclusions mentioned above derived unequivocal conclusion that investigation was an important source of facts and circumstances, which will give a opportunity to the investigator to defined directly at a scene of the crime, both general and special, specific versions regarding the crime offense and the offender.

CONCLUSION

This paper has attempted to analyze a certain extent discuss some complex aspects of crime scene investigation, especially in relation to application and affirmation of working with criminal investigative versions. This question is not sufficiently dealt with by standard criminal textbooks, which decreases in overall importance of criminal forensic processing of a crime scene, and necessity of functional linkage of inspection and versions in all phases of criminal and criminal procedural activities. However, as V. Vodinelic has carefully accented this issue years ago, and modern criminal investigative practice often requires and warns participants of particular investigation that it is necessary to starts to plan and very soon verify the planned version, we hope that this paper will "wake up" intellectual exploration authorities to be involved in the review and further consideration of this matter, which is factually incomplete and somewhat controversial. We expect in this context that legislator in his future changes of definitions and crime scene content must give adequate and concrete attention to broader aspects of this very important emergency investigation, and perform legally corrections of regulations to meet consistent needs of the scientific and practical view.

Within overall analysis, debate on a probative value of actions at a scene, it is necessary to connect the content and link between a crime scene, a reconstruction of the crime and experiment, and even expertise. It is necessary to comprehensively and thoroughly evaluate their traditional and contemporary content, strength and perspective in context of evidence and criminal investigative value.

Thanks to the professor V.Vodinelic, who gave an excellent basic teachings on the investigation and versions, we can from now on inexhaustible use essential content and value of those criminal procedural processes for further study, promotion and overall improvement of criminal theory and practice.

60 Material facts at the crime scene (objects, clues), represent the original appearance of the crime scene, which is "encoded" as essential relict contents of the offense crime and the offender.

61 The material base for planning of versions at crime scene is facts, clues, objects of crime offense and the offender. Investigative version is created on facts found at the crime scene. However, one should not exclude the possibility of planning of certain so-called imaginative version, based on current circumstances crime scene, called by investigator:"intellectual reconstruction of events".

62 It is very important that you get answers to as many gold issues.

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DOMESTIC VIOLENCE AND CRIME SCENE INVESTIGATION – POSITIVE LEGISLATIVE LEGAL FRAMEWORK, THEORETICAL DETERMINANTS AND PRACTICAL PROBLEMS

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Abstract: The crime of domestic violence or family community, as it is legislatively defined in the Criminal Code of the Republic of Srpska, is a specific offence in many ways. The specificity of this crime is reflected through several things like the social danger it brings with itself, its definitions in Criminal Code or activities that are implemented through Criminal Procedure Code and police activities.

Implementing constitutional and statutory activity, police authorities disclose criminal acts of violence in the family or household. Although all criminal acts of this offence have been already recognized and determined in different criminal legislatives before, it can be said that this specific offence is relatively new established and the conduct of police officials at the place of committed offence is not entirely uniform. It is not defined in detail and coordinated in positive legislative acts and bylaws, either in theory or practice.

This paper aims to clearly define, compare and put into the context the questions that arise in practice in relation to the given legal and theoretical framework in which police officers act.

Keywords: domestic violence, crime scene investigation, victim, offender, injuries.

INTRODUCTION

The initial idea of writing this research paper on the topic of domestic violence arises in practise, through the contact with specific criminal cases of domestic violence. From the beginning of my work in crime operative I have noticed non-compliance of regulations and their incomplete and inadequate implementation in practise, which resulted with an idea to analyze problems and propose solutions in this field.

This paper will try to identify the points in the legislation and practice that lead to confusion and inability of determining certain clues and facts that should become evidence. The intention is also to find answers to questions that often arise during the procedure that starts after the report of committed crime of domestic violence, especially in the part related to the processing of the crime scene and fixing material evidence. The paper has no ambition of dealing with forensic issues and procedures conducted at the crime scene. Although the phenomenon of domestic violence and its etiological characteristics are one of the most common subjects of scientific research, there is still need for further theoretical and practical discussions of criminal methods used to clarify and prove this offence which should become more compatible with the positive criminal procedural legislation.

POSITIVE LEGAL FRAMEWORK AND CRIMINOLOGICAL THEORIES

According to the definition contained in the Convention of the Council of Europe Convention on preventing and combating domestic violence (adopted in May 2011 in Istanbul), domestic violence is any act of physical, sexual, psychological and economic violence occurring in the family or household or any partnership, or an intimate relationship, whether or not the perpetrator shares or does not share the same residence with the victim. Domestic violence is a form of victimisation and a demonstration of control and power over the victims leading to the loss of confidence, and it is a threat.[2]

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2 Tomić M., Talijan S., Radović Stojanović J., " Domestic violence – studies and statistical practice in Serbia, International Scientific Conference" "Archibald Reiss days", Thematic conference proceedings of international significance, volume I, Belgrade, 3-4 March 2014, p.484. by Ćopić S., Wife Abuse in the Countries of the Former Yugosalvia, Feminist Review, Pelgave Macmillan Journals, 2004

The legal system, through legal and sub-legal solutions of criminal and misdemeanour law, family law and program of health and social care, provides the protection of the family as a unique social institution and the right to the protection of an individual. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, as many other universal and advisory European and international documents, are some of the most important documents that provide basic guidelines for production of basic legal acts of Republic of Srpska.

The crime of domestic violence, or violence in family community, is defined in the Criminal Code of the Republic of Srpska of 2000[3], and it retained the same in the new Criminal Code of 2003[4]. The crime of domestic violence, or family community, is more specified in the Criminal Code of the Republic of Srpska (Article 208), in the chapter entitled "Crimes against marriage and the family" as the usage of violence or reckless behaviour that endangers peace, physical or mental health of a member of family or family community. Punishment that is provided for this offence is a fine or imprisonment up to two years.

The first qualified form of the offence exists if during the perpetration of the basic form of the offence an offender uses a weapon, dangerous instrument, or other instrumentality suitable to injure the body or impairs health, for which a prison sentence of three months to three years is provided. The second qualified form of the offence exists if the perpetration of the basic form of the offence causes serious bodily injuries or serious damage to health or the offence is committed against a minor, for which a prison sentence of one to five years is provided. The third qualified form of the offence exists if the perpetration of the basic form of the offence results with the death of a victim, rather a family member, or a member of family community, for which a prison sentence of two to twelve years is provided. The most severe form of this offence exists if the perpetrator kills a family member or a member of a family community, whom he had previously abused, for which a prison sentence of at least ten years is provided. It is important to be said that Article 208 (6th paragraph) determines former spouses, their children and ex-spouses' parents as family members and members of a family community.

In 2012 the Republic of Srpska adopted The Law on Protection from Domestic Violence[5] in order to protect victims, prevent and combat domestic violence that threatens the Constitutional and by laws guaranteed basic human rights and freedoms. This Law regulates in detail administrative, misdemeanour and criminal proceedings, protection of children and minors in criminal proceedings, as well as implementation of criminal penalties. Special significance of this law is reflected through in details defined terms such as *family member*, *a member of the family community*, *the manner of the committed offence*, as well as the procedure that police and prosecution need to conduct from the moment of the cognition of the offence. This law also defines specific institutions and actions that should provide prevention of the offence. The act of perpetration of domestic violence is defined in The Law on the Protection from Domestic Violence (Article 6 / 1st paragraph) as any act of violence of a family member or a member of a family community that threatens the serenity, mental, physical, sexual or economic integrity of another family member.

In the same article, in the second paragraph, it is determined that when under the specific circumstances the act of perpetration of domestic violence does not represent a criminal offence, it gets characteristics of misdemeanour if the perpetrator: 1. threatens to cause physical injuries to a family member or person close to him; 2. threatens to confiscate children or expel from the apartment a family member; 3. exhausts the victim with hard work, starvation, deprivation of sleep or necessary rest to a family member; 4. educates children in degrading manner; 5.deprives a family member of the means of existence; 6. deprives the right to economic independence with prohibition of work or by holding a family member in dependent relation and subordination using threats and withholding the means of existence and other forms of economic domination; 7.verbaly attacks, curse or insult a family member; 8. restricts freedom of communication within family members or other people; 9. damages, destruct or trade common property, as well as damages or destruct property in the possession of another family member; 10. stalks a family member;11.causes fear, humiliation or feeling of inferiority.

Family law[6] also defines the term of a family as a community of parents, children and other relatives, without detailing the status of a family member as it is defined in the Criminal Code and the Law on Protection from Domestic Violence.

The protection from domestic violence in two repressive levels with preventive actions is legitimate since criminal law is *ultima ratio* and its norms are applicable only if and when other forms of social protection are not able to provide security and protection of citizens.

A protected object is the physical and mental integrity and dignity of the family member. Violence in the family or household is a complex offence, as it is specified and exposed in previous section. The

3 Criminal code of Republic of Srpska, Official Gazette of Republic of Srpska No 22/2000, 31 July 2000
4 Criminal code of Republic of Srpska, Official Gazette of Republic of Srpska No 49/2003, 25 June 2003
5 Law on Protection from Domestic Violence, Official Gazette of Republic of Srpska No 102/2012, 5 November 2012, Law on Amendments to the Law on Protection from Domestic Violence, Official Gazette of Republic of Srpska No 108/2013, 10 December 2013
6 Family law, Official Gazette of Republic of Srpska No 54/2002, 27 August 2002

complexity of this crime, except the complexity of elements of the offence, is reflected through specific social danger, potentially severe consequences for members of the family and social environment, as well as through specific criminal procedure, especially in the part related to fixing the facts in criminal proceedings. This is specific, special form of crime endangering security.[7]

The commission of this crime is defined alternatively and can be accomplished with diametrically different acts, from the way of upbringing a child, to a murder.What makes this action forbidden and gives it the quality of a crime or violation is the fact that it is committed against someone who is a family member or a member of a family community. It is important to emphasize that some actions done within this crime, such as causing physical injuries, torturing and the like are still an offence, even if they are not committed against a family member, or a member of a community. Domestic violence is an extremely harmful social phenomenon. This offence, in principle, directly affects a family member who is a victim of another family member, but also threatens the family as such, and destroys certain established family values that are of great social importance. The most severe forms of violence are certainly the ones directed towards children and minors, and in cases like these extra attentive approach in criminal proceedings is required.

In these cases, first of all, we should keep in mind and give our best to provide that such a victim does not suffer additional damage.[8] A stable and harmonious family allows an individual unhindered development and provides a solid basis for the proper development of the society.[9]

In the period before domestic violence was defined as a criminal offence, there was a problem with reporting and prosecuting certain offences that practically arise from the acts of domestic violence like light and heavy physical injuries, torture and the like are. In these circumstances, the victim was at risk of repeated and more aggressive abuse, since after reporting a crime or filling a private lawsuit, the victim would continue living with its oppressor even during the legal proceeding. The victim was also often exposed to threats in order to withdraw the prosecution.

Prescribing the offence of domestic violence with its prosecution ex officio these disturbances are partially removed.[10]Criminal proceeding is, by cognition that the offence of domestic violence or family community is committed, conducted by competent prosecuting authorities in accordance with the Law on Criminal Procedure.[11]Thus, in accordance with Article 43, the prosecutor has the right and obligation of detecting and prosecuting criminal offenders, and in accordance with Article 226, the prosecutor supervises the work of authorized persons who are obliged to immediately after cognition of the committed criminal offence, punishable by imprisonment more than five years, inform the prosecutor and take action under his supervision. Under the circumstances which do not tolerate any delay, an official may act immediately in accordance with the law, but need to inform the prosecutor about that as soon as possible. Thus, the period of seven days, from the moment when officials find out about the offence that carries a prison sentence of up to five years, must not be overdrawn.

The prosecutor, in accordance with the Law on Criminal Procedure (Article 157), conducts a crime scene investigation in order to determine important facts, requiring a direct contact and observation. Exceptionally, an investigation can also be conducted by the official that the prosecutor authorized in accordance with the Article 229. The crime scene investigation represents a system of various criminalistics activities that, based on the regulations of the Code of Criminal Procedure, at the scene perceive (directly or indirectly - with the participation of professionals or by using special instruments of forensic science), all relevant circumstances of the occurred event, find and expertly handle clues and objects (in accordance with the criminal DATA). During the crime scene investigation a reconstruction is made for the purpose of collecting and registering all relevant facts and evidence.[12]The Criminal Procedure Code determines in general the purpose of the crime scene investigation and gives no special instructions and methods to officials on how to conduct the investigation. In the criminalistics practice there is a very small number of offences in which the crime scene investigation is not done, such as pocket-picking and verbal delicts are, so we can say that the crime scene investigation is one of the primary investigative actions.

At the crime scene material traces that are directly related to the offence are being discovered and established.[13]Criminalistics theory considers and processes in details crime scene investigation as an investigative and criminalistic action.

7 Đurđić V., Jovašević D., Criminal Law, special part, Nomos, Belgrade, p.101
8 Škulić M., Domestic violence: Some Problems of legal Incrimination and Jurisprudence, Violence in Serbia, causes, forms and consequences of social reaction, conference proceedings, volume II, the Academy of Criminalistic and Police Studies and Hanns Seidel Foundation, Tara, 2014 p. 36
9 Kesić Tanja, Žarković Milan, Aranđelović Milomir, The Use of Photographs to prove the Crime of Domestic Violence, Expertus Forensis, second year No3, Association of Court Experts of Montenegro Veritas, Podgorica, 2004 p. 5
10 Ibid.
11 The Criminal Procedure Code of Republic of Srpska, Official Gazette RS No 53/2012, 11 June 2012
12 Aleksić Ž., Škulić M., Criminalistic, Dosije, Belgrade, 2004 p.59
13 Ibid.

In theory, crime scene investigation is divided in phases (static/dynamic), places of perpetration, groups of the offences that it belongs to and other specifics.[14] The crime scene investigation is conducted indoors or outdoors, or wherever a crime is committed and where clues and facts relevant for the crime exist. Thus, the crime scene investigation can be carried out on the ground of the committed crime as well as on objects. Since the crime scene investigation is, according to the Criminal Procedure Law, defined as an investigative activity, its implementation is carried out on the basis of the Law and there is no need for additional authorization or other form of order by the prosecutor and court, to enter a certain area in order to find, collect and document every change and evidence that can contribute to crime to be efficiently solved.

The specificity of the crime scene investigation and giving an expert opinion in criminal acts of domestic violence or household is reflected through several aspects:

1) An offence is committed between partners, or other family members or members of the community, mostly using verbal or other actions of which the use of physical force is the one that can cause serious injuries or death and is usually the reason to report such an offence to the authorities. Ascertained physical injuries in these criminal acts are diverse in many ways like the manner of their occurrence, their forms and heaviness.The most common injuries found on victims are bruises in the face area resulted from a punch or slap, bruises in the area of the upper arms, neck, legs, while on the perpretrator's body the most common injuries are in the head area, such as scratches.
2) The most common place of the pertpetration of this crime is a family house. During the crime scene investigation, in cases when the victim has suffered phsysical injuries or death, officials ussualy find clues that indicate struggle, like overturned furniture is, scattered silverware and other small objects, traces of red paint - the remains of blood, and other traces that indicate violence and struggle.
3) Non-cooperation of the family members during the crime scene investigation, such as disabling the officials of entering the house and refusing to testify by invoking the right of privileged witness.
4) Examining the body of a victim and the offender and establishing the injuries on both of them.

Injuries in both cases, the victim's and offender's can have many similarities, but there are differences that clearly separate one from another like tipical injuries for the offender that are usually found on the front part of his fist and scratches in the face area,due to the victim's deffense. It is particularly important for the procedural part of the investigation to separate the physical examination of the victim and offender that is done by an expert e.g. a coroner, from the examination that is carried out by an authorized officer or the prosecutor.These examinations are much different when it comes to its formal basis and methods. The examination that is carried out by the coroner when the offence has a fatal outcome is defined in the Article 159 and 168 of the Criminal Procedure Code.The coroner, in this case, as part of the investigation team and without any special instruction, notes injuries and ascertains the death.The most specific examination is the one that needs to be conducted on a person who refuses to be examined and expresses verbal opposition and protest.

In cases like these, when a suspect, i.e. defendant is involved, an examination can be done without his permission, while the physical examination of other persons involved in the offence is possible, due to Article 109, 1st paragraph, only with the consent of that person. But if the conclusion of the authorities is that the examination of that person is necessary for the investigation, the examination can be carried out without his concent.Therefore, the physical examination of the suspect can be undertaken in order to establish any facts relevant to the criminal proceeding, while other persons can be examined only if injuries indicate consequences of the offence.

The decision of the Supreme Court of the Republic of Croatia, Kz 460/70, indicates that under these conditions, a physical examination can be carried out even on the person who has the status of the privileged witness without his consent.[15]

By implementing a crime scene investigation in the case of domestic violence, immutable material evidence is being established. In the coexistence with subjective evidence like statements of the witnesses and the victim are, material evidence has essential significance in understanding the crime, illuminating all relevant circumstances that constitute a criminal offence and identifying all relevant facts.[16]The offender is usually not able to predict the occurrence of biological traces and to control their presence at the crime scene.[17]The value of the evidence, on the whole, is significant because it is used to determine material facts that make a content of a criminal matter and the basis of all judicial decisions in criminal proceedings.[18] Special significance of the crime scene investigation, as evidental action in the offences that have lack of evidence, like witness statements and denial of a testimony of persons that have right to it, is its objectivity

14 Ibid, general quote p.66-71
15 On that occasion, typical traces that arise as consequences of an offence with violent character are usually being found.
16 More about relation between evidence and facts in: Stevanović Č., Đurđić V., Criminal Procedure Law, general part, Law Faculty in Niš, 2006 p. 222
17 Simeunović B., Criminalistic, Law Faculty in Kragujevac, Institute for Social and Legal Studies, Kragujevac, 2004 p. 352
18 Stevanović Č., Đurđić V., Criminal Procedure Law, general part, Law Faculty in Niš, 2006 general quote, p. 228

and consistency. During the crime scene investigation of the crime of domestic violence, many mistakes can happen, mistakes that according to Simeunović can be divided into:

1) the ones that occur during the securing of the crime scene and informative phase of investigation;
2) the ones that occur in the static phase of the crime scene investigation and
3) the ones that appear in the dynamic phase of the crime scene investigation, imperfections during fixing and applying criminal technical methods.[19]

These mistakes occur primarily because of the unprofessional approach to criminal cases of domestic violence of the prosecuting authorities because it is considered to be sufficient evidence to establish the facts of the particular crime and to take the witness's statements that are being part of the first stage of the procedure and that usually cooperate without referring to the right to refuse to testify and status of the priviledged witness.Whether certain evidence, such as material facts established at the crime scene has more significance than the witness's statement, is solved in the theory of free evaluation of evidence, which is applied in our modern legislation. That is how court, considering all facts established in the proceeding and leading to a logical conclusion and free judicial conviction, makes a decision, that is, brings a verdict.

Although it is not in accordance with the principles of the Criminal Procedure Law, the free judicial conviction in appreciation of the probative value of evidence, criminologists agree that the results obtained at the crime scene have stronger probative value than those obtained through other actions because they can help in objective assessment of the situation and also can help in investigating and fixing the material facts and significantly reduce subjectivity in the assessments that are characteristic for personal sources of evidence.[20] While in the analysis of the current Criminal Procedure Code of the Republic of Serbia and legal theory there is no agreement upon whether the examination of the body of a suspect or a witness is a crime scene investigation activity or an expertise, the Code of Criminal Procedure of the Republic of Srpska has classified the physical examination in the chapter "Proving", the section "Expertise", although it does not require a professional at the crime scene. A physical examination, as well as other necessary actions that are carried out in accordance with the rules of the medical profession, is especially important in cases without a person's consent. One of the formal characteristics that separates the examination of the body of a suspect or accused person from the criminal scene investigation activity and makes it a separate investigative action is the fact that it requires an order of a court or prosecutor if the examination cannot be delayed. In accordance with the same principle, and based on the fact that for the physical examination of the witnesses it is not said that it needs to be done in accordance with the court or prosecutor, it could be concluded that the physical examination of witnesses, as opposed to physical examination of the suspect, is a crime scene investigation action, and that would be the wrong conclusion. Unlike the physical examination, the evaluation of physical injuries is done on the basis of Article 173, by order of the prosecutor and qualified person - an expert or institution.

Besides, in its formal basis and manner of the execution, a physical examination differs from the court proceeding in subjects to which it may be undertaken.Thus, the physical examination (using medical supplies by experts) does not imply the search of body cavities for the purpose of finding hidden objects, but exclusively for taking necessry samples in order to ascertain injuries.The physical examination is every overview of partially or completely naked body, or overview of the parts of the body that are uncovered with clothing, in order to determine its condition.

It is a special examination (investigation) of a body surface area with purpose of finding certain characteristics (injuries, tattoos, freckles, blemish and moles) or evidence of a criminal offence (bruises, traces of needle marks, traces under the nails, etc.).[21]In order to injuries and other changes that have relevance to criminal proceeding be found in a professional way, it is necessary that the procedure is carried out by a doctor, where the Law does not specify the need of an expert. Since this is a specific criminal offence, it is necessary that every single report of this crime is observed as individual, with special attention, starting from the cognition of the offence to the completion of the procedure.

Victims usually call the police when the perpetrator of this crime is already known, in accordance with the committed offence, when the victims are abused by the perpetrator, when the perpetrator uses a weapon and when he is intoxicated at the time of the offence.[22]In addition, victims also feel fear of the conse-

19 More in: Simeunović B., Criminalistic, Law Faculty in Kragujevac, Institute for Social and Legal Studies, Kragujevac, 2004 general quote, p.322

20 Simeunović B., Criminalistic, Law Faculty in Kragujevac, Institute for Social and Legal Studies, Kragujevac, 2004 p.323

21 Babić M., Filipović Lj., Marković I. and Rajić Z., Commentary of the Criminal/Penalty Law of Bosnia and Herzegovina, Europe Council and European Commission, Sarajevo office, Sarajevo, 2005 general quote p.320

22 Golubović Z., Determinants of Effective Police Intervention and Domestic Violence, Domestic Violence, causes, forms and consequences of social reaction, conference proceedings, volume II, the Academy of Criminalistic and Police Studies and Hanns Seidel Foundation, Tara, 2014. from D. Hirschel, W. I. Hutchison, "The relative affects of offence, offender, and victim variabels on the decision to prosecute domestic violence cases",Violence Against Women, 7 (1) 2001., p.46-59

quences and the revenge of the offender, as well as fear from the financial and material insecurity and are concerned for children.[23]

It is worth mentioning the fact that victims of domestic violence often 'give up' the proceedings before the report even gets to the public prosecutor, rather in the stage of preliminary investigation. In cases like these, emergency services, social work centers, relatives and friends of the victims or other citizens are the ones that indicate the existance of the crime of domestic violence. According to the police department in Pancevo, in such a situation 70% of victims do not want to press charges or to prosecute the offender (noting that the only thing that he or she wants is the offender to be warned).[24]

The hearing of the witness, that is the person believed to provide possible information about the crime, offender and other important cicrumstances, is conducted in accordance with the Article 146 of the Criminal Procedure Code of the Republic of Srpska. The person in his/her testimony is obliged to speak the truth, and perjury is specified as a separate offence. On the other hand, a witness may refuse to testify in accordance with Article 148, in cases where the witness is marital or extramarital partner of the suspect, parent or child, adoptive parent or adopted child, as it is often the case with domestic violence.

STATISTIC REVIEW AND ANALYSIS

For the proper understanding of the problem of domestic violence as a phenomenon that threatens individuals and basic social norms, besides the theoretic review, it is necessary to point out the data related to concrete diffusion of the offence. Beside the review of the frequency of conducted offences of domestic violence in relation to other crimes in Banja Luka region, we give a review of certain procedural stages that can indicate conclusion about the efficiency in proving this crime, efficiency of the prosecution. A separate chart shows the number of criminal acts of domestic violence and number of conducted criminal scene investigations.

Chart 1 *Review of the offences and misdemeanours of domestic violence and family community in the area of the Center of Public Security of Banja Luka*[25]

Year	2010	2011	2012	2013
Number of criminal offences of domestic violence	68	52	60	118
Number of reports	67	52	59	114
Number of suspected	71	54	59	122
Number of mide-meanors	732	673	885	Number of cases 442
Number ofrequests for initiating a misdemea-nour proceeding	452	463	584	376
Number ofsuspects for the misdemeanour	580	580	757	475
Number of conduct-ed csi at the scene of domestic violence	18	9	9	28

Observing the review, it is obvious that from the total number of reports that have elements of domestic violence, in accordance with the Law on Protection from Violence in the family or household, offences take part with 9.2% and in most cases the offender is one person. Given in percentages, crime scene investigation is conducted in 26.4% of total committed offences of domestic violence.

23 Golubović Z., Determinants of Effective Police Intervention and Domestic Violence, ibid, by: H. S. Horwitz, D. Mitchaell M. La-Russa-Trott, L. Santiago, J. Pearson, M. D. Cerulli, "An Inside View of Police Officers` Experience with Domestic Violence", Jurnal od Family Violence, Vol. 26, 2011, 617-625

24 Borović A., Pavlica N., Žarković M., Victims of Domestic Violence as Privileged Witnesses, Violence in Serbia, causes, forms and consequences of social reaction, conference proceedings, volume II, the Academy of Criminalistic and Police Studies and Hanns Seidel Foundation, Tara, 2014 p. 281

25 Document of the Ministry of Internal Affairs of the Public Security Center Banja Luka No: 08-052-871/14 dated 30 December 2014

Chart 2 *Review of the offence and misdemeanour of domestic violence or household in the area of Prnjavor Police Station*[26] *for 2014th*

Year	Number of the offences of domestic violence	Number of misdemeanour of domestic violence	Number of the offences of domestic violence with light physical injuries
2014.	14	58	21

Analyzing the data of a police station, considered to be a representative sample of the Centre of Public Security of Banja Luka, we can ascertain that from a total of 72 security events that have characteristics of the offence or misdemeanour of domestic violence, 21 involves violence with injuries. Nine cases involve consequences that are being shown in the section called "Others". The obtained data evidently show that there are no other consequences such as murder, rape and serious physical injuries. Expressed in percentages, from the total number of events, 41% are with consequences, of which 29% represent light physical injuries. Nine cases involve consequences presented in a statistical presentation in the "Others". The obtained data reveal that there were other consequences such as murder, rape, serious bodily injury and others. The percentage of the total number of events shows that in 41% of the performances are the consequences of which 29% include bodily injuries.

Chart 3 *Review of the offence of domestic violence or household in the area of Banja Luka District Attorney's Office*[27]*, in total per year*

Year	The total number of reports	The total number of investigations	Number of orders of dismissal of investigation	Number of suspended investigations	Number of indictments	Number of indictments accepted from court
2010.	153	102	1	32	58	58
2011.	153	109	5	24	81	78
2012.	140	106	7	32	68	64
2013.	241	162	2	58	90	83
Total	**687**	**479**	**15**	**146**	**297**	**283**

Observing the data of Banja Luka District Attorney's Office, for the crime of domestic violence, it is clear that there is a positive trend since th eincrease of 71.49% of this crime is registered in 2013.The data that indicate the quality of the facts contained in the report on commited offences of domestic violence is the relation between numbers of reports and numbers of ongoing investigations.Thus, the 66.6% of all reports belong to initiated investigations in 2010, and 75.7% in 2013, while the percentage of indictments that are accepted from the court 37.9 in 2010, and 34.4 in 2013.

Chart 4 *Review of the court decisions for the area of Banja Luka District Attorney's Office*[28] *for the offence of domestic violence*

Year	Suspension of proceedings	Prison penalty	Fine	Probation	Total	Verdicts of Abandonment	Verdicts of Release	Offence committed in the state of incompetence
2010	2	8	14	47	71	2	1	
2011	3	9	12	42	66	2	1	1
2012	0	12	11	35	58	2	1	0
2013	2	16	11	32	61	0	0	0
Total	7	45	48	156	256	6	3	1

Observing the chapter of court decisions we can detect the qualitative elements of penal policy. Thus, from a total number of 69 verdicts in which the offender was found guilty, prison penalty share 11.5%, while from total of 74 court verdicts, verdicts of abandonment and release share 4%.

26 Ibid.
27 District Attorney's Office Banja Luka, The Answer to the Request for Information, No IT-205/14, 10 October 2014, with attachments Family Law, Official Gazette of Republic of Srpska No 54/2002, 27 August 2002.
28 District Attorney's Office Banja Luka, The Answer to the Request for Information, No IT-205/14, 10 October 2014, with attachments Family Law, Official Gazette of Republic of Srpska No 54/2002, 27 August 2002.

CONCLUSION

The complexity of the crime of domestic violence or family community is reflected through many factors. Multiple social menace and complexity of actions that make this offence are only some of many shades of this crime. One of the key problems in solving and proving this crime is a frequent phenomenon where a passive subject, more precisely a victim, after reporting the crime, invokes the right of a privileged witness refusing to testify and bring up evidence to court.

The phenomenon is that many victims, in the initial stage of the investigation, usually fully describe the incident, ensuring in that way a significant amount of facts that are necessary for the proper procedure, and then later, in the final stage of the investigation suddenly, due to various circumstances, refrain from testifying. Those circumstances are usually the fear of repeated violence, economic dependence, fear of the reaction of the environment, loss of the children and similar things. It is also important to note, as an additional aggravating circumstance in the process of proving the crime, the fact that in most definitions the term *a family member* is matching the definition of *a person that can invoke the right of a privileged witness*. In circumstances in which the victim-witness refuses further cooperation, asserting the right of the privileged witness, the record of the hearing that was made in the preliminary phase of the investigation will be disqualified and will not be used in the process. Since these offences are usually done within a family unit like an apartment, house, or other isolated area, where usually little evidence can be found, it significantly reduces the efficiency in proving the crime, especially in cases with no witnesses. In situations like these, the focus in proving the crime is transferred to other investigative activities that are carried out at the very beginning of the criminal proceeding. Subsequently, the investigation usually relies on a detailed physical examination both of the offender and victim, but the decision of the privileged witness to refuse to testify does not relieve the authorities from prosecuting the offender.

Through interviews with the police officers who work directly on proving and solving domestic criminal acts, we can conclude that presented data with analysis do not provide complete state of reported crimes and misdemeanours of domestic violence or family community. Beside the fact that there is a large dark figure of committed crimes, a significant number of reports having characteristics of domestic violence is being withdrawn by the witnesses, soon after the report or soon after the first phase of the investigation.

In these circumstances, in accordance with the fact that this crime is characterized by a frequent lack of material evidence, the quality of the crime scene investigation is of a great importance. The crime scene investigation has a special significance in determining the material facts.

Analyzing the data given by Banja Luka District Attorney's Office and Public Security Centre of Banja Luka, we can recognize the fact that the CSI of a crime of domestic violence is conducted in 26% of cases. Injuries are present in 41% of cases, of which 29% present light injuries, while 12% belong to the group named other consequences (this group does not include serious consequences such as murder, rape, etc.). Analyzing these indicators, we can conclude that the crime scene investigation is not conducted in sufficient proportion, especially having in mind that the only material evidence that practically makes the basis for the proceeding, can be found only at the crime scene.

On the other hand, aggravating circumstance is that Police and Prosecutor do not keep statistics on investigative actions like physical examinations, search of dwellings and others. That is why we cannot show the statistics of these actions that represent important pieces of an investigation.

Since the light bodily injuries make 29% of all consequences of domestic violence, the question is whether these factors are fixed as material facts and whether they have any evidentiary character for the process. From the personal experience of the author as well as the interviews with criminal inspectors who are engaged in the processing of these crimes it is determined that the crime scene investigation where bodily injuries occurred should be fixed. Additionally, an emergency physician should check an injured person in an authorized institution and make a report, a list of all injuries.

Analyzing the actions that are carried out at the crime scene of the offence of domestic violence, as well as subsequent actions used for documenting the process, we can conclude that the crime scene investigation, as a basic action, is not done every time and that physical examination is not a part of investigative procedure. The consequences of processing of criminal cases in such a way result with reliance on personal, subjective evidence, frequent cancellation of the witnesses who have right to testify, which altogether leads to the lack of evidence and inability to conduct further proceedings.

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THE FAST INSTITUTIONAL REACTION AS THE MOST IMPORTANT PREVENTIVE MEAN IN THE PROCESS OF SUPPRESION OF VIOLENCE ON SPORT FIELDS: THE CASE OF THE REPUBLIC OF MACEDONIA

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Abstract: Sport violence, i.e. violence on sport fields is a phenomenon that generates attention from many aspects. Different subjects in society research and analyze violence, its reasons and consequences. Nowadays violence is getting priority in relation to sport games.

Reaction, which must exist, should not be and stay in the framework of legal defining of the problem. Active participation of more subjects and institutions is needed, so a possibility and sense for preventive activity and awareness is opened. Only in this way a directive influence in decreasing violence will be possible.

Keywords: institutional reaction, participation, subjects, prevention, sport violence, coordination, cooperation.

INTRODUCTION

Violence is a reaction of humans, caused by the influence of many factors[2], among which the dominant ones are the economic, social, cultural and political factors. The fact that violence is the result of so many factors, we could conclude that the solution, i.e. the control, should be found in common reaction of many organs, bodies and institutions, i.e. common interdisciplinary and inter-institutional approach. Such steps will lead to the situation in which all state bodies, organ and institutions will work inside their areas of interest and will help the violence on sport fields decrease to a minimum level.

The paper analyzes the normative specification of violence on sport fields, the possibilities for preventive action and the results of use of possible preventive measures undertaken in Western countries.

NORMATIVE SPECIFICATION OF VIOLENCE ON SPORT FIELDS AND INSTITUTIONAL OBLIGATIONS COMING OUT FROM LEGAL FRAMEWORKS

A modern state has an obligation to define and normatively specify every area of social life, thus showing its citizens what is allowed and what is not, which human actions are acceptable, which are not. The same is with the sport violence.

The Republic of Macedonia from the moment it became an independent country, slowly but surely started to introduce normative regulations which determine human actions in all areas, including the area of sports, where the correct and precise definition of the term violence on sport fields is defined. Although Macedonia was the last from the ex-Yugoslav republics that brought the Law[3] regarding this area, the legislature does not fall behind other republics, especially Serbia and Croatia. These two countries are interesting, because the legal solutions they had and tried to implement were used as an example and solid soil for Macedonian legal solution. Historically seen, Macedonia as a part of the Yugoslavian Federation[4] accepted the determination to fight violence on sport fields. This determination came out from the signing and ratification of the European Convention on Spectator Violence and Misbehavior at Sports Events and in par-

1 blagojcedugal@yahoo.com
2 Ignjatovic, Kriminoloski aspect delikata nasilja u publikaciji "Delikti nasilja – krivicnopravni i kriminoloski aspect", Institut za kriminoloska i socioloska istrazivanja, Beograd, 2002, p.259
3 Закон за спречување на насилството и недостојното однесување на спортските натпревари, Службен весник на Република Македонија, no.89/2014, p.5
4 http://www.slvesnik.com.mk/Issues/AAF7B1701B1A4419B59366AA9CC31B58.pdf

ticular at Football Matches.[5] Even after its independence, Macedonia did not lose that determination and commitment, but continued to act and adopt new policies for the suppression of violence on sport fields. Those new policies are the result of the ratification of the above mentioned European Convention. The new reality and the situation on field culminated in the 1990s when the Council of Europe brought three more Resolutions giving the Convention even stronger and more important place in the law framework. That is why as the most important benefits the Convention gives are:

Prevention - the text underlines the importance of deploying public order resources in stadiums and along the transit routes used by spectators; separating rival groups of supporters; strictly controlling ticket sales; excluding trouble-makers from stadiums and matches; prohibiting the introduction and restricting the sale of alcoholic drinks in stadiums; conducting security checks, particularly for the objects likely to be used for violence; clearly defining responsibilities between organizers and the public authorities; designing football stadia in such a way as to guarantee spectator safety; the development of social and educational measures to prevent violence and racism (develop fan embassies, improve club-supporter relations, promote fan coaching and stewards, etc.)"[6];

Cooperation - the Convention also highlights the importance of co-operation between the sports clubs and police authorities of all countries concerned during the organization of major international sports events in order to identify the possible risks and be able to prevent them. Preparatory meetings for the European Championships and World Cup, as well as evaluation meetings, are organized within the framework of the Convention[7];

Repression - Legal co-operation should allow the identification of trouble-makers and their exclusion from stadiums and matches; the transfer of legal proceedings to the country of origin for sentencing, extradition or the transfer of those found guilty of violence.[8]

The most important benefit of the Convention is the commitment to full cooperation between the members. Article 4 from the Convention (International Cooperation) says that "the Parties shall co-operate closely on the matters covered by this Convention and encourage similar co-operation as appropriate between national sports authorities involved. In advance of international club and representative matches or tournaments, the Parties concerned shall invite their competent authorities, especially the sports organizations, to identify those matches at which violence or misbehavior by spectators is to be feared. Where such a match is identified, the competent authorities of the host country shall arrange consultations between those concerned. Such consultations shall take place as soon as possible and should not be later than two weeks before the match is due to take place, and shall encompass arrangements, measures and precautions to be taken before, during and after the match, including, where necessary, measures additional to those included in this Convention."[9]

Analyzing the Macedonian legal solution which was brought for the first time in 2004, we can conclude that the legislator had an idea to use cooperation between a wider number of bodies and institutions as a tool against sport violence. The fight includes a policy of inter-institutional and interdisciplinary approach and a policy which will minimize violence to the acceptable degree.

Very wrong is the opinion that is a consequence of irrational prejudices and stigmas in public opinion, where the only and direct responsibility is looked and found into the Ministry of Internal Affairs. The Ministry of Internal Affairs is part of the system which should give its own contribution to the suppression and prevention of violence on sport fields. As an institution, maybe, is the most often "pointed with finger", but it is wrong to seek solution in retribution and repression.

Contrary, the legal solution at the moment, specifies, i.e. transmits, part of the responsibility to other institutions, bodies and organs. An example, federations who are organizers of competitions (football, handball, basketball and volleyball) have obligations coming from the legal norms which is expected to be implemented, and used in a way which will help to prevent violence on sport fields. Sport clubs are also part of the system of institutions that have legal rights and obligations, with whose fulfilling they would help in the process of elimination of this phenomenon. A very important obligation for which we can say it is a primary one and which is connected to fan groups[10] is the obligation for direct and close communication with fans.

5 European Convention on Spectator Violence and Misbehavior at Sports Events and in particular at Football Matches; http://conventions.coe.int/Treaty/en/Treaties/Html/120.htm;
6 http://www.coe.int/t/dg4/sport/violence/convention_en.asp
7 Ibid;
8 Ibid;
9 http://www.coe.int/t/dg4/sport/Source/CONV_2009_120_EN.pdf 4
10 Закон за спречување на насилството и недостојното однесување на спортските натпревари (прочистен текст) , член 6, http://www.mvr.gov.mk/Uploads/Zakon%20za%20sprecuvanje%20na%20nasilstvoto%20i%20nedostojnoto%20odnesuvanje%20na%20sportski%20natprevari%20-%20neoficijalen%20precisten%20tekst%20okt.%202010.pdf

ACTS OF SPORT VIOLENCE AND MISBEHAVIOUR AT MACEDONIAN SPORT GAMES

Before we start noting incidents in which sport fans were active participants, we must say that the most serious incidents which ended with detained and injured subjects have happened outside sport arenas.

In 2009, August 15th in Nerezi, Skopje an incident happened the result of which were 4 seriously injured and more than 10 slightly injured sport fans. The incident could have become a starting point for even more serious conflicts between ethnic groups in the capital. Why? Because on the opposite sides were two sport fan groups with different ethnic and religious background.

Very similar incident to the one mentioned above, was the one that happened on February 13th 2011, again in Skopje, on the Kale Fortress. Few days before the incident, politicians from Macedonian and Albanian political parties were having verbal conflicts connected to the construction of the church museum on the Fortress. There were around 500 people on both sides. It is really important to mention how police forces acted during their attempts to stop the incident. Namely, there was a huge lack of coordination between the police officers; the reaction was amateur, and the estimation of number of people, their movement, the level of possibility to escalation. Moreover, if we ignore the fact that sport fans once again were used for political goals, the accent is on a very badly organized and not realized security plan at the starting point where fan groups were gathering.

As the most serious incident that happened in the period 2008 - 2013 is the one from September 30th 2012 during the football match between the clubs Vardar and Pelister in Skopje. Before the incidents that happened on the National Arena Philip II Macedon, a chain of incidents happened outside and before the start of the game. Namely, the guest fan group Ckembari should have been securely conducted by the police from the Railway station to the Arena, but once again police officers did not make a coordinated action. They drove with them through ethnically Albanian part of Skopje, making fans open targets for throwing rocks on them. Many media gave reports on the incident and pointed their fingers to fan groups, not even asking why the police showed their reluctance and incompetence once again.

Furthermore, during the five-year period there were few other more serious incidents, like those between fan groups in Tetovo, then on games between basketball clubs MZT Skopje and Rabotnicki Skopje (the last one was at the end of March 2014). Macedonia maybe does not have frequent incidents on sport fields (which is a good thing), but it is not a country immune to it.

SHORT REVIEW OF PREVENTIVE OBLIGATIONS OF THE MINISTRY OF INTERNAL AFFAIRS, SPORT FEDERATIONS AND SPORT CLUBS

As we have clearer picture of how many and what kind of obligations the above mentioned institutions have, we can make a short overview of the Law on violence on sport fields, from 2004 till the last legal changes in November 2013.

With those last changes, the accent is on preventive measures which should be fulfilled by sport clubs, sport federations and police. Justifiable is the impression that the idea of these legal solution and article is an action of wider participation in processes against sport violence.

Taking into account the fact that through the legal solution, the main role for organizing a sport event is given to a sport club, the legislator begins from the idea that a club can make contact with fan groups and other subjects in an easier and simpler way. Basically it is so because the starting point and access sport club - sport fans is more rational and does not have the weight of stigmatization, in contrast to the direct contact police - sport fans. What is more important is the fact that the communication between the club and the fan groups should be characterized with continuous and constant upgrade.

The obligation regarding security is also given to sport clubs,[11] which have an obligation to establish a warden service, wherein the organizer has a discretionary right to decide whether the wardens will be people employed with the club, whether they will be members of fan groups or whether a security agency will be engaged. Additionally, the organizer must include the police in the process of making security assessment for the game and to name a security commissioner who will be directly concerned with the coordination and communication with police and wardens. The Commissioner is faced with a serious task because of the responsibility given to a person who has at least basic knowledge of organization of sport

11 Закон за спречување на насилството и недостојното однесување на спортските натпревари (прочистен текст) , член 7, http://www.mvr.gov.mk/Uploads/Zakon%20za%20sprecuvanje%20na%20nasilstvoto%20i%20nedostojnoto%20odnesuvanje%20na%20sportski%20natprevari%20-%20neoficijalen%20precisten%20tekst%20okt.%202010.pdf

events, especially for security assessments of every game, a person who is capable and is not limited in communication with other subjects that are directly or indirectly part of the organization and security of the game. The legislator very precisely lists all activities which should be undertaken by every subject. In such a way there will be decreased level of violence on every sport event, there will be possible preventive influence and action that will eliminate all possible influences, factors and acts which have potential to cause a situation of insecurity followed by violence.

However, there is an impression that an active inclusion of other subjects is missing. Those subjects can give (educational or practical) contribution to the process of suppression and prevention of violence and spectators misbehavior on sport fields. Other subjects are institutions from the area of sport and education, as is the Agency for youth and sport, educational institutions, Ministry of Justice, Ministry of Labor and Social Policy, local authorities, etc. It is not a coincidence we mention these institutions. We do that, because we are of the opinion that they can give a lot to finding a solution to decreasing the level of sport violence today. They will open a wider area for reaction, with which a wider maneuver for new policy will be undertaken, a policy that will be comprehensive, multidimensional, with division of responsibilities and obligations.

EXPERIENCES WHICH CAN BE OF HELP: ENGLAND, GERMANY AND THE NETHERLANDS

Very often we are witnesses of the discussions about how action against sport violence should look like; that the English model is the most appropriate and most practical example and that this model has proved its efficiency with best results in its use. Maybe this theory is pushing the English model as the best solution if we go back in time and analyze the situation in the stadiums in England after the 1980s and 1990s.[12] What did England do when suppression and prevention of sport violence are seen through the prism of interest?[13]

England[14] started to use a system of efficient supervision[15] that understands a situation of complete monitoring of the sport arena (stadium), and used it without severe measures, a system of repressive measures directed towards offenders for certain criminal acts. Those severe measures have their own preventive role and function, because their consistent application averts huge part of potential offenders. While we are analyzing the English model, it is inevitable to mention the fact that English clubs have great infrastructural conditions which cannot be an obstacle of a consistent implementation of set goals and allow uninterrupted possibility for successful application of the system of efficient supervision. Compared with Macedonian clubs, the conclusion is that we are far behind England in this area, and that is why we cannot expect the implementation of the policy of efficient supervision, because it would be limited at the beginning. Nevertheless, Macedonia can use the model of police work in Western countries. That is the policy of data exchange, which is an obligation arising from the European Convention, i.e. Recommendation on the use of standard documents for police data exchange (T-RV/917), a system that matches and gives results in the action against violence and misbehavior on sport fields. However, we must have in mind the fact that the implementation of such a policy needs well-trained personnel and the formation of a special force whose one and only obligation and role will be the suppression of sport violence and misbehavior on sport fields.

The example from Germany[16] has preventive target as the English model. The difference is not in the use of English methods from Germany, but the fact that Germany uses the education as a tool of prevention. Namely, the youngest fans are educated for the problem of sport violence, its consequences, thus giving education a chance to be used for affecting young people's awareness of those problems.

12 Hillsboro stadium is the place where 96 people lost their lives in the incident in the Cup game between Liverpool and Nottingham. England is the first country where organized spectator groups were born, but also was the first country which started the process for institutional solution of the problem of violence on sport fields. From there the action was spread through all Europe. Namely, the violence on football matches was not unknown in Germany, Italy, France, Spain, the countries from the Eastern Block and the countries from ex-Yugoslavia. Actually, Europe is the only territory where hooligans compete with one another.

13 The law brought in the time when Margaret Thatcher was the Prime minister was not brought only to cover the area connected to sport fans and hooligans. It was a law more connected with the very bad organization of football matches. The Hillsboro incident was the last of the many mistakes.

14 As an illustration for the proactive working we will mention just a few from the many measures and activities used in England. They are as follows:

- dismantling of the fences in the area for spectators;
- dismantling of the fences which physically are dividing the field from the spectators' area;
- no standing places;
- cameras;
- replacement of the police officers with wardens (club fans) with severely defined role.

15 http://www.legislation.gov.uk/ukpga/1989/37/contents

16 Problemi u primeni propisa namenjenih borbi protiv nasilja i nedolicnog ponasanja na sportskim priredbama, Dejan Suput, Institut za uporedno pravo, Beograd, Zurnal za kriminalistiku i pravo, p.94;

Regarding the policy in the Netherlands[17] on the subject of sport violence, we can say that in this country a serious attention is put on the process of rehabilitation of sentenced hooligans, giving them a second chance for social life. After rehabilitating them, the government, includes them into the process of education of other sport fans who are potential perpetrators of sport violence. Namely, having a sentenced and rehabilitated hooligan as an example, a picture of direct situation will be provided for others. This measure used by the Netherlands has its positive sides, but in Macedonia there is no such development of the fan scene and there is no high number of sentenced hooligans, so they can be part of the educational process after they are rehabilitated.

OBJECTIVE OBSTACLES FOR ENTIRE AND CONSISTENT APPLICATION OF THE LAW AGAINST VIOLENCE AND MISBEHAVIOR ON SPORT FIELDS IN THE REPUBLIC OF MACEDONIA

The above mentioned examples taken from Western countries were not used accidentally. They were analyzed, because we would like to give an example of measures which can be undertaken in our country, using the conditions at this moment.

After Macedonian independence, its authorities brought a decision with consensus which is still existing, i.e. that the place of the Republic of Macedonia is in NATO and the European Union. Exactly this is the goal that forces Macedonia to harmonize its legislation with the European one. Of course, important part for fulfilling these standards is the active action and commitment for decreasing the level of sport violence. In order to fulfill these standards, our country used examples from neighboring countries and even "borrowed" legal solutions from Croatia and Serbia, who are a little in front of us in this area. Saying a little in front of us, means that they have much more experience and maybe they give this problem a bit more attention. The Croatian and Serbian models and legal solutions greatly use the solutions given in the English model of action. Right here is the biggest problem and error of Macedonian legislature in efforts to put an end to the violence on sport fields. It is good to use someone other's policy, when a country builds its own, to compare similar cases and countries, their results and methods of implementation, but it is very wrong to totally "transplant" legal policies and solutions which, of course, in practice lead to problems during the implementation. It is not real to expect that conditions in England can be compared with those in Macedonia; it is also not real to expect to find the English football tradition in Macedonia. Besides, material and financial side is important as well. The resources which Western countries have are more abundant than those in Macedonia and in its institutions. And there are many other reasons forcing us to find out a legal solution that will be a copy of conditions and situation that we have at this moment, the infrastructure we have, the culture of supporting sport clubs we have and the tradition of football in Macedonia.

The first and most important step in changes Macedonia must undertake is to cancel the policy of "high profile" which means to cancel the tactics of physical splitting of fan groups and prevent any contact between them (a policy that for a long time is passed in modern European country). Additionally, in the context of this is the "bang" effect that authorities want to achieve. Actually, in attempts to suppress violence and misbehavior on sport fields, the police undertake incidental and dramatic actions in which excessive force is used, there is no selection of problematic fans and those that are only there, but are not making problems. The key motive for such an action is the idea to impress publicity and show them that authorities undertake measures for suppressing sport violence. We are witnessing that in Macedonia, sport objects and their environment resemble battle fields,[18] militarized zones, i.e. the surroundings are full of police officers, many police vehicles, which has influence on people's awareness and their way of thinking. Often this militarized situation does not have a preventive effect, but opposite reaction and situation. Namely, those moments are influencing a fan's psychology and make him see police officers as enemies. In such moments only a spark can "make fire" in fan groups and a more serious incident can happen.

17 Ibid, p.94;

18 Типичен пример за зголемено присуство на полицијата на еден спортски настан е натпреварот помеѓу фк. Пелистер од Битола и фк. Вардар од Скопје, одигран на 06.03.2013 година во Битола, при што дојде до сериозен инцидент помеѓу навивачите и полицијата, беа повредени голем број на лица и беше предизвикана голема материјална штета https://www.youtube.com/watch?v=8wMBewS8MvU

CONCLUSION

As an annex to a new and better legal solution, which will be functional and will not give authorities more serious difficulties in implementing it, a solution directed towards timely and exact institutional responsibility and reaction, solution which means bigger efficiency and effectiveness in the action against violence and misbehavior on sport fields (individual and collective)[19], we propose activities which should be undertaken in future, by few subjects. They are:

- **Authorities should use solutions which are easier to be used in practice, which do not ask for serious conditions and standards, and which, in the end, will lead to a better situation.**

Macedonia can include other bodies and institutions and use the German model of education of sport fans with just a little intervention as regards the personnel potential. That kind of education is an obligation derived from the Macedonian Law against violence and misbehavior on sport fields, and refers to the communication between sport clubs and fans. In that process of education, local authorities should be included. Their participation is important because different regions have different problems, and local authorities know the problems of their citizens.

- **A faster reaction of other institutions and bodies is necessary.**

The National Coordinative Body for the suppression of violence and misbehavior on sport fields should be included in the process of prevention, by using educational systems to influence the citizens' awareness (practically, not only declarative including primary and secondary schools in the process of prevention), including an active contribution of the Ministry of labor and social policy, which would give easier and less painful rehabilitation of sentenced violent sport fans, continuous monitoring of legal norms and their addition and change, that will help for decreasing the violence (an obligation for the Ministry of Justice).

- **The system in Macedonia needs to be strong and consistent in application of norms and rules that are in force.**

Steps must be taken and people should not be amnestied from their responsibility for violent behavior on sport fields, using political influences.

- **Secure public support for undertaken steps in actions against violence and misbehavior on sport fields.**

The support should not be based on stigma and generalization of all sport fans, and all sport spectators, but on public debate and continuous education of public for the legal measures and sanctions.

- **Continuous debate on this problem, enriched with the presence of relevant institutions, associations, so they can give their support and help in the process of eliminating sport violence;**
- **Macedonia to start using services of the so-called spotters;[20]**

This idea of using spotters is an idea which is originating from the English model of solving the problems connected with sport violence. Namely, by using spotters, authorities collect data on fans, groups that are followed, problems that can be expected. Spotters mandatorily are connected with sport clubs and through them are contacting fans and collect information that can be used in the process of decreasing the level of sport violence and misbehavior and their prevention.

- **Data collected by spotters to be gathered and classified at one place, i.e. forming National football and sport data center;**

The idea of forming such a center, where collecting and analyzing data will take place, is an idea coming from England where it is already successfully in use. Using spotters, English authorities collect data on the fans' movement, their number, their modus of communication, their plans (especially plans for travel on guest sport fields) and based on such analysis, security plans are ready and undertaken. That is why security policies and their practical realization are easier and viable when a number of data is used. Using this conclusion as a starting point, Macedonian authorities should start thinking to use, form such a center and realize the idea. It is correct that such an intervention needs financial resources, maybe personnel equipping, but final results are positive. The most important acquisition from the successful functioning of the National football and sport data center (direct or indirect) and all those institutions which are part of the organization of sport games (direct or indirect) is the possibility of preventive actions and reactions. Any preventive action and its results will be higher and with higher value than any repressive action, because the influence of repression has instant effects while prevention has wider influence, the effect is more on people and the action does not have only instant effect, since it is a continuous process. Forming such a center will help Macedonia to keep pace with countries from Western Europe, i.e. countries working on preventive activities and policies in suppression of violence and misbehavior on sport fields. With such

19 M. Kovac, O oblicima navijackih grupa koje vrse nasilje na sportskim takmicenjima – Nasilje u sportu – huliganizam kao oblik nasilja sportske publike, Zbornik Instituta za kriminoloska i socioloska istrazivanja, no. 1-2/2005, p.357

20 http://www.northumbria.police.uk/advice_and_information/eventsdemos/football/spotters/index.asp

actions, Macedonia will be a country where legal solutions and repressive measures contained in that Law will be used as ultima ratio.

It will be wrong if Macedonia does not "go beyond" the legal solution, police reaction, sport clubs actions, etc. A policy of synergy of all bodies and institutions, and togetherness in reaction should be built for the successful implementation of the Law and decreasing the level of sport violence. The absence of institutional fight means we should not expect a successful tale. Maybe the severe legal solutions sometimes give momentary results; strategies in long terms must offer other conditions and possibilities, and other methods of prevention.

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Topic II

POLICE ORGANIZATION STRUCTURE AND FUNCTIONING

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POLICE – SERVICE OF CITIZENS IN DEMOCRATIC SOCIETY WITH SPECIAL REFERENCE TO THE REPUBLIC OF MACEDONIA

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Abstract: According to Article 2, paragraph 1 of the Constitution of Republic of Macedonia, the Republic sovereignty derives from the citizens and belongs to the citizens. If sovereignty stems from the citizens and belongs to them, then the state bodies of legislative, executive and judicial powers derive from citizens and belong to them. Because they belong to the citizens they should serve them. That is the essence of belonging to the sovereignty of citizens. Axiologically speaking, if something belongs to someone, it is his, and it should serve him. Therefore, if the state authority bodies belong to citizens, they should serve the citizens to meet their needs and achieve their goals.

In a democratic society the bodies of internal affairs, which the police belong to, are the citizens' bodies. As organs of the citizens, they are established for them, and therefore should serve them. If they serve the people, they are their service.

The bureaucratic distancing of the government from the citizens is alien in democratic society. In it, power is of citizens and for citizens. That is the essence of political service role of the government in relation to the citizens, and also, of the service role of the police authority.

Starting from the constitutional provisions for the service role of government in the state, the system of bodies of internal affairs and police is legally regulated in a way that will enable efficient and effective service to citizens. The police, as part of the Ministry of Interior, is responsible for the maintenance of public order and peace in society and the security of citizens is in constant contact with them. In order to put this contact into function of the efficient performance of police work, Macedonian police established the principle Community policingthat enables establishment of effective relationships between Police and public,and also cooperation of police with other government bodies, with local government units, civil associations and citizens.

But, in practice, there is noticeable deviation from normative to the actual regarding police behavior towards citizens, which negatively affects the efficiency of the police service to the citizens. Seen through the prism of the dialectical principle of development, relations between police and people are moving in a positive direction, which is a guarantee for realization of Macedonian police efforts in the future to turn into an efficient and effective service to protect public order and safety of Macedonian citizens.

Keywords: society, police, service, people, cooperation.

INTRODUCTION

The history of the service role of the police in a democratic society begins in 1829 when, on the initiative of Sir Robert Peel (Interior Minister of the United Kingdom of Great Britain and Northern Ireland), the first law of police in democratic society was passed. This law specifically emphasized the service role of the police in relation to the citizens reflected in the efforts of the legislator to replace repressive police actions with preventive ones. The legislator advocated approval of police actions by the public, efforts of the police to gain public trust, cooperation with public in order to provide law enforcement and reduce the need for the use of force by the police or to reduce its use to the necessary required level; maintaining a relationship with the public and the efficiency of the police, which would eliminate crime and disorder in society[3].

Further democratization of social relations in Western countries has lead to a strengthening of the role of service nationals authority bodies, including the police. The citizens of Western democracies are increas-

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3 See: The Group of Authors, The work of the police in federation Bosnia and Herzegovina, Handbook, Sarajevo, 2010, p.18-19.

ingly becoming aware that budget money to finance the activities of state bodies is theirs, allocated to taxes and fees that they pay to the state and, given that, they want the money to be spent wisely, to meet their social needs and interests. This will only be achieved if service role of these bodies is strenghtened to the maximum.

In a modern democratic state middle class citizens have a more important role as they are the most numerous. It is increasingly turning into a state of citizens. There sovereignty stems from the citizens and belongs to the citizens. With this in mind, every citizen should feel responsible for the state, because it is his country. Consequently, if citizens are asked to feel responsible for the state, then the organs and institutions of the state are required to be, as far as possible, in the service of citizens. Accordingly, the police, as an institution of the state, must take what is necessary to protect citizens from crime and other threats against their lives and property.

In modern civil society, the police must not be content with the response to crimes and accidents. Rather, it must seek and discover the causes that can lead to, or have already led to crime and accidents, to be recognized and determined. Once they do it, the police have to act preventively and embark upon a long-term endeavor to reduce and, preferably, to remove them.

Due to the complexity of modern life, characterized by numerous visible and invisible causal connections, prevention of crime and other negative social phenomena that threaten the security of citizens, often cannot be accomplished solely by engagement of police, but by joint action of police and citizens as individuals or organized in various social institutions. Therefore, the need of finding new forms of cooperation and new tools and ways of working in order to reduce slippage of the safety of citizens, so they get rid of fears and restrictions on freedom of life. But, citizens cannot be passive observers of the situation and wait by the police, on the contrary, they are to engage in various forms and methods of cooperation in to actively participate in and thus contribute to the support of the police and other security authorities in carrying out their statutory obligations, to maintain law and order in society, which in turn leads directly to achieving the security of citizens.

Solving complex problems of security, in terms of democratic society and tweak requests from citizens for service-oriented and accountable administration in the seventies of the last century, imposed the need for greater police presence on the ground and closer cooperation with citizens. As a result, the idea of community policing appeared and began to develop. With the development of policing in the community, closer ties were established between police and citizens. Those links have contributed to increase citizens' trust in the police, to improve the sense of security of the citizens, and of course, to intensify cooperation between the police and the citizens, which ultimately increases the efficiency of policing.

The Republic of Macedonia was created on August 2, 1944 as a federal unit of the former Yugoslavia. As such, it existed until September 8, 1991 when, following a referendum on independence from the Yugoslav federation, it seceded and declared itself an independent state.

The development of the service role of the police in the country started from its formation in late 1944. On December 12, 1944, based on the decision of the National Committee for the Liberation of Yugoslavia, departments of the interior were formed in future federal units of the Yugoslav federation. These departments developed the internal affairs bodies including the Office of People's Militia[4] (police). The evolution of the service role of the police went from a close relationship with the authorities and a high degree of separation from the citizens in the period of administrative socialism (1945 - 1952) to a high level of connection with citizens, following the adoption of the Constitution of the SFRY in 1974 and the Constitution of SRM of the same year.

The Constitution of 1974 established a high degree of decentralization of state power in a number of powers transferred from federal authorities in the republics and autonomous provinces bodies. In the republics and autonomous provinces, a number of powers were transferred from federal, to the republic's or provincial authorities and to the bodies of smaller socio-political communities (local government) as the cities and municipalities. Secretaries of Interior were formed in municipalities and were immediately responsible to the municipality executive councils and municipal assemblies. This decentralization meant maximum approximation of the Interior Ministry and the People's Militia (police) to the citizens. This was especially evident in the late seventies and throughout the eighties of the last century, when the fully developed system of social self –defense that required active relationship of the citizen to the protection of social values, cooperation with police authorities and other control and protection institutions of society. At that time sectoral or regional militia (police) daily patrolled the streets of Macedonian cities and maintained close contacts with citizens and informed them on all developments in the interest of public security. That provided prevention of crime and other threats to the security of citizens. Working in area for a long period they become an integral part of the home microenvironment thereby producing the prerequisites for successfully dealing with security issues. But, despite all, efforts to approache the police to citizens, the public,

4 Official name of the police at that time was "people's militia", with an intention to make distinction between the police in capitalist states and the police of the then-socialist states.

to a certain extent, treated police as an institution for the protection of the regime and its values, for which significantly the police had sgnificant contribution, having failed to approached citizens and fully transform into a real civil service to protect the security of society.

Following the proclamation of independence of the Republic of Macedonia, there was a high degree of centralization of power, including the police authorities. The spoils system[5] of filling the state authorities with staff that started being applied with the introduction of multi-party system of political organization, led to the influx of persons that were not enough professional and morally suitable to carry out honest and responsible police duties. This was especially evident after the signing of the Ohrid Framework Agreement that formally put an end to the nine-month dirty war between Macedonian security forces and units of the so-called National Liberation Army (Albanian). Police started being politicized. It largely turned into a service for protection of the interests of political ruling structures. A number of morally deviant officers who were in close cooperation with certain criminal groups were employed in the police which resulted in a loss of reputation and the citizens' trust in the police service.

But, over time, under influenceof the democratic trends in close regional and wider European environment started a process to overcome pathological conditions in the police force and transform it from the service of the ruling structures in the service of citizens. These processes are particularly intensified in the early years of the new millennium, few years after the end of armed conflict in the country and the signing of the Ohrid Framework Agreement.

Reforms of the police then started including: creating own capacities to address new forms of crime and strengthening of these facilities; improving the efficiency of policing; expanding the scope of policing towards servicing the citizens; accountability for performance; establishment of cooperative structures with parallel international organizations and institutions; meet democratic standards of professionalism and ethics[6].

One of the strategic goals of the reforms is the development of the police as a service to citizens. This determination will be achieved by introducing a system of Community Policing whose standing point is joint action of the police and citizens in solving security problems in society.

Boosted priority in the Strategic Plan of the Ministry of Interior of the Republic of Macedonia[7] is to strengthen the confidence of all ethnic communities in policing through the development of partnerships between citizens and police, developed transparent system of public relations and promotion of Community Policing, as a principle of policing. With introduction of the system of policing in the community, the police style of incident police working should be replaced with a new approach oriented to problems, or in other words, reactive approach and traditional policing should be replaced with a proactive way of solving problems in which the basis will be orientation of police towards the provision of police services to the citizens or the community, where the community will be consumer of services and police services provider amid intense cooperation in solving rised security problems.

THE EXERCISE OF THE SERVICE ROLE OF THE POLICE IN A DEMOCRATIC SOCIETY

In a democratic society, the Ministries ofInterior, that the police belongs to, are citizens bodies at their service.

For democratic society,the bureaucratic distancing of the government from citizensis strange. In it,the power is from the citizens and to the citizens. That is the political essence of service role of government in relation to the citizens, and of course the service role of the police power[8].

Basic settings for the realization of the service role of the police in a democratic society are contained in the Code of Conduct of the Persons Responsible for Applying the Law passed by the General Assembly of the United Nations with Resolution number 34/169 from 17 December 1979[9].

According to Article 1 of the Code , policeman,as person responsible for applying the law, must always perform the task imposed by the law, so that they will serve the community and protect all persons against illegal acts in accordance with the high degree of responsibility required by their profession. According to the Code (Comment in th mentioned provision), the term service to the community means, above all,

5 From the Englishword 'spoil'. In this specific case it is about the so called spoils system according to which the ruling structures fill the working positions of state authority bodies from their party members or followers not taking into consideration their expert qualifications and capabilities. See more: Mc Lean1, Mc Milan A.: Concise Dictionary of Politics, Oxford University Press, 2003, p. 508

6 See: Dojchinovska R. Basics of preventive police working, Ministry of Interior, Skopje, 2013, p.7

7 Dojchinoska R: Ibid, p.7

8 According to Article 2 of the Constitution of Republic of Macedonia, in Republic of Macedonia the sovereignty stems from the citizens and belongs to the citizens.

9 Jankuloski Z: Human Rights, Fund Open Society of Republic of Macedonia, Skopje, 1993, p.166-175.

the assistance given to members of the community to whom, in extraordinary circumstances of personal, economic, social or other nature, need to be provided immediate help. This provision of the Code covers all acts of violence and robbery and other crimes, as well as all acts prohibited by criminal law. Moreover, this provision may apply to offenses committed by persons who may be criminally responsible (accountable persons).

The grammar, logic and teleologically interpretation of this provision leadsto the conclusion that follows. Officers serve the community. One who serves someone is in service of him. The community consists of people - citizens as individuals or as phisical personsorganized in groupsas legal entities to achieve certain common objectives, which are also legal entities in legal relations. Accordingly, the police as a publicand as a social institution, serve the community and serve the citizens. The rest of the sentence "and protect all persons from illegal actions" confirms our interpretation. So,policeman will protect all persons as individuals and as a members of legal entities. Furthermore, police officers or police protect against unlawful actions, means protecting the publicorder established by law, or in other words, actions that do not fit in that order and law. Any act that does not fit in the law and order established by law violates safety, or the feeling of security of citizens, or briefly, that violates the security of citizens.

Any breach of safety, the security of the citizen from his personal point of view, is an emergency. If someone steals somebody, if he cuts the road in traffic and brings his life and his property (vehicle) in danger, if he damages his property and so on, brings him in emergency regarding other citizens to whom this did not happen. Given that,he is in a state of emergency, he needs help to get out of this circumstance. Police is one that will give him help and, by giving it, it will serve to him.

According to Article 2 of the Code, in the performance of their task the persons who are responsible for applying the law (regardless of whether they are appointed or elected and who perform police authorities -comment), -police officers must respect and protect human dignity and defend and protect the fundamental rights of every individual. Human dignity is a set of personal values of man as an individual that he has the right to keep and cherish. Most closely associated with personal values are basic human rights, such as: the right to life, the right to physical and moral integrity, the right to personal and private property in order to earn for living etc. The basic human right is the right to life. Other human rights are in function of exercising this right. Only a live person can have dignity and rights for its protection, only he has the right to physical and moral integrity, only he has the right to property, etc.

Respect and protection of human dignity and defending and protecting the fundamental rights of every individual imposes the need for close cooperation between the police officers and the citizens whose rights they protects. It means establishing and nurturing relationships of mutual trust and respect, because itcan to cooperateonly with somebody who is respected. Respected person is one who has personal values or dignity. Therefore, servising of citizens by the police is the dialectical unity of the activities of providing services to citizens aimed at protection of their security as a set of rights guaranteed by law and the activities of cooperation with citizens as users of services.

Teleological viewed, cooperation means working together to achieve a particular goal. In this particular case, the cooperation of the police and the citizens includes a set of joint actions aimed at achieving the highest degree of law and order in society, or in other words, the highest level of security of the citizens as the ultimate goal of community policing. Cooperation, as working together to achieve this goal, means mutual provision of services between the police and citizens. In addition, Police provides citizens with all services aimed at protecting their safety[10], and citizens provide information to the police on all phenomena that can lead or have led to the disruption of security on the ground. They make it through formal and informal contacts. These contacts allow citizens to get to know their local police service and police officers to gain more knowledge about their local community. Information can be exchanged through contacts between police and citizens and their associations, patrolling, planned and organized meetings, through surveys and other means. In a circumstances of developed system of citizensservicing supported by mutual cooperation, mutual trust and respect between citizens and police isstrengthening. In such circumstances, citizens expect a professional and quality service, with devoted attention to the flow of information between them and the police with great significance on feedback. They also expect a visible, accessible and compassionate police dedicated to solving the problems of the local community in an efficient and effective manner, and police expect respect, trust and willingness for cooperation from citizens.

One of the most important duties of the police in a democratic society is to ensure peace and tranquility in the community in order that democratic, economic, social and other processes in the society will take place in a legal and socially acceptable way. But, security is a very complex social phenomenon that can not be provided without active participation of all members of the community. On this theoretical setting is

10 See: Talijan M., Ristovic S.: Visions on reform and development of modern Serbian police, Proceedings from international scientific conference 'Reforms of the security sector in the Republic of Macedonia and their influence in combating criminality, European University, Skopje, p.163.

based the transforming cooperation between the police and citizens in a new dimension, a new philosophy of police to citizens, new way of policing called community policing.

Community policing is based on theoretical standpoint imposed by the practice according to which the contemporary challenges facing police demand it to offer comprehensive service to citizens who will be proactive and reactive, at the same time. In community policing, police officers are more proactive than reactive, because through it and over it will be much easier to recognize and provide for the security problems of the community, which is essential for their prevention or for their elimination, if they already happened. This is due to the intensive and comprehensive cooperation between the police as provider of the service role and citizens as consumers of the services of the police that are not a passive subject of this social relationship, but partners in recognizing and solving problems.

THE EXERCISE OF THE SERVICE ROLE OF THE POLICE IN THE REPUBLIC OF MACEDONIA

Service role of the police of the Republic of Macedonia is accomplished by performing police works. According to the Law on Police (Article 5)[11] Macedonian police performs the following police duties: protection of life, personal safety and property of citizens; protection of the human rights and freedoms of citizens guaranteed by the Constitution, laws and ratified international agreements; prevention of committing crimes and misdemeanors, detection and apprehension of the perpetrators and taking other measures specified by law for prosecution of offenders; identifying and searching for direct and indirect economic benefit gained by committing a felony; maintenance of public order; regulation and control of road traffic; control of movement and residence of foreigners; border controls and border surveillance; aid and protection to citizens in case of urgent need; securing certain persons and facilities and other things prescribed by law.

Moreover, police provides assistance to state agencies, municipalities and the City of Skopje, the legal entities and physical persons in saving people and property from natural and other disasters; provides assistance for implementing an executive decision, if when enforcing it, the competent state authority or those which are authorized by law to carry out the execution, encounter physical resistance or such resistance can reasonably be expected; for providing transportation of explosive materials, emergency transportation and escort of certain goods, etc.) and for providing transportation of money and other valuable items, or items of value; inform the public about issues of its competence; provides information and data to citizens, public authorities, public companies and other legal entities on matters within its scope, for which they are directly interested.

The performance of police work for the citizens and their associations cannot be immagined without the cooperation of the police with them. So, the police cooperates with citizens, government agencies, associations and other legal entities for the prevention or detection of crimes and offenses; with bodies of the municipalities and the City of Skopje on issues relating to public safety and the safety of road traffic.

In order to perform cooperation and strengthen influence of the public in the police work, advisory and coordinating bodies (councils and committees) can be created, with aim to build common recommendations to improve public safety in the municipality and the City of Skopje, building trust and partnership in preventing occurrences affecting safety.

These statutory provisions contained in the Law on Police of the Republic of Macedonia is based on the community policing.

In order for the police to colaborate with citizens, it should be composed of morallyimpeccablemembers. The citizen cooperates with a person who is morally pure, because heexpectto receive protection from him.Unfortunately, many members of the Macedonian police are not graced by the epithet of moral clarity, not to mention the moral impeccability. Indicative of this is the frequent occurrences of involvement of police officers in various unlawful activities, such as: accepting bribes, theft, criminal assistance in the execution of a crime, abuse of duty and so on[12]. In 2013 over 1584 cases of misuse of power and abuse of power by officials from the Ministry of Interior[13] were detected. Thus, almost every seventh police officer over-

11 Consolidated text, electronic edition of MoI, Skopje, March, 2014.

12 According to information of the Ministry of Interior given on their web page on 18 January 2015, only in 5 days from 12 – 16 January 8 disciplinary acts were passed for policeman disciplinary sanctions: the first one acted against laws and rules of the Ministry, the second used the service vehicle for private needs, the third behaved inappropriately while securing football match, the fourth did not take measures for finding of stolen vehicle, finding and apprehending of the perpetrator and did not report it on time to the competent prosecution office, the fifth did not act upon requests of competent prosecution office and did not submit expertize reports on time, the sixth when examined was found a presence of marihuana, the seventh committed an act that was violation of public law and order and the eight was sleeping on duty.

13 According to data given in the report of the Department for internal control and and professional standards on 2nd February 2014, this Department during 2013 undertook measures for examining 1,584 cases for exceeding authorization and misuse of duty and authorization of officials from MoI, against 1,644 in 2012, that was slight reduce of cases for 3.6% compared to 2012. There was increased

stepped their official authority or abused a position that is concerning and frightening. In addition, in 2013 the number of written complaints that citizens submited for mismanagement of police officers increased by 9.4% when compared with the previous 2012. Police force that has such policemen cannot be an effective service of the citizens, because the citizens do not want to cooperate with them, and are afraid to cooperate with other police officers who are responsible and honest, if they do not know them personally as honest, conscientious and responsible people.

The reason for the infiltration of morally discredited police officers in the police ranks undoubtedly lies in the legal provisions of Article 95 of the Law on Police from 2006 that did not include restricting employment of police officers under convictions for crimes against the constitutional order and security of the Republic Macedonia, against holding the rights and freedoms of man and citizen, the armed forces of the Republic of Macedonia, duty, major crimes against life, against property or crimes committed out of cupidity reasons or because against the job applicant there are criminal proceedings for any of these crimes. The only limit to the employment of candidates for police officers in the police, in terms of convictions, refered to not having a final decision of court order prohibiting the performance of a profession, activity or duty during such a measure. Identical provisions regarding empoyment conditions in the Ministry of Interior, was in the Law on Internal Affairs in 2006. Interpreting these provisions, without exaggeration, we can conclude that employee of the Ministry of Interior, and of course the police, can be citizen of the Republic of Macedonia who has committed serious crimes on parole in court case, with a final decision not imposed a ban on performing profession, activity or duty. This means that a candidate for a police officer, without exaggeration, could be a murderer[14], robber, rapist, pedophile, gang member, participant in trafficking or illicit drugs trafficking etc. Such officers are not creators and protectors of security and freedom, but rather triggers of fear and non-freedom. Creators and guardians of the security and freedom of citizens can only be highly professional, psychophysically healthy and morally clean police officers. They will be trusted by citizens and citizens will adress them for assistance and cooperation.

Subsequent amendments to the Law on Police involved inserting a provision in Article 95 ensuring that, among other requirements for employment in the police, there is a condition to prove that there is no security risk in hiring a person - candidate for the police service. The Police Law does not define the term "security risk". This term is defined by the provision of Article 3, paragraph 4 of the Law on Internal Affairs as "risk of a security breach in the performance of work under the jurisdiction of the Ministry." This definition of security risk is obviously aimed at protecting of the Ministry, not at protecting the citizens from morally inappropriate police officers and it leaves broad space for free evaluation of those who decide on the employment of each specific candidate, which in turn leaves space for the candidates who are not eligible to perform honest and accountable police service to be received in the police ranks in the future.

With this on mind, there is no doubt that the Law on Police should incorporate restrictions on employment in the police force contained in the provisions of Article 48 of the Law on Internal Affairs from 1995[15]. The provisions of paragraph 1 of this article, along with the special conditions for employment in the police force was stipulated that a candidate for a police officer was not to be convicted of a crime against the constitutional order and security of the Republic of Macedonia, against the economy, freedoms and human rights,freedom and rights of citizens, against armed forces of the Republic of Macedonia, duty, major crimes against life, property or crime committed out of cupidity avarice; and condition that against him there are not criminal proceedings for any of these crimes.

For the efficiency of service to citizens in the protection of their security and freedom of particular importance is the cooperation with them within the system CommunityPolicing. Consistent implementation of this system involves close relationships between police and citizens and therefore effective collaboration with other government agencies, local government units, associations and individuals citizens.

Effective cooperation with the police implies existence of a high degree of trust in it. The above mentioned pathological phenomena in Macedonian police had very negative impact on the development of trust between citizens and police. In addition to this point are the data of a project called "Public Opinion Research for policing" conducted by the Ministry of Interior of the Republic of Macedonia in cooperation with the OSCE. According to the report on the implementation of the project given by the Interior Minister

number of complaints by citizens for non- appropriate work of police officials. In 2013, 652 complaints by citizens were received (596 in 2012), (21 in electronic form), so there was increase of 9.4 %compared to the same period in 2012. Slight increase was spotted with verbally submitted complaints 352 (346), where the citizens complain on certain irregularities in work of mainly police officers. There was 69% increase of received anonymous complaints 108 (64), where citizens point to certain irregularities of MoI employees, and for various reasons do not reveal their identity.

14 In the beginning of June 2011, a member of the special police unit 'Tigers', that was on duty securing the solemn lodge where the prime minister and other ministers were sitting on the occasion of celebrating the victory at parliamentary elections, beat to death 22-year- old Martin Neshoski who, as a follower of the winning party, overwhelmed by the victory, attempted to climb the solemn lodge, but after being warned, gave up. After that the policeman started chasing him, and when he caught him he caused him grave body injuries, that were fatal for the young man. The authorities tried to cover up this case. But after a series of protests by angry citizens, criminal proceedings were instituted against the officer (known as being violent in his neighborhood) for an offense of murder and he was sentenced to prison. (See Libertas, Internet edition of 06.06.2014).

15 Official Gazette of RM, No. 19/95.

Gordana Jankulovska at the end of 2014,51.5% [16]of citizens during the 2014 expressed pleasure of police work. However, this data shows that 48.5%, or almost half of the population stillis not satisfied with the work of the police. This means that they do not trust the police.

The minister Jankulovska additionaly, in the report, states that "from 2008, after the measured data, the percentage of people who are satisfied with policing has increased by nearly 20 percent." From this data we can conclude that in 2008 only around 30% of citizens were satisfied with the work of the police, that they had confidence in it. Therefore, before 2008 the situation in terms of public trust in the police have been overwhelming. These data do not speak well of the service placement of the Macedonian police regarding the citizens.

The minister Jankulovska obviously was right when concluded that "The positive trend of increasing citizens' satisfaction with police work is increasing, and this is the most important reason why we exist as a service ... Although in the last two years we have noted a small increase of about 2%, we managed to cross the line of 50%."

The small increase in the percentage of citizens who are satisfied with the work of the police, without a doubt, is the result of frequent confrontations of the state authorities with citizens that led to numerous expressions of dissatisfaction in the form of mass meetings in the Parliament and Government. Police was deployed in first line to prevent the conversion of such expressions of discontent in major disruption of public order and security of citizens. In this context, the announced changes in the Law on Police, which will allow the police to use rubber bullets, water cannons and chemical anti disgruntled citizens, are not in favor of increasing the rating of the Macedonian police in the eyes of citizens and their trust in it.

The rating of the Macedonian police in the eyes of the Macedonian citizens will be undoubtedly increaseed by the consistent implementation of the system of community policing.

CommunityPolicing as a philosophy of behaviour of police to citizens or, more precisely, as a system of moral norms for work of police officers which is prescribed by the Code of Police Ethics[17]. To the provisions of the Code can be noted that, in the list of entities that cooperate with the police, citizens are on the last place. Police is a service of the citizens. All other subjects of cooperation listed in the code operates in the service of citizens. These are bodies and organizations from citizens to citizens, and themselves aremade up of citizens, which is a notorious fact. In civil society, the citizen is a subject number one - persona prima. The society belongs to him. His are all social institutions - state and non-state, because they are meant to serve him, his interests and needs. Therefore, any puttingof a citizen on a second or third term is contrary to the principles of civil society and civil democracy.

Service placement of police regarding the protection of security and freedom of citizens imposes a need for daily presence of police officers on the ground. This will be achieved by restoring the regional police officers who will always be known and available to citizens. Past experience shows that regional police officers were effective in the prevention of crime, and thus, to preserve the security and freedom of citizens. The policemen, with its constant presence on the ground, acts preemptively. Citizens can very easily and quickly address him if they notice something suspicious. He knows the area and its people on it, so, of course, those who are prone to criminal behavior. He is able to monitor their movement and their actions. On the other hand, citizens know him. He is their protector and friend. Realizing and accepting him as such, they are in relation to him, and they appear in the role of a kind of intelligence servicefor everything suspicious they will notice on the ground.

Inspectors or prevention officers are not present on the ground although, according to the statements of authorities in the Ministry of Interior, they should be present. But,even if they are present, the name "preventioninspectors " associates static presence of those police officers, officers separated from the people who follow the situation more than actively working on the ground. Their role is only prevention,which is good. But the role of the local police officer is preventive enforcement that is even better for security and freedom of citizens. Present on the ground he prevents, but if it is necessary, he is active in detecting and capturing perpetrators of crimes. He will be effective, if he works with citizens. He will cooperate if he is good and honorable, dignified and if aware of the extraordinary importance of his work in the protection of law and order, security and tranquility of citizens. The presence of police officers on the ground releases honest citizens and scares criminals.

The local police officer is a model of an officer that is most responsive to the system of communitypolicing. To be efficient and effective, he needs to know very well the area of operations. Of course, one of the main ways of working of this officers in terms of community policing is patrolling in pedestrian patrols. Given the multi-ethnic composition of the population of the Republic of Macedonia, pedestrian patrols should be of mixed composition. They must, in addition to Macedonians, include officers from other communities that are numerically dominant in certain areas of the territory of the Republic. It will contribute to strengthening the confidence of members of ethnic minorities in the police. Moving on the ground in the area that has been assigned, the officer creates a climate of trust between citizens and police.

16 See: www.vesti.mk, title: Citizens have more and more confidence in police, from 29 December 2014

17 See Article 18 of the Code on Police Ethics (Official Gazette of R.M., No.72/2007).

INSTEAD OF CONCLUSION

Invisible and omnipresent police is characteristic of a police state. Features of a civil democratic state is a police force that is visible, recognizable, uniformed, which is with the citizens and that, as their service, protects and assists the citizens in exercising their right to security.

As a service to the citizens in a democratic society, the police develop and implement activities according to the needs of citizens and the state, and in particular, assist those members of the community who are in need of immediate help. It must meet the needs of all citizens in society, regardless of their ethnic and social status and pursue timely servicing in equal and impartial manner. Through its activities, it should be part of the joint efforts of society to promote legal protection and a sense of security.

With this in mind, the competent authorities of the state government of the Republic of Macedonia, especially the Ministry of Interior, should take the necessary personnel, organizational, educational and other measures to restore the dignity and reputation of the police officers, and thus, of the police as a social institution. Their vocation is responsible and dangerous. Therefore, only checked and highly moral people should join it. For quality and responsibility in their work, they should be rewarded, that additionally will motivate them to perform their official duties conscientiously and responsibly and reduce the reasons for possibly corrupted behavior.

With The Law on Internal Affairs and Law on Policeis established legal framework of the system of internal affairs which should enable efficient and effective service to citizens. The police, as part of the Interior, responsible for the maintenance of public order and peace in society and the security of citizens, according to these laws, need to be in constant contact with them. If this contact is to be put into operation, the efficient performance of police work in the Macedonian police is based on the principle of Community Policing which allows to establish effective relationships between the police and public and along with it, effective police cooperation with government bodies, with local government units, civil associations and citizens.

But, as we have see, in practice there appeared a noticeable deviation from the actual state and normative regulation regarding police behavior towards citizens, which negatively affects the efficiency of the police service to the citizens. Ministry of Internal Affairs of the Republic of Macedonia should constantly monitor these appears to take measures to eliminate them. The Ministry in the frameworks of implementation of the system Community Policing, takes such measures. As a result of these measures the relationship between police and people is moving in a positive direction, which is a guarantee to deliver the Macedonian police efforts in the future to turninto an efficient service to the citizens to preserve internal order and peace in the society and safety of the citizens.

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CERTAIN ASPECTS OF PROVIDING USE OF POLICE UNITS IN ACTIONS OF PROTECTION AND RESCUING IN CASE OF NATURAL DISASTERS[1]

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Abstract: Police officers represent significant and very respectable force of the system for protection and rescue of people, material and cultural values from consequences caused by natural disasters. Effectiveness and efficiency of police forces depend on various factors, such as degree of abruptness, type, scale, intensity, phase and consequences of natural disaster, quality of training and equipping police officers, availability of response action plans and stable financial resources. However, experiences of the police in protection and rescue actions during the floods in May 2014, led to importance of exploring visibly present but not sufficiently explained theoretical aspects of the use of police units during natural disasters of catastrophic proportions.

Regarding this, the paper elaborates the issues concerning organization and functioning of telecommunications and geotopographic ensuring use of police units in actions of protection and rescue during catastrophic floods on examples from Obrenovac and Šabac. At the end of the paper, the concrete suggestions for improving the treated issues are given.

Keywords: functioning of police organization, natural disasters, protection and rescue, telecommunication security, geotopographic security.

INTRODUCTION

During natural disasters police faces unstable, dangerous situations that can endanger a large number of citizens. The occurrence of a natural disaster with catastrophic consequences can cause great human and material losses but it does not change the main social role of the police – both the government and citizens expect the police to continue to maintain public order. In addition to its primary role, the police must protect lives and property of citizens, conduct search for missing persons, conduct rescue operations, control and direct traffic in order to avoid congestion and blockage of roads designated for evacuation of citizens and delivery of humanitarian aid, warn citizens about possible dangers, conduct, if necessary, evacuation of the citizens from endangered areas, etc. Certain studies have shown that police generally are the first civil service that responds to natural disasters.[2] That first police response to a natural disaster includes the usual police activities, such as providing assistance to the citizens, transfer of information from the field to the communication centres and neutralization (minimizing) the physical consequences of an accident. In addition, the police have legal powers that other government bodies and services do not have, which may help in eliminating the consequences of natural disasters. Due to the daily contact with citizens, police have

1 This paper was realized as a part of the project "Studying climate change and its influence on the environment: impacts, adaptation and mitigation" (43007) financed by the Ministry of Education and Science of the Republic of Serbia within the framework of integrated and interdisciplinary research for the period 2011-2015.
This paper is the result of the research on the project titled "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019
2 Bonkiewicz, L., & Ruback, R. B. (2012). *The Role of the Police in Evacuations: Responding to the Social Impact of a Disaster.* Police Quarterly, p. 143.

information about the population in the area, the number of residents in a particular area, their place of residence, population structure (seniors - youth, capable of working - disabled, pregnant women and mothers with small children), etc. All these pieces of information are particularly important when searching for missing people and especially while conducting evacuation of citizens from endangered geospace.

The role of the police in these situations can have different aspects. For example, police officers can go door to door in order to inform and provide additional explanations related to directives to evacuate, they can assist in the implementation of planning routes for evacuation, they can facilitate the departure of citizens by transporting them in official vehicles, and carry out checks of settlements and residential buildings in order to determine whether the citizens fulfil the orders (instructions) for evacuation. When the evacuated citizens return, police may have different tasks, such as assisting inspection services in process of assessing damage done to the properties, distributing necessary nutritional support, providing information to the citizens about accompanying dangers of primary natural disaster (for example, if the water is contaminated after floods, if there are knocked poles for electricity supply, etc.).

The way of police work before, during and after a natural disaster can dramatically change although the social role of the police has not changed. For example, police officers may carry out security checks regarding citizens who have applied for the purchase of weapons, police officers can patrol the neighbourhoods, they can investigate reported crimes, protect public meetings, etc. However, if the occurrence of a natural disaster is certain and when it occurs, police officers can warn citizens about mandatory evacuation, they may participate in search and rescue operations or assist in the security inspection of residential buildings. Instead of solely focusing on maintaining public order and controlling crime, police forces are functionally oriented to providing assistance to endangered citizens.[3] And throughout all the time, police officers must not neglect the duty to maintain public order.

In Germany, during the natural disaster, police have the following tasks: to warn people about the dangers; to protect life, health and property; to restrict the access to the endangered areas; to clear the roads for emergency vehicles and rescue services involved in the protection and rescue actions; to cooperate in the rescue of endangered citizens and bring them to safety; to conduct defined police measures in traffic; to protect property; to prevent theft, etc.[4]

Experiences from police engagement during natural disasters such as when Hurricane Katrina devastated America in 2005 have shown that: police officers were not adequately prepared for a natural disaster; most police departments did not have an outlined plan for a hurricane; police officers were not trained and prepared for a disaster and they did not know what to do when the storm hit, the communication links were broken, so the police officers were left to themselves, and some of them behaved heroically; they did not have any plans how to evacuate the complete area; initially a unified command structure was established, but later, it collapsed; police officers needed help due to the large number of received calls; many police officers were in areas impacted by a hurricane and were not available to theirs units; police communications were cut; many police officers lacked food, water, fuel, and accessories such as flashlights, gloves, radios, etc; after the hurricane, many police officers worked 12-18 hours per day, seven days a week. [5]

Figure 1 *Members of the Joint Forces of Police Directorate during protection and rescue operations, May floods (Source: MoI Republic of Serbia 2014)*

Catastrophic floods that stroke Republic of Serbia in May 2014, forced the employees of the Ministry of Interior (MoI) of the Republic of Serbia to change their everyday working routine, and to adapt to the new situation. The Sector for Emergency Situations of the Ministry of Interior, as the main subject for protection and rescue in Serbia immediately sent all its forces and capacities to the affected areas - fire-rescue units, six specialist flood rescue teams, two teams of civil protection units specialized for the protection and rescue on and under water, a team for unexploded ordnance, with the available equipment. In the headquarters

3 Deflem, M., & Sutphin, S. (2009). *Policing Katrina: Managing Law Enforcement in New Orleans*. Policing, 3(1), p. 43.
4 Mlađan, D., Cvetković, V. (2011). *Police deployment in emergency situations caused by weapons of mass destruction.* International scientific conference Archibald Reiss days, The academy of criminal and police studies. Belgrade, p. 276.
5 Rojek I. J., Michael, S. (2007). *Law enforcement lessons learned from hurricane Katrina*, Review of policy research, volume 24, number 6, p. 604.

of the Sector and in the organizational units, teams for operational duty, operators for receiving calls for help, acceptance and distribution of humanitarian aid, liaison officers and others were working 24/7. Police Directorate has engaged its units for protection and rescue operations (Figure 1): Gendarmerie, SAJ, PTJ, Police Directorate, Traffic Police, the Criminal Police (especially NKTC), helicopter squad and other services. Also, the employees of Telecommunication and Cryptography Directorate were involved, as well as other staff from the Sector for Analytical, Telecommunications and Information Technology and Sector of Finance, Common Tasks (Logistics) and Human Resources.

On average, 7,300 police officers of the MoI of Serbia were engaged per day, while the number of police officers deployed by the Police Directorate for the first 10 days of flooding reached number of 41,172 (Table 1), while only in the municipality of Obrenovac, which was one of the hardest affected municipalities there were 10,231 (Table 2) police officers of the Police Directorate of the Republic of Serbia engaged. Also, under the command of the Police Directorate, 500 student-volunteers from Academy of Criminalistic and Police Sciences were engaged daily, divided into four operating groups (1 group had 12-hour engagement) and a part of the teaching and non-teaching staff of the Academy, then a number of participants of the Police Training Centre in Sremska Kamenica, so we can talk about the joint forces of the Police Directorate, that is MoI of the Republic of Serbia.

Table 1 *Overview of engagement of police officers of the Police Directorate during the emergency situation in the Republic of Serbia*

14th May	15th May	16th May	17th May	18th May	19th May	20th May	21st May	22nd May	23rd May
924	3,302	5,095	5,224	5,716	5,291	4,781	3,955	3,728	3,156
Total		41,172							

Table 2 *Overview of engagement of police officers of the Police Directorate during the emergency situation in the municipality of Obrenovac*

14th May	15th May	16th May	17th May	18th May	19th May	20th May	21st May	22nd May	23rd May
14	17	1,090	1,474	1,665	1,598	1,351	1,186	1,067	769
Total		10,231							

In addition to the regular police duties performed by the police in Serbia, the police units in Serbia, during floods got special tasks imposed by the new situation, such as:

- Security protection of life and property of citizens endangered by floods (rescue and evacuation from flooded buildings and areas);
- Providing first aid, food, water, medicines and personal hygiene citizens in flooded areas;
- Strengthening of the existing and constructing new protective infrastructure along the river flows (raising higher and ensuring primary and if necessary raising secondary embankment);
- Securing territory and facilities after performed evacuation, to prevent committing criminal offences;
- Informing citizens, government bodies and services of the situation on the field where the units were engaged;
- Activities related to acceptance, transport and housing of evacuated citizens in reception centres;
- Remediation of landslides, and
- Surveillance and documenting from the air.

In the internal reports of the Police Directorate, the problems that particularly aggravated the work of the police in the field were highlighted. As especially difficult problems they stated the following:

- Extremely bad weather conditions:

– a large amount of rainfall

– low temperatures

– extremely strong wind (wind gusts over 60 km/h reduced visibility)

- Impassable traffic routes:

– most roads towards the affected areas were disrupted

– evacuation roads in the settlements had reduced throughput due to congestion of both the streets and handling areas due to torrential debris, shifted cars and waste

- The lack of adequate equipment for flood responding - rubber boots, raincoats, motor boats, life jackets, ATVs;
- The lack of dedicated and modern geotopographic materials;

- Inadequate communication between the actors of protection and rescue actions, incorrect and partially correct information in the media, social networks and call centres of the MoI (locations for evacuation, number of citizens, etc.).

As the authors of this paper were present in the endangered areas during the flood executing specific tasks, along with various police units, they spotted a group of problems, whose solving should be implemented as soon possible, as the natural disasters are unpredictable and real security threat. Specifically, it was noted that a number of police officers did not have adequate training that could relate exactly to the execution of specific tasks for protection and rescue operations during natural disasters. In particular, the problems that were identified among the police officers of the MoI during the catastrophic floods were related to the facts that:

- A certain number of police officers cannot swim;
- A notable number of the police officers did not participate in training regarding rescuing a drowning person and are not familiar with the measures and procedures for the protection and rescue of people, material and cultural values during natural disasters;
- A number of police officers cannot steer the boats (they did not even know how to row);
- The largest number of police officers had no knowledge about proper raising of embankments (stacking bags of sand making provisional embankment) or how to use dedicated technical resources for flood protection, or how to protect primary embankments from decantation and landslides (waterproof fabric, special beams and wooden beams), and to construct secondary embankments (boxing barriers, prefabricated panels, etc. (Figures 2 and 3), and
- A number of police officers did not have sufficient knowledge of providing first and immediate assistance to the injured persons, particularly to the drowned.

Figure 2 *Incorrect and correct construction of provisional embankment*

Figure 3 *Impermeable foil for ensuring primary embankment and box barriers used for constructing embankments*

All the above indicates that the police officers throughout their education must have special training intended to carry out tasks of protection and rescue from natural disasters. Education in this field must be continued after the entry into service.

In addition to the above lacking competencies, there were evident problems in some security aspects of using the police forces in protection and rescue operations. This problem is elaborated in the following sections of this paper.

ORGANIZATION OF THE FUNCTIONAL COMMUNICATION SYSTEM OF MINISTRY OF INTERIOR OF REPUBLIC OF SERBIA

Police tasks specificity demands exchange of various types of information so the Ministry of Interior of the Republic of Serbia uses several different telecommunication systems. Through these systems, the transfer is done in various ways. Encryption is applied in case of transmission of sensitive information. Telecommunication systems which make a functional system of communications of the MoI of the Republic of Serbia are:

- multiplexing systems and telecommunications infrastructure,
- radio systems (analogue and digital),
- telephone systems,
- systems for transfer of encrypted messages,
- video surveillance systems.

Most tasks executed by the employees of the MoI of the Republic of Serbia (uniformed and other authorized police officers, as well as employees in the Sector for the Emergency Situations) are the tasks that are performed in the field, outside business offices. To perform these tasks, constant and reliable radio communication that allows continuous communication between members of the police in a particular area is necessary and crucial. For this purpose, the Ministry of Interior of the Republic of Serbia developed two systems which are in operational use at the moment - older analogue system (in use since 1960s) and modern digital system (in use since 2005).

Due to the growing security challenges, the needs of the MoI of the Republic of Serbia have greatly exceeded the capacities of used analogue radio networks.

TETRA standard was introduced as a standard for digital professional mobile radio system and with its characteristics completely solved all the problems that the existing analogue system had. The special quality of this system is the adaptability and flexibility (as an independent system in relation to public systems) in emergency situations, as well as the possibility of connecting with other, analogue or digital systems.

The Ministry of Interior of the Republic of Serbia owns and uses TETRA system since 2005. Currently, there are two switching centres and approximately 120 base stations functioning. Total number of users is approximately 10,000. The calculated coverage of national territory by the TETRA system signal is shown in Figure 4.

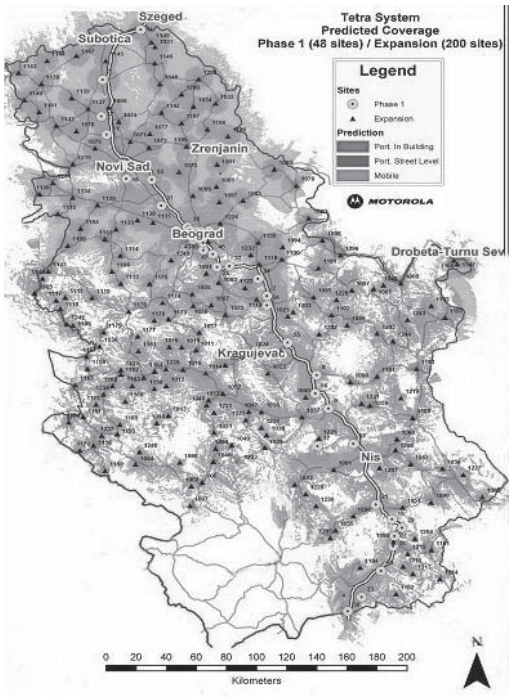

Figure 4 *The coverage of national territory by the TETRA system signal (Source: Motorola, 2011.)*

For the areas of national territory which are not covered by the TETRA system signal, as well as for the areas where the signal is weak, the Telecommunications Directorate prepared an interim solution for full operability of the system if such communication is needed. Also, using GPS receiver embedded in TETRA terminals, which enables positioning of the terminal, Telecommunications Directorate has developed its own system for automatic tracking of people and vehicles, based on software application Portable Tetra AVL.[6]

Systems for video surveillance are present in the Ministry of Interior for a long time, but their expansion began several years ago. One of the most important systems is video surveillance system of roads in Belgrade with 60 cameras. This system is intended primarily for monitoring traffic situation, but it is also used for other security purposes, for example to monitor various meetings in public places in Belgrade, for detection of crimes, etc.

Also, in Belgrade there is in use a system for automatic recognition of registration plates of motor vehicles and detection of traffic violations (ANPR system), which is the first system of that kind in Serbia.

In addition to these systems, the Telecommunications Directorate has prepared the conceptual design and the pilot project of video conferencing system that is intended to support middle and senior level police officers to make faster, more effective and more efficient decisions in acute, emergency and other complex security conditions.[7]

ASSURANCE OF TELECOMMUNICATION SERVICES FOR POLICE UNITS IN PROTECTION AND RESCUE ACTIONS IN CASE OF NATURAL DISASTERS

Experiences from the police interventions in conditions of natural disasters show that fast, secure and continuous communication is critical to the success in the protection and rescue actions. This is especially true in cases of natural disasters which are unpredictable, multiplied and have catastrophic consequences.[8]

One of many complex tasks of the Telecommunications Directorate was to assure telecommunication services during the floods that occurred in the Republic of Serbia in May 2014. With a well-designed system and trained personnel, the Telecommunications Directorate in a situation of complete break-down of public communication systems and termination of the distribution of electricity, succeeded to provide constant communication between all involved members of the MoI of the Republic of Serbia in all areas at risk of flooding. With that, Telecommunications Directorate enabled realization of the tasks carried out by the Ministry of Interior of the Republic of Serbia in the affected territories.

Here we can list some of the assignments the Directorate for the link and cryptography realized in this period:

- continuous work of all radio systems, with enhanced capacities of base stations of TETRA systems at the affected areas and with a complete transfer to alternative power source of electric energy;
- providing all necessary systems of links for undisturbed work of formed Republic headquarter for emergency situations, headquarters and units for protection and rescue in the MoI of the Republic of Serbia;
- providing video surveillance of the affected areas with constant supervision of security issues in headquarters for emergency situations;
- providing video surveillance from the air with a help of tactical aerostatic system, with the focus on night surveillance of the affected areas of Obrenovac;
- providing all necessary systems of links, as well as power source of electric energy for undisturbed work of created Headquarters for emergency situations in Obrenovac (Operational headquarter for defence against floods);
- diverting available part of equipment for communication from safe areas to affected areas (Figure 5);

6 Gligorijević, M., Đukanović, S., (2011). *GPS – Global positioning system and its applications in Policing*, International scientific conference Archibald Reiss days, The academy of criminal and police studies. Belgrade, vol. 1, pp. 429.

7 Đukanović S., Gligorijević M., Subošić D. (2012). *Video conference link as a way of communication of Heads in Ministry of Interior of Republic of Serbia, Security* 53, no. 2, p. 261.

8 For example, catastrophical consequences of Hurricane Catherine in Louisiana and Mississippi during 2005 caused among others, floods as secondary natural disaster that all together led to destruction of telecommunication infrastructure of police stations, interruption in chain of managing and commanding, dispersion of police forces and means, insecurity, inability to cope, stress, leaving Service, even occurrence of suicide at certain members of police.

Figure 5 *Instalment of mobile base station TETRA in Obrenovac (Source: MoI Republic of Serbia)*

– providing support to link units of police departments in the affected areas;
– providing radio communications among other members engaged outside the MoI of the Republic of Serbia during floods: the Serbian Armed forces, public companies (power distribution, post office, waterpower engineering), municipality authorities engaged in headquarters, emergency assistance, Institute for health care, utility services, mountain rescue services, veterinary services, etc.;
– assistance in providing alternative sources of electrical energy of Telekom and Telenor;
– work on enlightening the parts of Obrenovac with aggregates of the Directorate for the link and cryptography.
– Then, in order to monitor the situation in real time, at the initiative of the Directorate for the link and cryptography tactical aerostatic system was engaged – a balloon of Directorate of Border Police, with cameras for daily and thermal-vision surveillance (Janković and Milojević, 2014:42). The balloon was set at 300-400 m from headquarters in a city hotel (the height of the balloon lift is up to 200 m), and it covered the area of circuit diameter up to 5 km. During emergency situation, at the territory of Obrenovac a system of all 9 cameras has been used (8 air-video camera and one thermal-vision camera). Video signal of HD resolution from all cameras is distributed into headquarters: Obrenovac, the Sector for Emergency Situations, KOC 192 and the Cabinet of the Ministry (Figure 6).

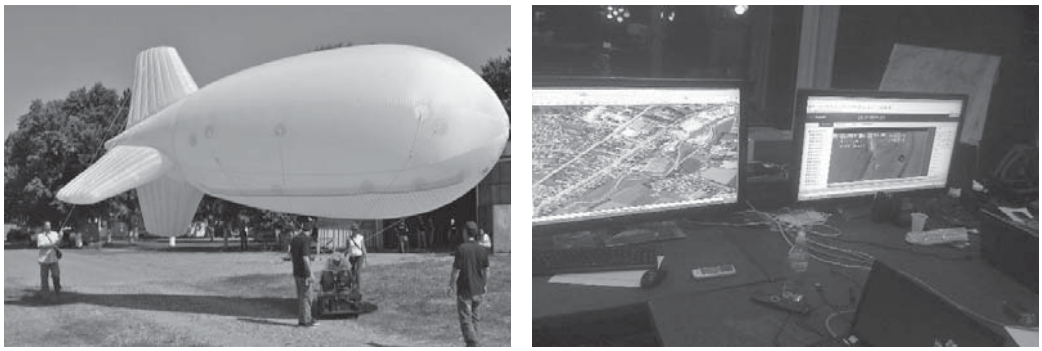

Figure 6 *Tactical aerostatic system in Obrenovac (Source: MoI of Republic of Serbia)*

To point out the significance and importance of uninterrupted system of communication in the chain of managing and commanding in emergency situations, we will present some basic parameters that made the pillar of communication system of the MoI of the Republic of Serbia during May 2014 floods. It covers the following:

- *radio connections* (repeater or mobile base station of TETRA system) – that provide necessary communication among operational units of the MoI of the Republic of Serbia in the field;
- *radio links* (networked repeater or TETRA system) – that provide communication and coordination of more Services included in rescue actions;
- *telephone connections and connecting roads* – that provide communication and managing from higher instances and coordination with citizenship;
- *video surveillance* – that provide real picture of current state in the field obtaining a higher degree of efficiency and timeliness in making decisions;

– All these components were necessary to provide and put into function in order to create conditions for continuous functioning of system links in the areas affected by floods. Of course, that is not easy at all having in mind catastrophic picture and problems that the members of the Directorate for the link and cryptography came across in the field. There, it includes the following problems:

- *Absence of adequate power supply of electric energy* – termination of functioning of electric network and absence of aggregate;
- *Termination of functioning systems of public telecommunication operators* – (*fixed connections* – the affected parts of system links of the MoI of the Republic of Serbia that rely on public operators and *mobile telephones* – completely interrupted communication with citizenship);
- *Sudden increase of number of users of TETRA system at small space* (problem of adequate organization of system links in those conditions), and
- *Large number of fake calls to telephone numbers for reporting problems.*

The members of the Directorate for the link and cryptography managed to solve all stated problems with their expertise, operability and long-time experience obtained through performing their work and tasks in the field of enabling to provide communication of all teams and headquarters of system for defence against floods. It is also very important to mention the fact that it is all performed by using the existing telecommunication capacities, resources and equipment designated for regular use.

Detailed analysis of all activities and performing of different units during emergency situation and the Directorate for the link and cryptography presented concrete suggestions for raising level of operability and functionality significant for future natural disasters, and they include the following:

- Provide alternative sources of power - resources (aggregates, additional equipment for aggregates and fuel);
- Issue procedures that regulate different levels of managing in emergency situations, as well as telecommunication systems that would be used;
- Issue order to mobile operators that in certain time period, by using mobile base stations provide uninterrupted mobile phone signal;
- Legally organize area "national roaming";
- Improve radio-relay art of transport plane of the MoI of the Republic of Serbia (shown to be extremely important as redundancy);
- Define status and measures for malicious calls to the numbers of emergency services;
- Determine certain numbers of telecommunication capacities, resources and equipment (mobile base stations, radio stations, means for power supply, etc.) that will be intended for use only in actions for protection and rescue against natural disasters (floods, earthquakes, fire, drought, snow blizzard, extreme temperatures, etc).

CONCEPT, STRUCTURE AND STATE OF GEOTOPOGRAPHIC ENSURING OF POLICE UNITS USE IN PROTECTION AND RESCUE ACTIONS IN CASE OF NATURAL DISASTERS

Geo-security is a general term for overall activity of geosciences. The concepts of geotopographic security of the military, geotopographic security of the police, and geotopographic security of civil structures (architecture, civil engineering, urbanism, settlement planning, the cadastre of real property, environmental protection, etc.) have been derived from it. Geotopographic materials make up the foundation of geotopographic security. They are made in graphic, photographic, digital, numerical, and textual forms. Currently, the existing geotopographic materials for police purposes in Serbia are made by the Military Geographical Institute, the Republic Geodetic Authority, and other governmental institutions, as well as renowned privately-owned companies in the field of geomatics and geo-information technologies and privately-owned companies in the field of cartographic publishing.

The concept of geotopographic security as part of geosecurity involves complex scientific and research activities, production, education and distribution activities performed by civilian and military geodesic offices, institutions of higher education and research institutions, aimed at timely collection, processing, topic-focused modelling, delivery, exchange, updating, and storage of the data on the geographic space.[9] Also, the aspect of providing specific and modern data about geospace is necessary in planning and

9 Milojković, B., Milojević, S., Janković, B. (2013). Some aspects of geo-topographic security related to the use of special police forces. Thematic Conference Proceedings of International Significance, International Scientific Conference „Archibald Reiss Days", Belgrade: Academy of criminal and police studies, str. 147.

performing special security police tasks, especially in complicated security, timely and geospace conditions is relevant.

Experiences from interventions of special police forces in the national geospace in the past 20 years have shown that geotopographic security, as a kind of security, was relatively present, but that it was not theoretically defined. Thus, for instance, securing an intervention of special police units aimed at restoring large-scale disturbances of public order includes measures, procedures, and activities which prevent sudden disorderly activities of rioters or alleviate and eliminate effects of the large-scale public order violations and create favourable conditions for organized, timely and successful preparation and engagement of the police, i.e. it creates favourable conditions for the intervention of the police. In general, the types of security interventions of the police include: IT and telecommunication security, psychological – propaganda security, intelligence and security services, logistics security, medical security, geotopographic security, transportation security, fire fighting security, veterinary security, masking, safety at work and environmental protection.[10]

In addition, certain issues related to the geotopographic security of use of police units in protection and rescue of people, material and cultural values from the consequences of natural disasters are left open.

For example, for the purposes of planning and conducting evacuation of endangered people and goods, police needs geotopographic materials with the address system and communal amenities of residential, public and commercial buildings as well as knowledge of the affected geospace. In such circumstances, a notable number of police officers are not familiar with street structure of the settlement, because they come from different organizational units and there are not enough guides, so the orientation is slower and insufficiently accurate.

Then, for the purpose of planning the development of localizing embankment, police in addition to the knowledge and skills to build them, personal and common equipment, need the data regarding borrowing site of materials, i.e. pits where it is possible to load the sacks with sand or manipulative areas if the sand is transported from the quarry, as well as the information on the number of sacks that can be filled, loaded and transported from the average stock and the amount of sand that can be extracted or delivered in one-hour period by construction machinery or men. Also, they need the data about area(s) where units should be gathered (areas where natural disasters are expected), positions and capacities of sanitary, telecommunication, hydro-technical, quartermaster and other security, castling roads, accessible roads that lead to places where localized embankment are being made, performances and state of embankment (dimensions, proportion of steepness of banks, height, communicability, arrangement, coverage of vegetation, places of previous damages, etc.), places for rest and protection of people due to extreme temperatures, occurrence of insects, etc.[11]

The most commonly used geotopographic materials for police purposes are: geodetic plans, topographic and thematic maps, photographic and digital geotopographic materials. But beside contemporary approach in producing the mentioned geotopographic materials, it is evident that they do not have sufficiently dedicated complete and updated cartographic content for police use, that is, they do not contain sufficiently specific and contemporary data on geospace for police purposes.

Currently stated data do not exist at one place, gathered, digitalized and processed with adequate databases and organized in necessary number of layers out of which according to the type of intervention they can be combined for process of graphical enclosures in plans of intervention and during monitoring of their flow, reporting, analysing and for other needs of managing and commanding. Specific data about geospace are not available to the police in necessary volume either for needs of planning or performing actions of protection and rescue in case of natural disasters.

Also, the fact that so far used content of geotopographic materials, especially topographic maps are not systematically updated for 15 or even over 35 years represents a problem. The update period is very long having in mind needs of the police, and as such, it does not fit into the results of larger studies of the optimal time interval for systematic update of maps in the world, which, for example for topographic map 1:25000 is 5-6 years.[12] Beside stated, new digital topographic charts created in GIS environment, although made with significant digital pace do not possess a necessary print level and availability to secure military objects. To the mentioned fact it is also necessary to add that already made – published topographic charts in digital form have outdated a bit, considering the fact that they were made based on the measurements from 15-45 years ago. In addition to that, significant parts of Serbia's geospace are not covered with geotopographic photo materials, and one part of the completed materials is also outdated. Not enough covered territory and mapping of national geospace as well as outdated content of some of the modern geotopographic material can be seen in Figure 7.

10 Vuletić Ž., Ilić A., Milojović B., (2009). *Model of geotopographic ensuring of police units use during interventions at restitution of public order and peace in large volume*, Security, 51, no. 1-2, p. 331.
11 Milojković, B., Mlađan, D., (2010). *Adaptive managing in protection and rescue from floods – adapting to risk of floods,* Security, year LII , no. 1, p. 189.
12 Milojković, B., (2007). *Contemporary geotopographic material for police needs – characteristics and wayd of using,* Security, year XLIX , no. 4, p. 109.

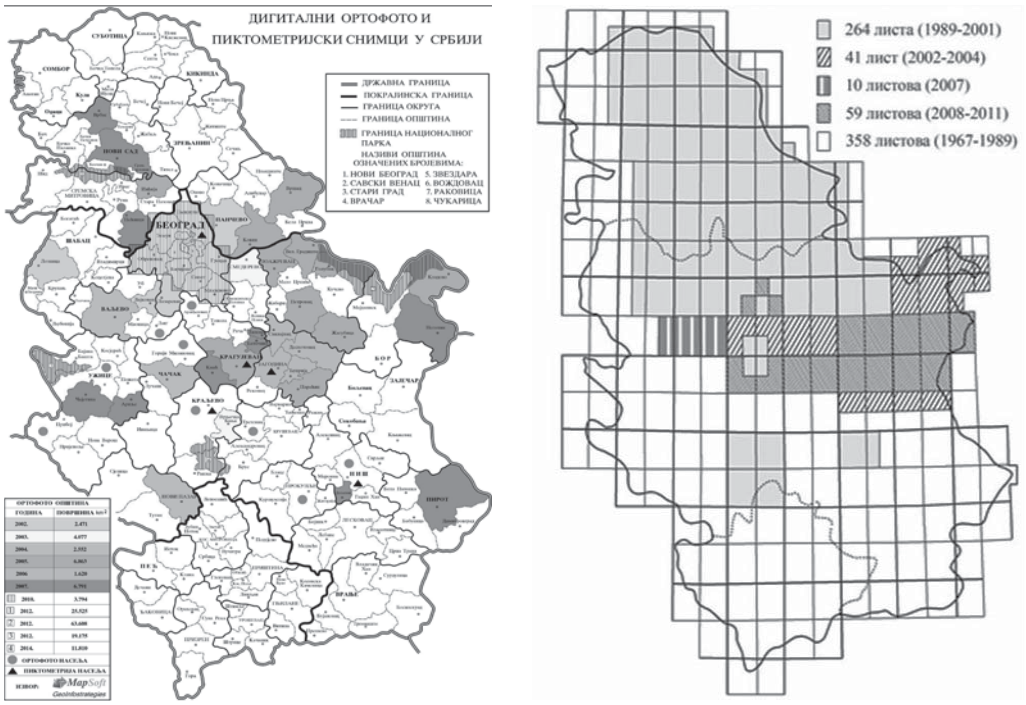

Figure 7 *State of content of photographic GTM and topographic map proportions 1:25 000 publication BGI for 2014 (Author – topographic base VGI, 1995)*

At the end, a problem of obtaining geotopographic material from centralized cartographic institutions due to limited financial resources of the MoI Republic of Serbia should also be mentioned. The MoI must purchase geotopographic materials – for example one TC sheet costs about 2.200 RSD without VAT. Financial assets for that purpose were not planned at earlier stage so at the moment of restrictive state monetary policy they are even harder to plan.

Beside the fact that dedicated maps and other geotopographic materials are missing, it is evident that not enough professional usage of the existing maps and plans and teaching topographic content are missing in programs of professional education and training. Also, some cards and plans, due to hand production and modest police officer's inventiveness and less familiar private cartographic companies that topographically and thematically model, do not satisfy professional methodological assumptions and therefore have small utility value. To some extent, information about available geotopographic material is absent, especially photographic and digital (satellite recording and other product of digital detecting such as lidar and pictometric shooting – georeferental vertical and aslope air recording, digital orthophoto, photo cards and GIS projects realized for use of specially valuable systems).

The appropriate MoI organizational units recognized the state issued during mid 1990s, but it did not come to complete realization due to lack of material and technical means. The project of implementing GIS technology for use in the Ministry of Interior started ten years ago and is still is the phase of constructing. That means that our police have not yet gained adequate system of geotopographic security.[13]

GEOTOPOGRAPHIC CHARACTERISTICS OF POLICE UNITS USE IN PROTECTION AND RESCUE ACTIONS IN CASE OF NATURAL DISASTERS

For purpose of this paper geotopographic characteristics of providing use of General Police Directorate in actions of protection and rescue of citizens, material and cultural values from catastrophic floods in Obrenovac and Šabac, in May 2014, have been considered.

13 Milojković, B., (2014). *Model of geotopographic security in police organization of Serbia*. In: Temathic collection of papers 3, Research project, „Structure and functioning of police organization – tradition, state and pespective ", Police Academy, Belgrade, p. 136.

Namely, after declaring emergency due to catastrophic floods, in the stated local governments' headquarters for emergency situations have been formed, the Headquarter of joint forces for safety and defence against floods. Among other things, graphic documents have been created that for their base had geotopographic materials (Figure 8).

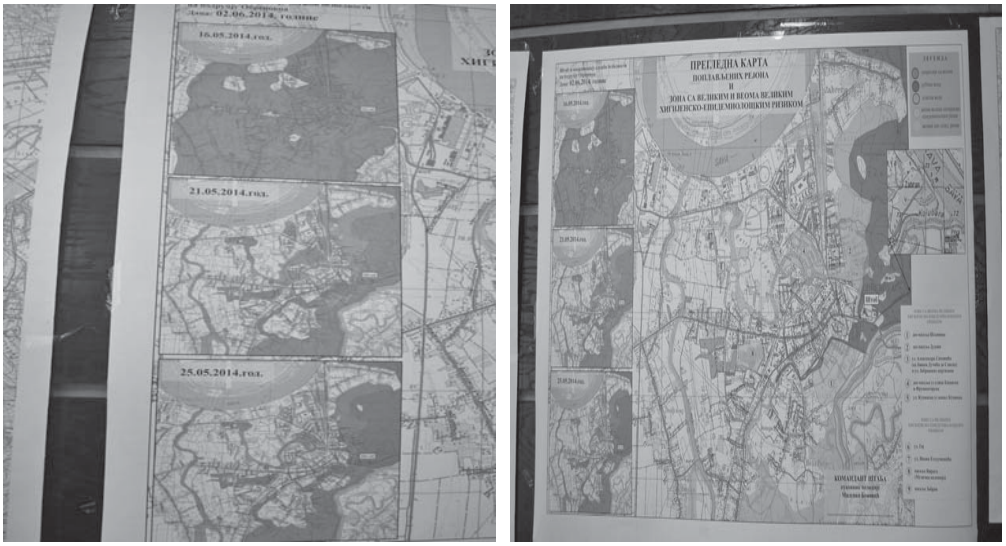

Figure 8 *Work chart of Operational headquarters for defence against floods (Topographic base TC 1:25 000, publication VGI 1995)*

For purposes of estimating situation as well as for planning and conducting actions of protection and rescue, concretely evacuating endangered people from flooded residential areas, heads in Headquarters used digital orthophoto plans, proportion row of topographic charts publication of Geomilitary institute and satellite recordings from portal "geoSerbia" that were made on 19 and 21 May. Those recordings were produced by French company "Airbus Defence & Space" that deals with production of satellite and cooperates with the Republic Geodetic Institute. Also some recordings made by the Service for managing in emergency situations and mapping "Kopernik" (GIO Emergency Management Service – GIO EMS) were used (Figure 9).

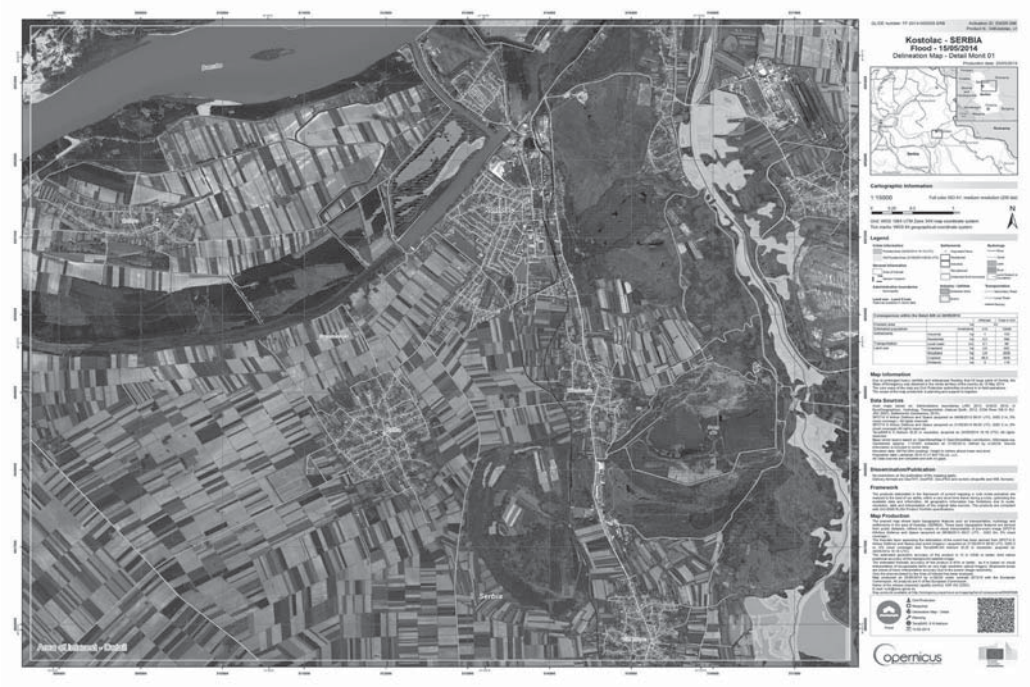

Figure 9 *Satellite recordings of flooded geospace – SPOT 6 and Kopernikus (Source: RGZ and GIO EMS, 2014.)*[14]

Beside invested effort of commanding officers and experts for geoinformatic technologies, the estimate of endangerment, planning the use of available resources and monitoring the action of protection and rescue were aggravated. Namely, aside the difficulties in flow and exchange of data of the state in the field among the joint forces, modern geographic materials were missing – digital topographic card 1:25 000, thematic cards, digital orthopohoto, plans with height of the field and address system, navigational maps, maps of water facilities, Web cartographic products and products of remote detection, etc). The reason for this fact is among other things that the Military Geographical Institute, the Republic Geodetic Institute, public and utility companies – post office, power supply companies, water system, drainage, cleaning of town, city's greenery,etc. made their own geotopographic material and GIS projects but they did not make their results available to the Headquarters for emergency situations, that is, they did not solve the mutual exchange of geospacial database without any fee.

Then, a special problem during the evacuation of the endangered people in Obrenovac lacked geotopographic material with correct address system – house numbers, street names, settlement names – local community and their smaller entities (made by e.g. post office or distribution and utility companies). Also the problem was inability to estimate further flow of the flood due to new flood wave (calculating volume and height of flooded geospace was not possible from digital orthophoto plan because it did not contain the layer of digitally modern field – digital model of height (Figure 10).

There are plenty of examples of the need for specific and purposeful data on the endangered geospace, but it is necessary to mention the limitations in their uninterrupted providing and usage. For example, the Military Geographical Institute for a couple of years is realizing a project of creating digital topographic card proportions 1:25 000 (DTK25) with central topographic database (Figure 11).

The mentioned topographic map was made for 380 sheets from 738 what was necessary in order to cover the national territory of mapping (Figure 7), but it was not available to police officers due to lack of financial funds for their purchase.

14 http://emergency.copernicus.eu/mapping/ems-product-component, accessed 22.12.2014.

Figure 10 *Digital orthophoto plan (Source: MapSoft Belgrade 2014.)*

Figure 11 *Part of digital topographic map 1:25 000 – type of photo card (Source: Military Geographical Institute 2014)*

However, beside the mentioned, the police were not able to use the benefits of contemporary geoinformatic technologies. For example, for the needs of geotopographic providing of police grand gesture of use were small UAVs that were suitable for production of photographic and digital geotopographic materials, gathering of geospacial data and their analysis. Those drones are called UAVs – BAS. These are the drones equipped with cameras of high resolution that enable production of orthophoto recordings in visible part of spectrum (RGB) or close to infrared part of spectrum (NIR – *Near InfraRed*) and digital model of surface in various forms (raster – *grid* model, vector – *tin* model; cloud of dots – 3D coordinates of each pixel) (Figure 12**).**

Figure 12 *Detection of floods with a help from UAVs „Sensefly eBee" – Bosut and Jamena (Source: Vojvodina waters, 2014)*

However, BAS products of recording do not contain quantitative and qualitative data on objects and phenomena in geospace necessary to police in case of natural disasters, therefore integrated implementation of BAS and GPS devices for GIS is needed. For mentioned use the most appropriate are GPS devices for GIS with represent PDAs and GPS receivers. Such gadgets are produced by American company TRIMBLE, and its experts have first made "binding" GPS receiver and a computer with operational system Windows Mobile, achieving easy, portable and strong device to work in the field with accuracy below 1 m with differential correction. At those devices receiver registers positional data, and user puts in attributive data according to pre-defined structure of user's system (projected codebook). Also, recording of object with a help of camera that makes georefential recordings and/or connecting with laser telemeter, sonar and other peripheral devices (Figure 13).

Figure 13 *GPS devices for GIS make TRIMBLE – Juno 3, applicative software for measurement and gathering of attributive data – TerraSync (Source: Livona, 2014)*

CONCLUSION

Natural disasters due to the increasing frequency and consequences, as well as their complexity and unpredictability, are becoming increasingly serious security challenge for the Serbian police. It is unequivocally demonstrated through experience and lessons from engaging units of the Police Directorate in the May floods that have had disastrous consequences. Specifically, in addition to insufficient training and equipment of police officers, there were evident problems in telecommunications security due to the decrease of the energy system, non-functioning of mobile operators and increased demands of a large number of users in a small geographic space, as well as problems in the absence of modern and specific geotopographic materials.

In order to establish adequate providing of police intervention in the future actions of protection and rescue of people, material and cultural values new, flexibly legal, organizational and planning, educational and scientific, materially-technical and financial solutions to maximize readiness for community response terms of natural disasters, are unavoidable.

Among the urgent activities we emphasize the urgency of training programs at vocational education and training that would, among other amenities include teaching in the field of safety and protection from natural disasters (primarily on measures of protection and rescue, risk assessment, preparation of planning documents and training in swimming, first aid, handling of special-purpose equipment and training of police topography). Training should be first implemented at the operating level management, and then with members of the police unit. It is particularly important that a lot of police officers of the Police Directorate undergo training in the first aid and training in swimming, because these competencies may be needed at intervention in natural disasters and in everyday tasks.

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QUALITY OF THE USE OF THE MEANS OF COERCION AND DETERMINING THEIR JUSTIFIABILITY AND REGULARITY IN ORDER TO BUILD THE TRUST OF CITIZENS IN STATE INSTITUTIONS

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Abstract: Achievement of professional results when performing police duties is conditioned by not causing unnecessary harmful consequences, primarily when using police powers, which must be proportionate to the need to exercise them and the police officers are obliged to make sure all legal conditions for their use are fulfilled and must be held accountable for their assessment.

The procedure of determining justifiability and regularity of the use of means of coercion in the situation when the use of this power resulted in grievous bodily harm of a person is conducted by a three-member commission in order to determine the truth. The ground for such an outcome of the work of the commission, in addition to professional approach to the execution of a service task, is also the following:

– possession of specific competences of its members to recognize individual problem situations as a basis to make decision on its justifiability, and
– knowledge of the principles whose fulfilment is necessary for successfully solving a concrete problem situation,
– knowledge of quality of individual tools used as the means of coercion, and
– the competences to make decision on the adequacy of the chosen tools to fulfil individual principles, and thus also the quality in performing a police task as a basis for final decision making about the regularity of the use of means of coercion.

Using scientific knowledge, expert knowledge and experience, this paper analyzes a concrete case of the use of means of coercion by police officers, on the occasion of which a grievous bodily harm occurred, as well as the work and the outcome of the acting commission.

The analysis of a concrete case of the use of means of coercion suggests the lack of specific competences of the police officers, as well as certain inadequacies in the procedure of the estimation of justifiability and the regularity of exercising of powers related to the use of means of coercion, which can surely suggest the lack of professionalism even in the process of education, training, continuing education and the evaluation of police officers and thus indirectly violation of the trust of citizens in the state institutions.

Keywords: problem situation, assault, means of coercion, justifiability, regularity.

INTRODUCTION

One of the specific features of the police coming from the specificity of their work but also from state organization is the police power allowing direct use of physical coercion, i.e. to use police measures and means of coercion. Obvious delicacy of police work and police profession reflects, among other things, in their relationship with citizens. This relationship is governed by the law and is based on the principles of mutual cooperation and informing as well as on the rights and duties set out by the constitution, law and other regulations. Special characteristics of this relationship, exclusively between the police and citizens, are determined by the Law on Police. The quality of this relationship is important since it contributes to the

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preservation and improvement of security of citizens and the state in general. This relationship is happening on a daily basis during the performance of police tasks, in other words police officer's duty, as well as when exercising numerous rights and duties of citizens in the field of security. In all these numerous legal relations, as social relations regulated by law (legal standards) both the police and citizens are obliged to behave according to the established legal standards. Accordingly, both the police and citizens are "bound by law", every one of them in accordance with their respective rights and duties set out by regulations (Miletic, 1997). Police officers authorized to use powers, particularly those involving the use of means of coercion, are direct representatives of the state and have an opportunity to indirectly contribute to building the trust of citizens in the institutions of this state itself. Also, the unprofessional conduct leaves irreparable consequences and violates this trust.[4]

USE OF MEANS OF COERCION

In order to achieve quality in performing the given tasks, the police have a considerable number of powers at their disposal including the power to use the means of coercion. It is the legal obligation of the police officers, prior to making the decision to use a certain power (including the use of means of coercion), to make sure all legal conditions are fulfilled and they are held accountable for their assessment. The law states that the basic goals in performing police duties are to provide equal protection of security, to ensure the rights and freedoms, to ensure the application of law and support the rule of law to everyone. The principles in performing police tasks on which the law insists are professionalism, cooperation, legality in work and proportionality in the use of police powers as well as the application of the principle of subsidiarity, in other words the work with the least harmful consequences.

Police officers are obliged to use only those measures and means of coercion which are set out by the law, as well as the measures and means of coercion which provide the most professional result without the **unnecessary harmful consequences** and waste of time. [5] The use of police powers must not cause more harmful consequences than those which would have occurred if the police power had not been used.

It is the legal obligation of police officers authorized to use police powers to give an oral report to their direct superior **in time and truthfully** immediately following (as soon as possible) the use of powers, but also in writing 24 hours after the use of means of coercion at the latest (Arlov, 2009). The superior... commission, but also the service in general (defined by the hierarchical structure of the police organization) has the task to conduct a correct procedure and determine if the means of coercion were used in a justifiable and regular manner (with the possibilities, of course, that this was done in the following manners as well: justifiably-regularly; justifiably-irregularly; unjustifiably- regularly or unjustifiably-irregularly). The importance of the quality of the determined state reflects directly on the trust of citizens in the work of the police (arguments, respecting the time limits, manner of informing the public, transparency, education of the public, response of the profession...) but also in the work of prosecution office, judiciary, the ombudsman (Žaberl i Arlov, 2007).[6]

4 The generally known examples come from Turkey, Greece and most recently from the USA, where the means of coercion used by the police officers were direct cause of mass riots. The use of means of coercion – physical force, as a tool – choking by forearm is legitimate, but in the mentioned example it was used inadequately regarding the duration and thus resulted in unnecessary harmful consequences for the person against which it was used. It is obvious from the same example that the conduct of several police officers in resolving the individual problem situation of passive resistance disobeying the order of the authorized officers – standing opposite the police officers – was also inadequate. It is easy to support with arguments that the mentioned inadequacies are the consequence of inadequate education of the acting police officers.

5 Such legal text served the first co-author as the basis to define the theory on justified-necessary harmful consequences. The feeling of pain, as necessary required effect in implementing a considerable number of tools in the field of physical force (but also the baton, as well as other means of coercion) is defined as necessary harmful consequence, which by all means must be lower than the consequence which would have occurred if the particular mean of coercion had not been used or if it had been used without causing the feeling of pain of the person against whom it was used. The contributions to the provision or prevention of the feeling of pain (as necessary harmful consequence) are unavoidable criteria of evaluation of each tool in the field of means of coercion, as well as its role in fulfilling the defined principles of resolving concrete problem situation, control over a person, and thus the quality of carrying out the police task and playing the role of the police in general.

6 The latest events related to the use of powers in the form of means of coercion by the police officers and the military against the brother of the current Prime Minister of the Republic of Serbia and other persons, determining the truth by the hierarchical structures and the relationship between the Ministry of the Interior, the Ministry of Defence and the Ombudsman, illustrate how delicate this area is.

PROBLEM SITUATIONS

Within the framework of the police duties, police officers perform various tasks and come across a large number of rather various problem situations (Arlov i Janković, 2013). The analysis of the legal text allows recognizing four global or **general** problems situations as follows:

– escape,

– self-injury

– resistance, and

– assault.

Based on the common characteristics, it is possible within the above groups, to define a considerable number of special groups of problem situations (for instance, *escape* – moving away without any means of transport; escape by running...; initiated escape...).

At the same time along with the existence of specific competences of authorized officers, it is possible (necessary) within particular groups of problem situations to define a considerably large number of individual problem situations based on specific characteristics which define them and make them different from any other situation (for instance, *escape* – a male person, 20 to 25 years of age, physically markedly capable, started moving away by walking backwards... from open space in the street ... somewhere near building number...).

It is possible to make a decision to use powers (or not – which is a discretionary right), according to the defined model (Arlov i Janković, 2013), only under the conditions when an authorized officer has specific competences to define within an entire state of affairs this exact individual problem situation as a basis to use means of coercion (defined by the existence of all information regarding space, time, place, person(s), characteristics, features, thing(s), manner...).

Also, the procedure of determining justifiability is not possible to carry out correctly without previous quality – clear concrete individual problem situation as a basis for the possibility of acknowledgment of the truth about the existence of the right to exercise powers.[7]

The procedure of determining justifiability and regularity of the use of means of coercion under the conditions when the use of powers resulted, among other things, in grievous bodily harm of a person is conducted by a three-member commission in order to determine the truth. The quality of reporting (oral and written) of an authorized officer following the use of means of coercion is of essential importance to determine the truth, but not the only the source of information especially in the work of the commission. Truth, as an outcome of the work of the commission is possible, in addition to the professional approach to service tasks, by the following as well:

– the possession of specific competences of its members to recognize individual problem situations as a basis to make the decision on justifiability, and

– the knowledge of the principle whose fulfilment is necessary for successfully solving a concrete problem situation,

– the knowledge of quality of individual tools in the field of means of coercion, and

– the competences to make decisions on adequacy of the chosen tools to fulfil individual principles, and thus quality performance of service task as a basis to make final decision on the regularity of the use of means of coercion.

The variability of the factors within which the performance of police tasks happens imposes a need to find common characteristics according to various criteria (space, time, person, means, manner...) in order to define general and special problem situations and common principles whose fulfilment certainly leads towards their being solved in a quality manner. Learning according to the principle of anticipation of concrete procedures for each of the concrete problem situations is unjustifiable and simply impossible.[8]

The level of acquisition of each individual tool in the field of legally defined police coercion considerably influences the possible fulfilment of the defined principles, and thus the final success in solving individual problem situations. In addition to the quality of tools, their adequacy is also important and it cannot be

7 The police officer's report following the use of means of coercion by its timeliness and quality is a specific scenario based on which it is possible to reconstruct the event with certainty and thus come to the real truth. The quality of the report reflects in the existence of clearly defined individual problem situation which was the basis of the police officer's decision to exercise their powers.

8 Although it is very often used in our country, sometimes as the only solution from the basic police training to the highest levels of police education in the form of ready-made solutions of concrete individual problem situations. The only guarantees of justifiability of the solutions are the authorities presenting the solutions, while the role of the cadets, students, police officers is to copy the authorities. What such an approach lacks considerably is some common sense. Special problem is also the factor of the available time duration within the education or training. The state-of-affairs in other former Yugoslavia republics is not better (or more logical) either, which are now the EU member states (Filipović i Šuperina, 2011), including the training programs carried out by the OSCE (manner of placing in handcuffs, Arlov, 2006).

determined without direct connection with individual problem situation which an authorized officer chose to solve (Arlov, 2008).

In order to determine the truth, it is necessary for the commission to determine the relationship between actual individual problem situation, the adequacy of selection of individual tools, the manner of their use and the level of harm of occurred consequences following the use of power as a direct indicator of the quality of performing the service task, but also the achievement of the police role in the society and thus strengthening the trust of citizens into the institutions of the rule of law.

CASE STUDY

Event

On April 22, 2011, around 1:30, at the territory of Police Administration of Novi Sad, authorized police officers exercised their powers using the means of coercion (physical force and handcuffs) in order to establish public order and peace in the school yard which was compromised by shouting and noise produced by several persons. The consequences of the used powers reflected in minor physical injuries of the authorized police officer (right upper arm haematoma) and grievous bodily injuries of a minor against whom the powers were exercised (common double compound fracture of the maxilla on the right side with the displacement of bone fragments). After the completion of the procedure of determining the justifiability and regularity of the use of means of coercion, the three-member commission concluded their work announcing the opinion that the means of coercion were used in a justified and regular manner, but also added that it was necessary to undertake the activities on the education of the acting police officers which would provide for a higher level of expertise when using the means of coercion.

Analysis of events

Official task:

Following the report by a citizen about the violation of public peace and order by noise and shouting in a local school yard, the shift leader of the police station sent a cruiser with three authorized police officers to the scene. According to the report of a police officer after the use of means of coercion, around 01:00 o'clock the patrol arrived at the scene and found several persons who were shouting and making noise. They stopped behaving in such a way after the police officers ordered them not to.

Problem situation:

While talking to the persons found at the scene, there came another person from behind a police officer who said: "Where is that cop, what does this copper want?" After being told to stop yelling and insulting, the said person disregarded the instructions, continued to yell and insult the officer and started moving towards him. He got in the police officer's face, grabbed the left pocket of the officer's shirt with his right hand and with his left hand grabbed the right upper arm of the police officer, pushing him backwards with the intention to get him to knock him down. The attacked police officer recognized this problem situation and defined it in his report as active assault by pushing.

The authorized police officers are professional persons (trained and equipped) for police duties (the acting police officer is 26), including the establishing of public order and peace disturbed by shouting and noise of the people (in this case juveniles under the influence of alcohol). The decision to start solving the problem situation (Arlov, 2011) of assault by grabbing and pushing and not active resistance with the prospect that the police officer will be attacked or with the prospect of the attempted assault by grabbing and pushing is their discretionary right but they are also held accountable for their assessment. Defining the problem situation by authorized police officers as a basis to exercise their powers is inadequate considering the notion of active assault, but also the claim (belief) that the attacked colleague's life was in danger (which would actually create the right to use other means of coercion even firearms).

Manner of solving problem situation:

Solving of actual problem situation was started by an attacked police officer in such a way that he put his hands on the breasts of the person attacking him with the intent to free himself and stop the attack on him. At that moment another police officer, as a leader of the patrol, noticed that his fellow officer was in danger being attacked by a person who was taller and stronger than his fellow officer, realised that the fellow officer was in danger and that his **life was endangered** (according to the report of the attacked police officer) and ran towards the attacker from his left side, grabbing him while running and supported by inertia catching the person on his left forearm with his left hand, while he used his right arm to put pressure on the left shoulder of the attacker. However, his hand slid from the attacker's shoulder and he hit him in the upper

part of the face with the edge of his hand with the intent to repel the attack on his fellow officer. The inertia caused the attacker to fall on the ground and remained lying there, while the leader of the patrol driven by inertia jumped over him and found himself on his left side.

The manner of solving the problem situation by grabbing and pushing was inadequate based on the fulfilment of the principle to solve the situation successfully. The principles for solving such problem situations are:

- fixing the grip position;
- providing necessary required feeling of pain which is of such origin that would not create unnecessary harmful consequences on the person against whom it is used;
- use the same and/or other tools in the field of physical strength to get control over the person or create conditions to use another mean of coercion with the same goal, but also
- the selection of tools, and
- the manner of their use in order to fulfil the defined principles.

Manner to achieve control over the person:

The attacked police officer states that the person – attacker stopped active assault and resistance and he and the leader of the patrol held him under control (without stating the manner of control) and allowed the friends of the attacker to **lift** him from the ground and put him to sit on a nearby bench. The acting officers state that they searched the persons (they have not found any objects) and restrained him - placed him in handcuffs.

As for the manner of control over the persons against whom the powers were exercised, the authorized officers conclude that the persons will not attack them and that they can be transported together in one vehicle at the back seat (not taking into account other bases to use handcuffs, such as self-injury, escape or resistance). As for the control over the attacker, they decided that he would sit on the bench some 10 m away, but to restrain him due to the reasons known to the officers (self-injury, escape, resistance, assault, and this is the person that the others had to lift from the ground and put him to sit on the bench).

Manner of transport of persons to the official premises:

The attacker was transported to the premises of the police station in a police vehicle in the back seat behind the passanger and with a police officer next to him. The other three persons who accompanied the attacker were transported in one vehicle to the police station.

Specific characteristics of the person against whom the measures were taken:

The person is minor, male, and the alcohol test detected the presence of 1.59 mg/ml of alcohol.

Level of harm of consequences resulting from the powers exercised:

The consequences for the person against whom the means of coercion were used were defined by a specialist doctor of Clinical-Hospital Centre of Vojvodina and they were common, double compound fracture of the maxilla on the right side with the displacement of bone fragments. The attacked police officer who was defended by another police officer had his uniform torn and light bodily injury in the form of three haematoma of upper right arm.

The level of harm of the consequences, together with the quality of control over the person against whom the means of coercion were used, is the basic criterion to assess the professionalism of the authorized officer's conduct. The harmful consequences that occurred at the person against whom the means of coercion were used suggest the need to achieve high-level force in a short amount of time (the growth of force over unit of time, which characterizes the tools of pushing and hitting, varies according to that time). In pushing it is considerably longer, which makes the force impulse lower and naturally makes it impossible to result in consequences such as common double compound fracture of the maxilla. The level of harm of the consequences that occurred suggests that the tool used in solving the attack on another police officer was a blow.

Outcome of conduct against the person:

Misdemeanour action was moved against the four minors who violated public peace and order by shouting and making noise, while the criminal charges for obstructing a police officer in carrying out his duties were brought against the minor who assaulted the authorized officer. The procedure has not been completed yet.

The outcome of the work of the commission in order to determine justifiability and regularity:

Considering that in the course of exercising the powers in the form of the use of means of coercion there occurred grievous bodily injuries of a person, the procedure to determine justifiability and regularity was

conducted by a three-member commission chosen from experienced, authorized, highly educated police officers of the current police administration.

In order to determine the truth, it was necessary for the commission to determine the relationship between the actual individual problem situation, the adequacy of selection of individual tools, the manner of their use and the level of harm of the consequences resulting from the use of powers.

The commission completed its work with the report upon considering the circumstances of the use of means of coercion and giving the opinion that the means of coercion were used justifiably (in accordance with the Law on Police) and in the manner set out by the current sub-legal act. In addition, the commission stated also their opinion that it was necessary to undertake the activities on the education of the acting police officers which would provide for a higher level of expertise when using the means of coercion.

The results of the work of the commission represent a basis for confirmation of professionalism in work of the police officers individually, organizational units, and even the entire police force, and/or recommendation to the responsible persons that it is always necessary to improve the quality of functioning of police organization. The previous outcome of the commission work suggests the professional work of police officers and could (must) be used as positive examples in the future education of the authorized police officers as good example from practice.

The work of the commission is the most interesting for this paper as well as the manner in which they defined their opinion. It is the opinion of the commission that the means of coercion were used in a justifiable and regular manner, however, at the same time, the commission adds that it is necessary to undertake the activities on the education of the acting police officers which would provide for a higher level of expertise during the use of means of coercion. Before defining their attitude, the commission got acquainted with the opinion of the prior acting superiors that even the use of force – physical strength of lower intensity using other skills of defence and attack would have given the positive results in repelling the assault by the minor.

CONCLUSION

Police powers in the form of use of means of coercion are rather delicate due to the possibility of violation of basic human rights, and thus violating the trust of the citizens in the police as a state institution, but at the same time in other state institutions (prosecution office, courts, ombudsman...).

Specific competences as the positive outcome of quality education of authorized police officers should be the guarantee that only necessary harmful consequences would occur when exercising powers in the form of means of coercion during performance of police duties and playing the role in the society.

As for the analyzed event, there is a disregard of the established social standards by several minors who were under the influence of alcohol, as well as a certain level of social danger as the consequence of such behaviour. Of course, the level of harmful consequences that occurred after the use of powers is incomparably higher.

The authorized police officers made decision to choose among several previous problem situations to resolve this assault of grabbing and pushing of a police officer. There is reasonable doubt in the tools mentioned to be used in the report, as well as in the stated manner of their use. Hierarchical control of justifiability and regularity of the used means of coercion, and particularly the work of the commission, missed the opportunity to get the information on the concrete event in other ways and from other sources. Without them, the commission concluded that the means of coercion were used justifiably and regularly.

However, the commission added to their opinion the suggestion that there is the need to undertake the activities on the education of **acting police officers** which would provide for a **higher level of expertise** when using means of coercion, by which it cast a long shadow on the quality of the previously established justifiability and regularity.

The analysis of the concrete case of the use of means of coercion suggests the lack of specific competences for the use of powers in the form of use of means of coercion, but also the competences for their justifiability and regularity, which may suggest the lack of professionalism even in education, training, continuous education and evaluation of police officers, and thus the possible violation of the trust of citizens in the police organization, but also in other state institutions.

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INTERNAL MARKETING AS ONE OF THE FACTORS OF EFFICIENCY OF THE POLICE ORGANIZATION[1]

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Abstract: This paper deals with internal marketing as one of the factors of efficiency of the police organization. The research was conducted by means of the analysis of domestic and foreign literature relevant to the topic of the paper – largely that published in scientific journals (articles) in the field of social sciences, which are in the Serbian Citation index base (SCIndex base) and the Serbian Library Consortium for Coordinated Acquisition (Kobson), as well as articles published on the Internet.

During the 20th century, the focus of the research was the analysis of factors which affect behavior of police officers (employees). *The police as citizens' service* concept implies the key postulates of internal marketing: The satisfaction (and retention) of employees is one of the preconditions for the satisfaction of citizens with the service.

Orientation towards citizens (as customers) among the employees is very important, because the former rely on the behavior of the latter when judging the quality of a service. There is growing evidence that supports a positive relationship between employee satisfaction (employee retention) and citizen satisfaction. This paper focuses on employee retention from the perspective of citizens as customers, because the retention of valuable employees has always been important to police as an organisation. Therefore, internal marketing focuses on the employees who are able to serve the citizen as a customer well.

However, measuring the efficiency of police performance by the parameters based on internal marketing is not so common in practice. The aim of the paper is to encourage domestic and foreign professionals to get involved in the research of performances which determine the quality of relations between employees and citizens, the factors which affect employee retention, and their satisfaction.

Future research should be concerned with the research and analysis of factors of the employee retention because the retention of valuable employees is one of the factors that enhance the efficiency of the police organization.

Keywords: internal marketing, employee retention, citizen satisfaction, efficiency of the police organization.

INTRODUCTION

"Policing, like all professions, learns from experience"[3]

Organizations invest a lot in recruiting, selecting, training, developing and motivating their employees over time. These activities are conducted by the human resource management. The goal of the modern human resource management is achieving business (corporate) strategy through the effective management of employees in an organization.

What becomes crucial is how to maintain and retain the best employees (workers). If the best employees are not retained, this can have a negative effect on the organizational efficiency and effectiveness.

Maintaining and retaining the best employees is not only in the focus of the human resource management, but also the focus of the internal marketing. It is worth to mentioning that internal marketing focuses on employees as customers. Also, the satisfaction and retention of employees is one of the preconditions for the satisfaction and retention of customers.

1 The work presented here was supported by the Serbian Ministry of Education, Science and Technological Development (project III 45003 and project III 44006).

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3 Kelling, L.G., Moore, H.M. (1988). The Evolving Strategy of Policing. *Perspectives on Policing*. Harvard University: A publication of the National Institute of Justice, U.S. Department of Justice, and the Program in Criminal Justice Policy and Management John F. Kennedy School of Government, November, No. 4, p. 1.

The police as citizens' service concept implies *citizens (as customers) orientation among employees*[4]. This is very important, because the citizens rely on the behavior of employees when judging the quality of a service. Internal marketing focuses on employee retention from the perspective of a citizens as customers. The retention of valuable employees (who are able to serve citizen as a customer well) has always been important to police organization. The aim of the paper is to encourage domestic and foreign professionals to engage in the research of performances which determine the quality of relations between employees and citizens, the factors which affect employees retention, and their satisfaction.

METHODOLOGY

The research was conducted by means of the analysis of domestic and foreign literature relevant to the topic of the paper – largely that published in scientific journals (articles) in the field of social sciences, which are in the Serbian Citation index base (SCIndex base) and the Serbian Library Consortium for Coordinated Acquisition (Kobson), as well as articles published on the Internet. Therefore, the structure of the paper is as follows: Internal marketing as a topic in scientific articles or studies; Measuring the efficiency of the police organization as a topic in scientific articles or studies; The efficiency of the police organization, human resource management and internal marketing; Instead of discussion – directions from past research; Conclusion; Literature.

INTERNAL MARKETING AS A TOPIC IN SCIENTIFIC ARTICLES OR STUDIES

According to SCIndex base[5], domestic literature about internal marketing is modest (Table 1).

Table 1 *Internal marketing as a topic in domestic scientific articles or studies (SCIndex base)*[6]

Autor/authors, Title, Journal, Vol. (No.), Pages	Topic
Riznić, D., Milijić, N., Lazić, J. (2011). Merenje performansi ključnih dimenzija unutrašnjeg marketinga. *Industrija*, 39(2), 185-201.	This article presents a tool that helps 'companies to assess their orientation towards the internal marketing in order to successfully comply it with the market objectives'. (p. 185)
Krstić, B., Krstić, I. (2012). Komplementarnost primene koncepata upravljanja znanjem i internog marketinga. *Marketing*, 43(4), 253-263.	This article shows 'that complementary application of the concept of internal marketing and the concept of knowledge management may result in synergistic effect of enlargement and specialisation of the intellectual capital'. (p. 263)

Retention of employees[7] as a topic in domestic scientific articles or studies (SCIndex base) has not been found.[8]

Foreign literature on internal marketing is significant (Kobson base and articles published on the Internet). Table 2 shows internal marketing as a topic in foreign scientific articles or studies.

According to Rafiq and Ahmed (2000), the first phase in the development of the internal marketing concept focuses on employee motivation and satisfaction via marketing-like activities (the treatment of employees as internal customers, employee satisfaction becomes important), while the second phase focuses on customer orientation.[9] In these periods, inter-functional coordination (within an organization) was not in the focus of scientific articles.[10]

4 Hennig-Thurau defines *customer orientation among employees* 'as the extent to which the employee's behavior in personal interactions with customers meets those customer needs'. Hennig-Thurau, T. , (2004). Customer orientation of service employees, its impact on customer satisfaction, commitment, and retention. *International Journal of Service Industry Management*, 15(5), 460-478, p. 462.

5 Search term 'internal marketing'– Serbian: *interni marketing* (search text *in article titles, abstracts and keywords,* and *in article full-texts).*

6 http://scindeks.ceon.rs/SearchResults.aspx?query=ARTAK%26and%26interni%2bmarketing%26ARTFT%26and%26interni%2bmarketing&page=0&sort=1&stype=0 (retrieved: 13.12.2014.)

7 Search term 'retention of employees'– Serbian: *zadržavanje zaposlenih* (search text in article titles, abstracts and keywords, and in article full-texts).

8 http://scindeks.ceon.rs/SearchResults.aspx?query=ARTAK%26and%26zadrzavanje%2bzaposlenih%26ARTFT%26and%26zadrzavanje%2bzaposlenih&page=0&sort=1&stype=0 (retrieved: 13.12.2014.)

9 See more: Rafiq, M., Ahmed, P.K. (2000). Advances in the internal marketing concept: definition, synthesis and extension. *Journal of Services Marketing*, 14(6), 449-462, p. 450-451.

10 *Ibid.*

Table 2 *Internal marketing as a topic in foreign scientific articles or studies (Kobson base and articles published on the Internet; selected articles, criterium: the number of citations to articles)* [12]

Author/authors, Title, Journal, Vol.(No.), Pages	Topic
Berry, L.L., Hensel, J.S. & Burke, M.C. (1976). Improving retailer capability for effective consumerism response. *Journal of Retailing*, 52(3), 3-14.	'Internal marketing is concerned with making available internal products (jobs) that satisfy the needs of a vital internal market (employees) while satisfying the objectives of the organization.' (p. 8)
Sasser, W.E., Arbeit, S.P. (1976). Selling jobs in the service sector. *Business Horizons*, 19(3), 61-65.	The primary focus of the service manager is offer 'a spectrum of jobs designed to attract and retain employees who provide excellent service'. (p. 65).
George, W.R. (1977). The Retailing of Services-A Challenging Future. *Journal of Retailing*, 53(3), 85-98.	Satisfied employees-satisfied customers.
Berry. L.L. (1981). The Employee as Customer. Journal of Retail Banking (March), 33-40.	Berry defined internal marketing as 'viewing employees as internal customers, viewing jobs as internal products that satisfy the needs and wants of these internal customers while addressing the objectives of the organization'.[11]
Grönroos, C. (1981). Internal marketing - an integral part of marketing theory. In Donnelly, J.H., George, W.E. (Eds). *Marketing of Services*. AMA Proceedings Series, 236-238.	Internal marketing is a part of Interactive marketing.
Grönroos, C. (1985). Internal marketing - theory and practice. AMA's Services Conference Proceedings, 41-47. http://marketing.conference-services.net/resources/327/2958/pdf/AM2012_0348_paper.pdf	Internal marketing enables employees to behave in a market oriented manner. The aim of internal marketing is motivated and customer-conscious employee (developing, educating, and training employees).
Gummesson, E. (1987). Using internal marketing to develop a new culture – the case of Ericsson quality. *Journal of Business & Industrial Marketing*, 2(3), 23-28.	The broadening of the internal marketing concept to include the notion of the 'internal customer'.
Piercy, N., Morgan, N. (1989). Internal marketing strategy: leverage for managing marketing-led change. *Irish Marketing Review*, 4(3), 11-28.	Focus is on inter-functional coordination and integration (internal marketing and human resource management).
Piercy, N., Morgan, N. (1990). Internal Marketing: Making Marketing Happen. *Marketing Intelligence & Planning*, 8(1), 4-6.	Internal marketing plans and strategies are a critical issues in making marketing work.
Grönroos, C. (1990). Marketing Redefined. *Management Decision*, 28(8) http://dx.doi.org.proxy.kobson.nb.rs:2048/10.1108/00251749010139116	The focus is on the relationship marketing and the internal marketing.
George, W.R. (1990). Internal marketing and organizational behavior: a partnership in developing customer-conscious employees at every level. *Journal of Business Research*, 20, 63-70.	The internal marketing concept implies that the internal market of employees is best motivated for service-mindedness. A customer-oriented behaviour by an active, marketing-like approach, where marketing-like activities are used internally. (p. 64)
Bowers, M.R., Martin, L.C. & Luker, A. (1990). Trading Places: Employees as Customers, Customers as Employees. *Journal of Services Marketing*, 4(2), 55-69.	Focus is on the quality of the customer-employee interface. Companies can improve this interface by treating employees as customers and customers as employees.

11 *Ibid*, p. 451.
12 http://kobson.nb.rs/kobson.82.html; internet – academic article Google Scholar (retrieved: 12.12.2014.)

Gummesson, E. (1991). Marketing Orientation Revisited: The Crucial Role of The Part-Time Marketer. *European Journal of Marketing,* 25(2), 60-75.	Elements of internal marketing mix are: communication, training, education and information.
Author/authors, Title, Journal, Vol.(No.), Pages	Topic
Christopher, M., Payne, A. & Ballantyne, D. (1991). *Relationship Marketing*. Oxford: Butterworth-Heinemann.	Internal marketing (market) can contribute to an organisation's (market place) effectiveness.
Rafiq, M., Ahmed, P.K. (1993). The scope of internal marketing: defining the boundary between marketing and human resource management. *Journal of Marketing Management*, 9(3), 219-232.	Elements of internal marketing mix are: motivating, developing, educating and training employees; attracting, hiring and retaining employees.
Helman, D., Payne, A. (1995). Internal Marketing: Myth versus Reality. In: Payne, A. (ed.). *Advances in Relationship Marketing*. London: The Cranfield Management Series and Kogan Page.	The aim of internal marketing is improving internal market relationships, quality and customer service and organizational effectiveness.
Piercy, F.N. (1995). Customer satisfaction and the internal market: Marketing our customers to our employees. *Journal of Marketing Practice: Applied Marketing Science*, 1(1), 22-44.	'An internal market perspective suggests where these implementation barriers may arise inside organizations in ways which directly mirror the external market'. (p. 22)
Rust, R.T., Stewart, G.R, Miller, H. & Pielack, D. (1996). The satisfaction and retention of frontline employees: A customer satisfaction measurement approach. *International Journal of Service Industry Management*, 7(5), 62-80.	Employee turnover is highest among employees who are not satisfied with their jobs. Organizations need to focus on increasing employee satisfaction. (p.62)
Rafiq, M., Ahmed, P.K. (2000). Advances in the internal marketing concept: definition, synthesis and extension. *Journal of Services Marketing,* 14(6), 449-462.	Inter-functional coordination and employee motivation become significant.
Ahmed, P.K., Rafiq, M. & Saad, N.M. (2003). Internal marketing and the mediating role of organisational competencies. *European Journal of Marketing*, 37(9), 1221-1241.	Focus is on the link between employee satisfaction and organizational performance, on inter-functional coordination that provides the effective implementation of marketing strategies and other.
Bowers, M.R, Martin, L.C. (2007). Trading places redux: employees as customers, customers as employees. *Journal of Services Marketing,* 21(2), 88-98.	Companies can improve interface by treating employees as customers and customers as employees.
Lings, I., Greenley, G. (2009). The impact of internal and external market orientations on firm performance. *Journal of Strategic Marketing*, 17(1), 41-53.	Internal marketing techniques can affect performance in external market.
Cardy, L.R., Lengnick-Hall, M.L. (2011). Will They Stay or Will They Go? Exploring a Customer-Oriented Approach To Employee Retention. *Journal of Business and Psychology*, 26, 213–217.	Employees are internal customers of management.
Khaled M. Omar Salem, (2013). The Relationship between Internal Marketing Orientation and Employee Job Satisfaction In Public Sector. *International Journal of Learning & Development*, 3(5), 111-120. http://www.macrothink.org/journal/index.php/ijld/article/viewFile/4485/3727	Internal marketing orientation positively correlates with employee job satisfaction.

The definition (1993) 'Internal marketing is a planned effort to overcome organisational resistance to change and to align, motivate and integrate employees towards the effective implementation of corporate

and functional strategies'[13], fails to emphasize the use of a marketing-like approach.[14] Therefore, 'Internal marketing is a planned effort using a marketing-like approach to overcome organizational resistance to change and to align, motivate and inter-functionally coordinate and integrate employees towards the effective implementation of corporate and functional strategies in order to deliver customer satisfaction through a process of creating motivated and customer orientated employees'.[15] Thus, the third phase in the development of the internal marketing concept focuses on broadening the internal marketing concept - strategy implementation and change management (the major emphasis was on inter-functional coordination and implementation).[16]

According to Saad, Ahmed, Rafiq (2002), internal marketing supports human resource management by making that employees working together support the organizational strategy and goals.[17] The internal marketing mix components are: top management support mix (empowerment, senior leadership, strategic reward, physical environment); business process support mix (staffing, selection and succession, process changes, incentive system); and cross-functional coordination mix (internal communication, inter-functional co-ordination, training and development).[18] According to Dabholkar and Abston, job satisfaction, the employee's patronage of the services and job performance (as customers contact employees) are the three factors leading to long-term relationships (between customers and employees) and benefits for the organization.[19]

Employee perceptions of internal marketing are significantly related to their organizational loyalty. If an organization wants to develop a quality-based strategy to increase employee loyalty, it must know how to support work, atmosphere, communication, educational training, motivation, and empowerment influence employee loyalty. Organizations should engage in employee internal marketing to enhance organizational loyalty.[20]

Previous studies indicate that many organizations have not balanced the internal marketing and the human resource management in the field of employee retention.

MEASURING THE EFFICIENCY OF THE POLICE ORGANIZATION AS A TOPIC IN SCIENTIFIC ARTICLES OR STUDIES

The focus of the various studies was on the analysis of traditional factors measuring the efficiency of the police as well as on the factors influencing the behavior of police officers in police-citizen encounters (Table 3).

During the 20th century the most interesting research topic was police-citizen encounters. Citizen satisfaction with police officers in police-citizen encounters as a topic is less researched (Table 4).

There is growing evidence that supports a positive relationship between employees satisfaction and citizens satisfaction. However, the above articles/studies, do not provide the answer to the question *how to retain employees*.

Table 3 *Review of articles/studies that are mostly present citizen satisfaction with police encounters*[21]

Author/authors, Year	Title	Journal, Vol., No., P.
Sykes, R.E., Clark, J.P. (1975)	A Theory of Deference Exchange in Police-Civilian Encounters	*American Journal of Sociology*, 81 (3), 584-600.
Sherman, L.W. (1980)	Causes of police behavior: The current state of quantitative research	*Journal of Research in Crime and Delinquency,* 17(1), 69-100.
Smith, D.A., Visher, C.A. (1981)	Street-level justice: Situational determinants of police arrest decisions	*Social Problems*, 29(2), 167-177.

13 Rafiq, M., Ahmed, P.K. (1993). The scope of internal marketing: defining the boundary between marketing and human resource management. *Journal of Marketing Management*, 9(3), 219-232, p. 222.
14 Rafiq, M., Ahmed, P.K. (2000). Advances in the internal marketing concept: definition, synthesis and extension. *Journal of Services Marketing*, 14(6), 449-462, p. 454.
15 *Ibid*.
16 *Ibid*, p. 455.
17 Saad, N.M, Ahmed, P.K. & Rafiq, M. (2002). Internal marketing: Using marketing-line approach to build business competencies and improve performance in large Malaysian corporations. *Asian Academy of Management Journal*, 7(2), 27-53, p. 33.
18 *Ibid*, p. 39.
19 Dabholkar, A.P., Abston, A.K. (2008). The role of customer contact employees as external customers: A conceptual framework for marketing strategy and future research. *Journal of Business Research*, 61(9), 959-967.
20 Chen, Y-C., Lin, S. (2013). Modeling Internal Marketing and Employee Loyalty: A Quantitative Approach. *Asian Social Science*, 9 (5), 99-109, p. 106.
21 *Ibid*.

Riksheim, E.C. (1993)	Causes of police behavior revisited	*Journal of Criminal Justice*, 21(4) 353-382.
Kanduce, L.L., Greenleaf, G.R. (1994)	Police-citizen encounters: Turk on norm resistance	*Justice Quarterly*, 11(4), 605-623.
Lundman, R.J. (1994)	Demeanor or crime? The Midwest city police-citizen encounters study	*Criminology*, 32(4), 631–656.
Mastrofski, S.D., Snipes, J.B., Parks, R.B. & Maxwell, C.D. (2000)	The helping hand of the law: Police control of citizens on request	*Criminology*, 38(2), 307-342.
Weitzer, R., Brunson, R.K. (2009)	Strategic Responses to the Police among Inner-City Youth	*The Sociological Quarterly*, 50(2), 235-256.
Dai, M., Frank, J. & Sun, I. (2011)	Procedural justice during police-citizen encounters: The effects of process-based policing on citizen compliance and demeanor	*Journal of Criminal Justice*, 39(2), 159-168.
Rossler, T.M., Terill, W. (2012)	Police Responsiveness to Service-Related Requests	*Police Quarterly,* 15(1), 3-24.
Jonathan-Zamir, T., Mastrofski, D.S. & Moyal, S. (2013)	Measuring Procedural Justice in Police-Citizen Encounters	*The Sociological Quarterly*, 50(2), 235-256.
Mazerolle, L., Antrobus, E., Bennett, S. & Tyler, T. (2013)	Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice	*Criminology*, 51(1), 33-63.

Table 4 *Review of articles/studies that are mostly present relationship between police and citizens*[22]

Author/authors, Year	Title	Journal, Vol., No., P.
Tyler, R.T., Folger, R. (1980)	Distributional and Procedural Aspects of Satisfaction With Citizen-Police Encounters	*Basic and Applied Social Psychology*, 1(4), 281-292.
Reisig, M.D., Chandek, M.S. (2001)	The effects of expectancy disconfirmation on outcome satisfaction in police-citizen encounters	*Policing: An International Journal of Police Strategies & Management*, 24(1), 88-99.
Alpert, P.G., Dunham, G.R., & MacDonald, M.J. (2004)	Interactive Police-Citizen Encounters that Result in Force	*Police Quarterly*, 7(4), 475-488.
Skogan, W. (2005)	Citizen Satisfaction with Police Encounters	*Police Quarterly*, 8(3), 298-321.
Murphy, K. (2009)	Public Satisfaction With Police: The Importance of Procedural Justice and Police Performance in Police-Citizen Encounters	*Australian & New Zealand Journal of Criminology*, 42(2), 159-178.
Hinds, L. (2009)	Public satisfaction with police: the influence of general attitudes and police–citizen encounters	*Int. Journal of Police Science & Management*, 11(1), 54-66.

22 http://kobson.nb.rs/servisi.124.html; retrieved: 09.03.2014, in Milanović, V. (2014). Relevantnost logike marketinga i marketing filozofije u policiji kao servisu građana. *Bezbednost*, MUP RS, 56(2), 51-66.

THE EFFICIENCY OF THE POLICE ORGANIZATION, HUMAN RESOURCE MANAGEMENT AND INTERNAL MARKETING

According to Mawby (2011), the efficiency of police organization depends on type of police organization as an institution (police system).[23] Type of a model of policing[24] determines the police organization through structure, division of tasks, manner of distributing power, internal coordination, interpersonal communication and other.[25]

Poor working conditions can provide opportunities for police officers to resort to corruption. Therefore, human resource management is a critical area in tackling police corruption.[26] According to Rust et al. (1996), 'employee turnover is highest among employees who are not satisfied with their jobs'.[27] Consequently, the human resource management needs to focus on increasing employee retention through increasing employee satisfaction. Adapting to Bowen (1996), the purpose of human resource management in police organization is to create satisfied employees. Satisfied employees are more motivated. They are capable of providing good service.[28]

Internal marketing orientation is positively correlated with employee job satisfaction: internal marketing research, internal communication, and internal response as three dimensions of internal marketing orientation used to accomplish relationship between internal marketing orientation and employee job satisfaction.[29] Also, internal marketing provides employee loyalty and retention. Adapting to Bowers, Martin (2007), successful police organization should treats employees more like citizens (as customers), as well as citizens more like employees.[30] Internal marketing (internal market-employees) can contribute to an organization's effectiveness (on external market-customers, through market place).[31] Adapting to Christopher, Payne, and Ballantyne (1991), internal marketing can contribute to the efficiency of the police organizations (through employees satisfaction to citizen satisfaction).

INSTEAD OF DISCUSSION – DIRECTIONS FROM PAST RESEARCH

In 2002, Mawby and Worthington are considered that 'The police will need to adopt many of the principles and techniques that have come out of the services marketing and management literature. One of these is internal marketing'. They also underlined that '*the Marketing of the Marketing Orientation* needs to be the next step in the process of transforming the police from a force to a service'.[32] According to Milanović (2014), *the police as citizens' service* implements the key postulates of marketing philosophy, while the satisfaction of citizens with the service provided by police in cooperation with citizens and other organizations in strategic partnership represents the most important one.[33] The success of police service depends on the police officers, their responsibility, attitudes, perceptions, and behaviors. The retention of valuable employees contributes the efficiency of the police organization, because the retention of valuable employees is one of the preconditions for the satisfaction of citizens with the service. Adapting to Rust, et al. (1996), the po-

23 Mawby considers the role of police organizations as an institution (not as a process) through comparison Anglo-American systems, those that have developed in the continental Europe, colonial societies, communist countries, and different parts of Asia. See more: Mawby I.R. (2011). Modeli of Policing, (pp. 17-47), In *Handbook of Policing*, (ed. Tim Newburn). London and New York: Routledge, Taylor and Francis Group.

24 See more: The choice of a model of policing (traditional policing vs community policing) is one of the most important strategic decision (p. 100-102). In Toolkit on Police Integrity (2012), The Geneva Centre for the Democratic Control of Armed Forces (DCAF). tps://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/88313.PDF (retrieved 12.12.2014).

25 See more: Elements of a police organisational structure (pp. 102-109); The processes as a one of the elements of a police organisation (pp. 109-114). In Toolkit on Police Integrity (2012), The Geneva Centre for the Democratic Control of Armed Forces (DCAF). tps://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/88313.PDF (retrieved 12.12.2014).

26 Toolkit on Police Integrity (2012). The Geneva Centre for the Democratic Control of Armed Forces (DCAF), 114-116; tps://www.politieacademie.nl/kennisenonderzoek/kennis/mediatheek/PDF/88313.PDF (retrieved 12.12.2014).

27 Rust, R.T., Stewart, G.L., Miller, H. & Pielack, D. (1996). The satisfaction and retention of frontline employees: A customer satisfaction measurement approach. *International Journal of Service Industry Management*, 7(5), 62-80, p. 62.

28 Bowen, E.D. (1996). Market-focused HRM in service organizations: Satisfying internal and external customers. *Journal of Market-Focused Management*, 1(1), pp. 31-47.

29 The most significant dimension of internal marketing orientation on employee job satisfaction is internal response. Khaled M. Omar Salom (2013). The Relationship between Internal Marketing Orientation and Employee Job Satisfaction In Public Sector. *International Journal of Learning & Development*, 3(5), pp. 111-120.

30 Bowers, M.R., Martin, L.C. (2007). Trading places redux: employees as customers, customers as employees. *Journal of Services Marketing,* 21(2), pp. 88-98

31 Christopher, M., Payne, A. & Ballantyne, D. (1991). *Relationship Marketing.* Oxford: Butterworth-Heinemann.

32 According to Lings, I. (1998), in Mawby, C.R., Worthington, S. (2002). Marketing the Police – from a Force to a Service. *Journal of Marketing Management*, 18(9-10), 857-876, p. 876.

33 Milanović, V. (2014). Relevantnost logike marketinga i marketing filozofije u policiji kao servisu građana. *Bezbednost*, MUP RS, 56(2), pp. 51-66.

lice should use customer satisfaction measurement approach in measuring citizens satisfaction with police service. Then, a customer (citizen) satisfaction measurement approach can be used to measure employee satisfaction and retention. [34]

It is necessary to have (internal) market-oriented human resource managers. That implies the alignment of the employees towards achieving police organizational purposes and goals. When marketing their services inside their police organization, human resource management specialists should apply the same strategies as marketing specialists use to promote police services outside the police organization (e.g. market research, segmentation and targeting).[35]

CONCLUSION

Measuring the citizen satisfaction and measuring employee satisfaction are insufficiently represented as topics in research articles as well as in practice of police organizations. It means that measuring the efficiency of police performance by the parameters based on internal marketing is not common in practice. Also, employee retention as an activity of the human resource management in the police organization is insufficiently present. Since the modern concept of human resource management and internal marketing concept are not applied in the police organization, the efficiency of the police organization is reduced.

Empirical evidence of a positive relationship between internal marketing practices and organizational effectiveness (through performance) are insufficient and unclear. Therefore, future research should be focused:

– on the research of the needs, attitudes and behavior of citizens in order to create adequate strategies of their satisfaction, as well as on measuring the citizen satisfaction (in the field of external marketing),

– on the research of the needs, attitudes and behavior of employees in order to create adequate strategies of their satisfaction, as well as on measuring the employee satisfaction (in the field of internal marketing),

– on measuring the efficiency of police performance by the parameters based on internal marketing because internal marketing can be one of the factors that enhances efficiency of the police organization.

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STRUCTURAL (A)SYMMETRIES OF POLICE STATIONS AND POLICE SUBSTATIONS IN THE REPUBLIC OF SERBIA[1]

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Abstract: Police stations and police substations represent key organizational units on an operational level within the organizational structure of the National Police Directorate subordinate the Ministry of Interior of the Republic of Serbia. Despite the fact that most of them are formed in order to provide immediate implementation of police affairs and other actions defined by current laws within the areas of each municipality, township or city in the Republic of Serbia, one of their characteristics is the existence of structural (a)symmetries of different types. Starting from that premise, this paper is a result of the research that identified, scientifically described and explained basic structural (a)symmetries of regional police departments, police stations and police substations in the Republic of Serbia, especially regarding their official names, competence, territorial reach, internal structures and delegation of authority. In this paper, reasons for the existing (a)symmetries were also analyzed and identified, as well as their influence on the quality of functions of these organizational units within the Police Directorate. One part of this paper contains recommendations that could improve the organizational structure of the Directorate, make it more efficient, effective and more suitable for modern day environment.

Keywords: Police station, police substation, organizational structure, a(symmetry).

INTRODUCTION

Based on the Law on Police, in order to conduct police affairs and other actions defined by current laws in the Republic of Serbia, the Police Directorate was formed, with the status of basic organizational unit within the Ministry of Interior of the Republic of Serbia (hereinafter referred to as: MUP RS). Its organizational structure comprises many different organizational units that can be classified by various criteria. Unlike extensive research conducted in the area of police affairs, as wel as its form, methods and practical results, the results of research regarding the compliance of its organizational structure with the needs and expextations of the surroundings and the specificities of municipalities and cities as territorial units within the Republic of Serbia is on a much lower level.

Starting from that premise, this paper shows the results of a particular research conducted in order to use the comparative analysis of regional police departments (hereinafter referred to as: PPU), police stations (hereinafter referred to as: PS) and police substations (hereinafter referred to as: PI) in the Republic of Serbia,[3] to identify and, if applicable, scientifically describe and explain: 1) their structural (a)symmetries, especially regarding their territorial reach, but also regarding their official names, internal structures, organizational levels and delegation of authority, 2) reasons for their existence and the influence of these (a) symmetries on the functioning of police department, as well as 3) possible needs for a review of existing solutions and the implementation of new solutions within the organizational structure of the Police Directorate, in accordance with the needs and abilities of the Republic of Serbia.

1 This paper is a result of the research conducted within the scientific research project III 47023 „Kosovo i Metohija između nacionalnog identiteta i evrointegracija", funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia. This paper is a result of the research conducted within the project: „Upravljanje policijskom organizacijom u sprečavanju i suzbijanju pretnji nezbednosti u Republici Srbiji", funded by the Academy of Criminalistic and Police Studies in Belgrade, research cycle 2015-2019.
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3 Due to international legal status of the Autonomous Province of Kosovo and Metohija established by the United Nations Security Council Resolution 1244, organizational units of the Police Directorate formed for this particular part of territory were analyzed only on the level of Serbian Coordination Directorate for Kosovo and Metohija.

RESEARCH RESULTS

Territorial organization of the Republic of Serbia and the organizational structure of the Police Directorate

Territorial organization of the Republic of Serbia comprises municipalities, cities and the city of Belgrade as territorial units, and autonomous provinces as a form of territorial autonomy.[4] Other than municipalities[5] as basic territorial units of the Republic of Serbia, in accordance with the City Statutes[6] and the Belgrade City Statute[7], it is possible to establish townships.[8] Territory of all the municipalities and cities in the Republic of Serbia, except the territory of the city of Belgrade, is grouped into areas of 29 administrative districts that are defined as regional centers of state administration that include regional units of all administrative state organs, that are formed for those specific areas.[9]

The organizational structure of MUP RS that is active in the 21st century was established in 1997, and was, with small changes, still active when the new Law on Police was passed in 2005.[10]. After that, based on the Rulebook on Internal Organization and Systematization of Job Positions in MUP RS[11], established in accordance with the Law on Ministries[12], Law on Police[13] and the Ordinance of the Government,[14] the Minister of Interior established a modern organizational structure of MUP RS.[15] In accordance with the Rulebook, a modern organizational structure (internal organization) of the Police Directorate was established, as the basic and most fundamental organizational unit within the MUP RS, established by law[16] in order to conduct police affairs,[17] as a part of internal affairs.[18]

The established organizational structure of the Directorate comprises many different internal organizational units that can be classified by various criteria.[19] In accordance with the territorial reach of competence and responsibilities, as one of the criteria, the complex structure of the Directorate comprises its internal organizational units that have: 1) national (republic), 2) regional[20] (county, city), 3) local (municipal) and 4) specific (object) reach.

Organizational units with national reach were established in order to conduct police affairs and other actions within the entire territory of the Republic of Serbia. Other than Police Directorates, these organizational units comprise departments and other organizational units in their headquarters.[21] Organizational units with regional reach were established in order to conduct activities within their reach and within the territory of several municipalities, and within the territory of the city of Belgrade. This type of organizational units comprise: 1) Police Departments (hereinafter referred to as: PU) of the city of Belgrade, established for the needs of the City, respectively 17 municipalities within the city, 2) Regional Police Departments (hereinafter referred to as: PPU), that were established for the needs of municipalities and cities that, with small exceptions, have appropriate Administrative Districts,[22] as well as 3) Coordination Directorate for

4 Law on the Territorial Organization of the Republic of Serbia, „*Sl. Glasnik RS*", num. 129/2007, art. 2.
5 Also, art. 11; 150 municipalities were established in Serbia: APV – 39, APKiM – 28 and Central Serbia – 83.
6 Also, art. 17; 23 cities were established in Serbia, in APV – 6 (Novi Sad, Zrenjanin, Pančevo, Sombor, Sremska Mitrovica i Subotica), APKiM – 1 (Priština) and Central Serbia – 16 (Valjevo, Vranje, Zaječar, Jagodina, Kragujevac, Kraljevo, Kruševac, Leskovac, Loznica, Niš, Novi Pazar, Požarevac, Smederevo, Užice, Čačak and Šabac).
7 Law on Territorial Organization of the Republic of Serbia, „*Sl. Glasnik RS*", num. 129/2007, art. 21.
8 Also, art. 19 and 23.
9 Regulation on Administrative Districts, Sl. Glasnik RS", num. 15/2006., art. 2 and 12. Of the total number of 29, 7 administrative districts were established in APV, 5 in APKiM and 17 in Central Serbia.
10 For more details: Stevanović, O. (2013): Organizaciona struktura policije u Republici Srbiji u poslednjoj deceniji XX veka. *Struktura i funkcionisanje policijske organizacije – tradicija, stanje, perspektive – I*, zbornik radova, KPA, Belgrade, page. 148-170.
11 *Rulebook on Internal Organization and Systematization of Job Positions in MUP RS,* since the 13th of September 2005.; 10th of May 2006.; 11th of April 2007.; 22nd of June 2009.; 3rd of April 2012.; and 23rd of May 2012.
12 Law on Ministries, „*Sl. Glasnik RS*", num. 19/2004, 43/2007,65/08, 36/2009,73/2010, 16/2011 and 72/2012.
13 Law on Police, „*Sl. Glasnik RS*", num. 101/05, 63/09 and 92/2011, art. 20-25 and 129.
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16 Law on Police, „*Sl. Glasnik RS*", num. 101/05, 63/09 and 92/2011, art. 1.
17 Also, art. 10.
18 Law on Ministries, „*Sl. Glasnik RS*", num. 19/2004, 43/2007,65/08, 36/2009,73/2010, 16/2011 and 72/2012.
19 For more details: Stevanović, O. (2013): Also.
20 In lack of a more adequte term, the term „regional" was used to label the territory of Belgrade, administrative district, and even parts of administrative district that have PPU.
21 *Informator o radu MUP RS*, January 2015, page 10.
22 Other than PU for the City of Belgrade, within the Police Directorate, for the territory of 24 administrative districts (outside KiM), 26 PPU were also established. 22 PPU were established symmetrically to territories of administrative districts with the headquarters in: Bor, Valjevo, Vranje, Zaječar, Zrenjanin, Jagodina, Kikinda, Kragujevac, Kruševac, Leskovac, Niš, Novi Sad, Pančevo, Pirot, Požarevac, Prokuplje, Smederevo, Sombor, Sremska Mitrovica, Subotica, Čačak and Šabac. In the area of Zlatibor and Raška administrative districts 4 PPU were established: PPU Kraljevo – for 3 municipalities of Raška district, PPU Užice – for 6 and PPU Prijepolje – for 3 municipalities of Zlatibor district, and PPU Novi Pazar – for 2 municipalities of Raška and 1 municipality of Zlatibor district. KU za KiM for all districts in AP KiM.

Kosovo and Metohija (hereinafter referred to as: KU za KiM), that was established for the needs of all municipalities (and Administrative Districts) within the Kosovo and Metohija territory.[23]

Organizational units with local reach within the Directorate were formed in order to conduct police affairs and other actions within the territory or parts of territory of municipalities, townships or cities. They include PS, PI with general jurisdiction, certain specialized PI with general jurisdiction, as well as police squads (hereinafter referred to as: PO) and security (hereinafter referred to as: BS). Organizational units with specific reach were established for territories and objects that include parts of 2 or more municipalities, but not their entire territories. These organizational units comprise, among others, regional centers and border police stations (hereinafter referred to as: RCGP and CGP) and certain specialized PI.

Police stations

Within the organizational structure of the Police Directorate 2 types of police stations were established as a part of their divisions that were territorially designed: 1) PS and 2) SGP. Having the status of internal organizational units of the Directorate, on an operational level, the former was established within the PPU and the latter within the Border Police Department (hereinafter referred to as: UGP) in the Directorate headquarters.

In order to conduct mainly operational and professional police affairs, one PS was established for the territory of: 1) each municipality outside the PPU headquarters, 2) 16 municipalities within the city of Belgrade[24] and 3) the city of Loznica.[25] Based on their internal organization, 3 basic structural types can be recognized:[26]

- PS without PI,
- PS with PI, and
- PS with PI and traffic police substations (hereinafter referred to as: SPI).

PS without PI were established in order to provide immediate implementation of police and administrative affairs within their reach in small municipalities outside PPU headquarters.[27] Their organizational structure comprises: 1) Crime prevention unit; 2) Administration unit; 3) Officer for records, general affairs and infractions; 4) Sector for traffic safety (hereinafter referred to as: SBS), 5) 2 or more BS,[28] and especially 6) police squad (hereinafter referred to as: PO).[29]

PS with PI were established in order to provide immediate implementation of actions within their reach, in the territory of large municipalities outside the regional police department headquarters. Internal organizational structure of each of them comprises: 1) One or more PI, 2) Crime prevention unit and 3) Administrative (or border and administrative) unit:[30]

PS with PI and SPI were established in order to provide immediate implementation of actions within their reach, in the territory of large municipalities with clear traffic and safety problems outside the regional police department headquarters.[31] Internal organizational structure of each of them comprises: 1) PI, 2) SPI, 3) Crime prevention unit and 4) Administrative (or border and administrative) unit[32]

Another type of police station is a SGP, established within a corresponding regional border police centers (hereinafter referred to as: RCGP),[33] in order to secure and control the crossing of national borders. Based on specific tasks that SGP perform, they can be sorted into 2 groups:

23 Due to international legal status of the Autonomous Province of Kosovo and Metohija established by the United Nations Security Council Resolution 1244, this paper does not analyze PPU, PS and PI in KiM that were structurally reduced or temporarily relocated in Central Serbia.

24 PS in Zemun was established for the territory of Zemun and Surčin municipalities.

25 PS in the city of Loznica, is the only PS with its headquorters in one city. It is a part of PPU in Šabac.

26 *Информатор о раду МУП РС*, January 2014, page 49.

27 These types of PS have headquarters in 27 municipalities: Trgovišre, Rekovac, Knić, Lapovo, Rača, Bojnik, Crna trava, Gadžin Han, Merošina, Ražanj, Bački Petrovac, Beočin, Titel, Opovo, Plandište, Golubac, Žabari, Žagubica, Malo Crniće, Žitorađa, Irig, Mali Iđoš, Arilje, Kosjerić, Vladimirovci, Koceljeva and Krupanj. Compare to: Subošić, D., *Organizacija i poslovi policije,* KPA, 2013, page 102.

28 Despite the fact that, in accordance with the Rulebook on Internal Organization and Systematization of Job Positions in MUP RS, they are not defined as organizational units of PS and PI, we can conclude that BS practically have the status of organizational units within the Police Directorate based on their names and corresponding instructions from the minister. (Subošić, D., *Organizacija i poslovi policije,* KPA, 2013, page 102; *Uputstvo o načinu organizovanja i vršenja unutrašnjih poslova na bezbednosnom sektoru*, MUP RS, 1997).

29 Within that category of PS, the following PS have police units within their organization: PS in Knić (PO Gruža), PS in Titel (PO Šajkaš), PS in Žagubica (PO Krepoljin), PS in Irig (PO Vrdnik), PS in Vladimirovci (PO Debrc) and PS in Krupanj (PO Zavlaka).

30 PS in municipalities that border neighbouring countries have border and administration units instead of administration units. Compare to: *Informator o radu MUP RS, January* 2015, page. 49.

31 PS in Bečej, Vršac, Loznica, Ljig, Negotin, Požega, Raška and Ruma (*Informator, also*).

32 Compare: Subošić, D., *Organizacija i poslovi policije,* KPA, 2013, page 101 and 103; Informator, also.

33 Regional border police centers towards: Hungary, Romania (north and south), Bulgaria, Former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Croatia and Montenegro (*Informator, also, page 30'31.).*

– SGP that secure national borders

– SGP that control the crossing of national borders

SGP that secure national borders were established as a part of the department of RCGP that has the same name, and in order to provide immediate implementation of actions within their reach in the territory that is both wider and narrower than the territory of one municipality. SGP that control the crossing of national borders were established as a part of the department of RCGP that has the same name, and in order to provide immediate implementation of actions within their reach in the territory that is narrower than the territory of one municipality.

Police stations (PS) are led by chiefs of PS, while Border police stations (SGP) are led by commanders of those stations. Regarding their actions, as well as any action of the PS they lead and the safety of any municipality or city where the PS was established, chiefs of PS directly report to a chief of a corresponding PPU, and therefore to the police commissioner.[34] Regarding the actions of SGP commanders, as well as any action of the SGP they lead and the safety of the territory that is within the reach of the SGP, they directly report to a chief of a corresponding department within the RCGP, and via chief of RCGP and chief of UGP to the police commissioner.

Police substations

PI can be defined as smaller organizational units within the Police Directorate that were formed in order to provide immediate implementations of police affairs regarding traffic police and police with general jurisdiction, on an operational level. Based on their competence and territorial reach, all PI can be divided into 4 basic types:

– PI with general jurisdiction,

– Specialized PI with general jurisdiction,

– Traffic police substations (hereinafter referred to as: SPI), and

– Specialized SPI

PI with general jurisdiction are a part of organizational units of police with local teritorrial reach. They were established in order to provide implementation of all or majority of police affairs within the territory of their municipality, township or the entire city – if more than one PI is responsible for that territory. From a structural point of view, they were established as a part of an organizational structure: 1) of most PS and 2) all police departments within the PPU headquarters. As an organizational part of PS, they were established for the majority of municipalities outside the PPU headquarters, all the municipalities within the city of Belgrade and for the city of Loznica,[35] and in all the other cities or municipalities with the PPU headquarters as organizational parts of police departments within the PPU headquarters.[36]

Internal organizational structure of most of the PI comprises BS and SBS. Also, within certain PI, PO were established,[37] with or without BS. Regardless of this, in PI established in municipalities or cities within the PPU headquarters, municipalities within the city of Belgrade and in municipalities and cities outside the PPU headquarters where the headquarters of corresponding SPI are located, SBS are not a part of PI but a part of SPI established in the PPU headquarters or in a municipality outside the PPU headquarters.

Specialized PIs with general jurisdiction are a part of organizational units of police with specific or regional territorial reach. Within the PU for the city of Belgrade, some of the specialized PIs with specific reach are: PI for railroad safety and PI for river safety established within the Police department,[38] while a part of specialized PI with regional reach is the PI for on call duties and security, formed within On Duty Institutiuons.[39] Within a police unit of some PPU, first type of specialized PI is: PI for railroad safety and PI for security, and the second type is: PI for on call duty and interventions.[40]

34 Law on Police, „*Sl. Glasnik RS*“, num. 101/05, 63/09 and 92/2011, art. 20.

35 In 27 municipalities outside the PPU headquarters, PI were not established (see footnote 26). 2 PI were established as a part of 6 PS: in PS Voždovac (PI Voždovac and PI Beli Potok), in PS Zvezdara (PI Zvezdara and PI Mirijevo), in PS Palilula (PI Palilula and PI Borča), in PS Raška (PI Raška and PI Kopaonik), in PS Stara Pazova (PI Stara Pazova and PI Nova Pazova) and in PS Čajetina (PI Čajetina and PI Zlatibor). In other PS outside the PPU headquarters, one PI was established.

36 As a part of 4 OP within the PPU headquarters, more than one PI were established: PU in Kraljevo (PI Kraljevo and PI Ribnica), PU in Leskovac (PI North and PI South), PU in Niš (PI Medijana, PI Pantelej, PI Crveni Krst), PU in Novi Sad (PI Stari Grad, PI Liman, PI Detelinara, PI Klisa, PI Petrovaradin, PI Futog), PU in Pančevo (pi North and PI South) and PU in Subotica (Fist PI and Second PI). In other OP within the PPU headquarters, one PI was established.

37 In 94 PI, total of 188 PO were established. Compare to: Subošić, D., *Organizacija i poslovi policije,* KPA, 2013, page 102.

38 *Информатор о раду МУП РС*, January 2014, page 40.

39 Also, page 42.

40 PI for railroad safety were established as a part of police department of PPU: Novi Sad, Kraljevo, Užice, Niš; PI for security as a part of police department of PPU Novi Sad; and PI for on call duties and interventions as a part of police department of PPU Novi Sad and Kragujevac (*Informator, also, page 46*).

SPI were established in order to provide immediate implementation of control and regulation of road traffic within the PPU territory or a part of PPU territory, which is the reason why they are considered as a type of PI with regional reach. In order to conduct these affairs within the complementary parts of PPU territories, the following institutions were established: 1) three SPI as a part of Traffic police department within PU for the city of Belgrade[41] and 3) 16 SPI as a part of eight PPU, with one SPI in each PPU headquarters and other as a part of one PS in municipalities outside the PPU headquarters.[42] In order to conduct actions within the PPU, one SPI was established for each Traffic police department in other 18 PPU.[43] Also, each of the above mentioned SPI covers, with its territorial reach, the entire municipality or the city where it's located, but it covers only or mainly state roads in municipalities that are outside its headquarters.[44]

Specialized SPI, together with specialized PI with general jurisdiction are a part of organizational units of police with specific reach. They were formed in order to provide immediate implementation of: 1) control and regulation of road traffic on state roads within the territory of several municipalities and usually within the territory of more than one PPU and 2) other specific actions regarding traffic police. They include two SPI that are a part of Traffic police department within PU for the city of Belgrade[45] and six SPI that are a part of traffic police departments in certain PPU.[46] SBS were also formed as a part of the organizational structure of each SPI.

Police substations are led by commanders of PI and they are responsible for implementing all actions regarding their competence. Regarding their actions, as well as any action of the PI they lead and the safety of any area or territory where the PI was established, commanders report to their superior officers of different status, depending on the organizational structure whose par is a PI. Commanders of PI with general jurisdiction report to the chief of a corresponding PS or chief of a corresponding police department within the PPU headquarters. Commanders of SPI report to the chief of Traffic police department within the PU for the city of Belgrade, chief of traffic police department in other PPU or the chief of PS. Commanders of the corresponding specialized PI with general jurisdiction report to the chief of police department and chief of On Duty Institution within the PU for the city of Belgrade and chiefs of police departments in some of other PPU.

DISCUSSION

Using a comparative analysis of territorial organization (municipalities, cities, city of Belgrade and autonomous provinces), administrative districts reach and regional organizational units of the Police Directorate within MUP RS, different solutions (symmetric and asymmetric) were identified within their structural relations. By establishing PS and/or PI with general jurisdiction in all municipalities, townships and cities without municipalities, almost entirely was the principle of structural symmetry implemented: „one municipality – one PS or at least one PI". In that way and, especially, by establishing PO and BS within PS and PI, police affairs were decentralized to a level of local communities. Therefore, the police was available and easily reachable to all the citizens and could resolve all the problems within the territory in which they occurred, in accordance with the safety issues, needs and expectations of all the members of local communities.[47]

High, but not complete, level of organizational symmetry was established between the areas for which purpose administrative districts and PPU were established. That is confirmed by the fact that within the territory of the Republic of Serbia (without AP KiM), symmetrically to territories of 22 (of the total number of 24) administrative districts and the city of Belgrade, 23 PPU were established (of the total number of 27), while in the territory of Zlatibor and Raška districts, 4 PPU were established in mutual asymmetry (in Kraljevo, Novi Pazar, Prijepolje and Užice). Certain level of asymmetry was identified within the status of the territorial unit of the Republic where the PPU headquarters is located. Of the total number of 27 PPU, one of them has its headquarters in the city of Belgrade, 21 in other cities, and 5 in municipalities (Kikinda, Bor, Prokuplje, Pirot and Prijepolje), while one city (Loznica) does not have a PPU headquarters.

41 As a part of the Traffic police department within PU for the city of Belgrade, three SPI with that status were established: SPI in the city – North, SPI in the city – South, and SPI in the city – West. (*Informator*, also, page 41).
42 These SPI were established within PS in Bečej, Vršac, Loznica, Ljig, Negotin, Požega, Raška and RUma (*Informator*, also, page 49).
43 As a part of every traffic police department within the PPU headquarters, one SPI was established. (*Informator o radu MUP RS*, January 2015, page 46.).
44 Traffic control and regulation within the territory of municipalities that do not have PPU headquarters (including suburban areas of Belgrade) is under the jurisdiction of PS established for those municipalities, and their SBS
45 Within the Traffic police department for the city of Belgrade, two SPI with that status were established: SPI in charge of highways and approach roads and SPI in charge of traffic accident investigations. (*Informator*, also, page 41).
46 As a part of traffic police department within the PPU headquarters in Vranje, Jagodina, Niš and Sremska Mitrovica, other than one SPI, a SPI in charge of highways was also established, and within the PPU headquarters in Novi Sad and Subotica one SPI in charge of M-22 road. (*Informator*, also, page 46).
47 For more details: Stevanović, O. (2013): Organizaciona struktura policije u Republici Srbiji u poslednjoj deceniji XXI veka. *Struktura i funkcionisanje policijske organizacije – tradicija, stanje, perspektive – II*, zbornik radova, KPA, Belgrade, page 87-102.

This type of asymmetry requires certain analysis, especially regarding a rational need for symmetry between the territories and headquarters of administrative districts for which purpose regional units of state authorities were established and between the territories for which purpose, within the Police Directorate, PPU were established and their headquarters. In the same context, the analysis of needs and possibilities for merging the territories of administrative districts, therefore PPU, should also be noted, in the context of political initiatives for the regionalization of the Republic of Serbia. Organizationally speaking, other than economic and financial reasons, one the reasons for this is a very wide span of authority and responsibility of the police commissioner, unlike a significantly lower span of authority and responsibility of the Minister of Interior.

Other than above mentioned asymmetries, two other should be noted. The first one is in relation to the fact that, for the territory of all 5 administrative districts within AP KiM, one Coordination Directorate (for KiM) was established. The other stems from the fact that smaller internal organizational units of PU for the city of Belgrade were established mainly with the status of directorate, and in other PPU mainly with the status of department. The international legal status of KiM established by the United Nations Security Council Resolution 1244, is most certainly the only, logical and legitimate reason for the first asymmetry, while size, administrative status, safety and other characteristic details of the city of Belgrade are the reason for the second one.

Using a comparative analysis of municipalities and cities within the Republic of Serbia and PS and PI within the Police Directorate, different (symmetric and asymmetric) solutions regarding their names, internal structures and relations were identified on a lower level. Above all, within the organizational structure of the Police Directorate, there are two main types of PS. First – PS with general jurisdiction were established within every PPU, and the second – SGP were established within the Border police directorate, as a part of only one, among many, departments within the Directorate headquarters. Regarding the territorial reach of competence, PS with general jurisdiction and SGP within KPDG are a part of organizational units of the Police directorate with local (municipal) reach, while SGP within OBDG are a part of organizational units with specific territorial reach.

Other than the two types of logical and reasonable asymmetries, the relation between PS with general jurisdiction and SGP is characterized by a significant asymmetry regarding competence and organizational levels on which they were established, within PPU and SGP, respectively. PS with general jurisdiction are subordinate the PPU chief, while SGP are subordinate the UGP chief via two lower organizational levels, specifically via RCGP chief and chief of a corresponding department within the RCGP. In other words, while a department is a smaller organizational unit within the PS with general jurisdiction, SGP is a smaller organizational unit of a corresponding department within the RCGP. Similar asymmetry that is difficult to explain was identified also between PI with general jurisdiction and SGP. Despite the fact that the names of these organizational units suggest that SGP is on a higher organizational level than PI, within the formal structure of the Police Directorate this situation is reverse. PI is 1 level below PPU, while SGP is 3 levels below UGP. On top of that, police stations (PS) are led by chiefs of PS, while SGP are led by commanders of those stations.

By comparing the territories of municipalities, townships and cities without municipalities, with PS and PI with general jurisdiction that were established to conduct affairs within their competence and reach, 4 typical situations can be identified: 1) in a small number of municipalities outside the PPU headquarters, PS were established without PI, 2) in a large number of municipalities outside the PPU headquarters, in all municipalities within the city of Belgrade and in the city of Loznica, PS were established with PI, 3) in a small number of large municipalities with clear traffic safety problems outside the PPU headquarters, PS were established with PI and SPI, and 4) in other townships and cities without municipalities no PS were established, but one or more PI as a part of police department within the PPU headquarters. While the relation between the first three situations is symmetrical, their relation with the fourth one is asymmetrical.

The fact that, even in the smallest municipality there is an organizational unit known as PS, while in biggest municipalities or cities where the PPU headquarters is located there is no such organizational unit, does not seem logical and reasonable, which is why it requires further analysis. One more reason for this lies in the fact that within the organizational structure of PPU, except one or more PI, there are no organizational units in charge of conducting police affairs strictly within the territory of a municipality or a city where the PPU headquarters are located. Also, the fact that all other organizational units within the PPU and their leaders, including the PPU chief, are responsible for conducting police affairs within the entire territory of PPU, and not only within the territory of a municipality or a city in the area of PPU headquarters, implies that it is not totally clear which organizational unit and which police official have the undivided responsibility for the safety of the territories of those municipalities and cities (where the PPU headquarters is located).

Unlike PS with general jurisdiction that are established strictly for the territory of one municipality and the city of Loznica, PI with general jurisdiction (as a part of PS or police department) are established for the territory of municipalities, townships, or cities without city municipalities, and for their parts. Despite this

difference, both PS and PI are a part of organizational units within the Directorate with local competence. Using the same criteria, organizational units with regional reach comprise large number of SPI and specialized PI with general jurisdiction – in charge of on call duty and security, and in charge of on call duty and interventions that were established for the territory or a part of territory of PPU. Starting from that premise, it is easy identify a clear asymmetry between PI with general jurisdiction as organizational units with local reach and SPI as organizational units with regional reach.

As a special group of organizational units with specific territorial reach there are specialized PI with general jurisdiction (PI in charge of river safety, PI in charge of railroad safety and PI in charge of security) and specialized SPI. Those organizational units within the Directorate were established in order to conduct affairs within their competence, in the territories or objects that are located within two or more municipalities, but not their entire territory. The fact that some of those PI exceed the borders of territorial reach of PPU, either by their competence or importance, makes it legitimate to consider the possibility that some of them should be excluded from the organizational structure of PPU and included in the structure of certain organizational units within the Directorate headquarters. The reasons for analysis of validity of those changes, based on the status of SGP, are recognized in specialized SPI and PI in charge of railroad safety.

By analyzing the smaller organizational units within the PS and PI with general jurisdiction, a different level was identified between BS and SBS within their structure. Within PS without PI, those departments represent smaller organizational units of PS. Within PS with PI, they represent smaller organizational units of PI, while within PS with PI and SPI, safety departments are a part of PI, while SBS is a part of SPI. The second specific type of asymmetry regarding smaller organizational units of PS is reflected by the fact that, PS that are located in municipalities that border neighbouring countries, have a department or a sector in charge of border and administrative affairs, while PS in other municipalities have departments or sectors in charge administrative affairs. The first asymmetry is a logical consequence of the fact that PS without PI exist, while the second one is a consequence of different statuses of municipalities, depending on the fact whether their territories border neighbouring countries or not.

Delegation of authority and responsibility from the top of the organizational structure to the leaders of organizational units within the Police directorate also represents one of the criteria that could be used to to compare and differentiate these units and their leaders. Delegation of authority and responsibility, or vertical hierarchy, from police commissioner to chiefs of PS, is established entirely symmetrically via chief of PPU. However, the same type of hierarchy from chief of PPU to commander of PI with general jurisdiction is established asymmetrically: 1) from chief of PS – to PI within PS and 2) from chief of police department – to PI within those departments.

On a slightly lower level, subordinate relationship from chief of PS and chief of police department within the PPU headquarters to leaders of BS and SBS and commanders of PO, is also established asymmetrically. This hierarchy is established directly in PS without PI and in PI within the PPU headquarters, and via commander of PI and SPI in PS with PI and SPI. Current names and hierarchy of organizational units of the police on a municipal and city level (relation: PS – PI - PO), appears inconsistent with the traditional relations in the Republic of Serbia (relation: PO – PS - PI). Also, current title of the PS leader – chief of PS, appears inconsistent with the tradition (chief of internal affairs department, commander of PS and commander of PI).

CONCLUSIONS

By summing key results of this research, we can conclude that the organizational structure of the Police Directorate at the level of PPU, and especially PS and PI is characterized by different types of structural (a) symmetries. While most of them are logical, reasonable and legitimate, some of them require special analysis that would include questioning the existing solutions and establishing new solutions in accordance with modern day circumstances, needs and abilities.

Within the category of logical, reasonable, legitimate and extremely significant (a)symmetries are the following:

– Symmetry that suggests that the majority of PPU that were formed have a territorial reach that is identical to the area which is regulated by corresponding administrative districts;

– Asymmetry regarding territorial reach and internal organizational structure between the PU for the city of Belgrade, other PPU and KU za KiM;

– Asymmetry regarding territorial reach of competence of the organizational units of the Police Directorate (national, regional, local and specific reach);

– Symmetry that suggests that one PS or at least one PI with general jurisdiction was formed within the territory of each municipality, township or city without city municipalities;

– Asymmetry regarding the internal organizational structure of PS depending on the size and geographic location of the municipality they were established in outside the PPU headquarters (PS with or without PI and SPI, with or without an executor of border affairs).

– Some of particularly significant asymmetries that deserve the questioning of their validity, and therefore the need for establishing new solutions, among others, are:

– Asymmetry regarding the status of territorial units of the Republic of Serbia where the PPU headquarters are located (municipalities and cities) and partial asymmetry regarding the areas that are covered by administrative districts and PPU, which indicates that it is necessary to question the existing headquarters and areas of PPU and possibly merging of those areas in the context of initiative for regionalization of the Republic of Serbia;

– Asymmetry between the areas of administrative districts (and PPU) and areas where PI with specific territorial reach were established, which indicates that some of those PI should be excluded from the PPU (specialized SPI, PI for railroad safety, and maybe others) and, similarly to the status of SGP within UGP, included in the structure of a corresponding organizational unit within the Police Directorate headquarters;

– Asymmetry between PS in municipalities outside the PPU headquarters and PI with general jurisdiction in municipalities and cities where the PPU headquarters is located, which indicates that there is a need to establish an organizational unit, within the PPU headquarters, that has the rank and status of PS in municipalities outside the PPU headquarters, whose territorial reach and jurisdiction would be identical to the territory of a municipality or city within the PPU headquarters;

– Asymmetry of names and organizational level on which PS with general jurisdiction (and PI) and SGP were established, as well as asymmetry between managing titles within PS and SGP, which indicates that SGP should be coordinated with PS, and PI with general jurisdiction regarding names, organizational levels and managing titles;

– Asymmetry between names and organizational units within the Directorate of municipalities and cities outside the PPU headquarters, which indicates that the existing hierarchy of those organizational units should be questioned (PS – PI – PO) and that it should be replaced with a different relation: PO – PS – PI.

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DRAFT STRATEGY FOR THE SAFETY OF CHILDREN IN SCHOOLS AND THE DRAFT LOCAL ACTION PLAN FOR SAFETY IN SCHOOLS AS MECHANISMS FOR THE PREVENTION OF BULLYING IN NOVI SAD

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Abstract: While writing the Draft Strategy for the safety of children in schools in the City of Novi Sad and the accompanying Draft Local Action Plan for the implementation of the Strategy, the authors took their unique knowledge from different areas of work and activism. The work on these drafts is the result of authors' direct involvement in the Coordinating Body for violence prevention in primary and secondary schools in the City of Novi Sad, of which one of the initiators was Biljana Kikić Grujić. Thanks to her experience in the field of prevention of deviant behavior among children and adolescents, as well as prevention of special kind of crimes committed through information and communication technologies, she initiated a few years ago making of special measures to increase the safety of children in the schools.

The work on the draft Strategy and LAP is a joint work of authors, a symbiosis of theoretical approach and parental angle on resolving this issue on the one hand, and the practical and experiential angle, on the other hand. This work made bear have in mind as well as a positive legislative framework, and other relevant factors: an increase of the number and variety of cases of peer violence, especially in schools acts.

Keywords: safety, kids, strategy, local action plan, Novi Sad.

INTRODUCTORY REMARKS

The representatives of the media proclaimed the City of Novi Sad for the most unsafe city in the Republic of Serbia in 2013. This negative trend continued in 2014. But it seemed that media overreacted when seeing unofficial statistics of the Police Department in Novi Sad (whose domain includes not only the city of Novi Sad, but several municipalities) -those data pointed to a completely different situation. According to a Report on the security of the Novi Sad, during 2013 in Novi Sad there was an increase in property crimes, due to the lowering of the statutory minimum for prosecution[4]. On the other hand, the number of situations when the representatives of the Ministry of Interior had to react, due to resolving security incidents in primary and secondary schools, as part of the external network protection in accordance with the protocols for protecting minors from violence, abuse and neglect, -that number slightly increased . During 2012, the number of crimes that were committed in or outside the school (buildings or schoolyards) was 258, while that number slightly increased in 2013 to 267. There are more offenses against property, usually in the form of damage to someone else's stuff- 212, bullying has been evident in 21 cases, while the most serious crimes , such as serious bodily injury or else, were not recorded. Also, the number of other violations increased- 71 case of disturbance of public peace and order) was recorded in 2012 , and in 2013- 83. The number of cases of false bomb alert , when it was engaged special police units to detect explosives ,was 55[5].

The situation that the media constantly portrayed, especially during 2014 pointed to an explosion of violence among children but also among adults. Forms of bullying, which previously could mark a number

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4 Data presented at press conferences of the Police Department in Novi Sad, in the part that was available to public. Identical reports in the form of information, were adopted at the meetings of the City Assembley, quarterly.
5 While writing this paper, the authors didn't have access to official data on the state of security in 2014 in the City of Novi Sad, since these results are presented to the public, after all the interior analysis, in late January or early February next year for the previous year.

less than 5, are now widespread and get some unprecedented forms. Multiplying the number of acts of bullying was provoked by the use of ICT - modern information and communication technologies (internet, mobile phones, social networks etc) .That lead to defining specific criminal offenses committed by ICT in the Criminal Code of the The Republic of Serbia[6], as well as forming of special government bodies in order to detect, prosecutes and trials those specific offenses envisaged by the law[7].

For several years, the City of Novi Sad is dealing the with need to constitute a network of all relevant institutions in order to efficiently exchange and process specific data , and to provide efficient response to cases of violence, abuse and neglect of minors. Cases of bullying ,in particular when minors are involved in them, have a category of "vulnerable" cases that cannot be discussed in public in the usual manner, in order to protect the identity of involved.

But, in-depth research of causes of violence which in 2012 was conducted by the Centre for the Prevention of deviant behavior among young people from Novi Sad, parallel with holding seminars on violence carried out by the ICT, showed an extremely negative trend in this area. The results were devastating: almost half of the surveyed pupils had seen or indirectly knew that some dangerous items were brought to school, such as tools or weapons. Large number of those pupils were injured by such dangerous things. After the survey, the Centre proposed and the Assembly of the City of Novi Sad adopted *Measures to prevent violence in primary and secondary schools in Novi Sad*[8]. On that occasion, The City Assembley accepted the proposal to constitute the Coordinating Body for safety in schools[9], as a central body that will gather people and institutions which, by the nature of their work, should mostly cooperate in cases of juvenile violence[10].

Coordinating Body was finally constituted in January 2014, when it officially began its work, and particularly the work on the implementation of Measures to prevent violence. The parents from the Council of Parents of primary school of the City of New Sad[11] (now still the non formal group of parents, who come from the parents' council of all elementary schools in the City) became a special member, without the right to vote at such meetings. This council was created after a number of security incidents that have occurred in the vicinity of schools or even in schoolyards, in the part of the town called Bistrica[12].

Since the same measures for prevention are not doing enough, and there is a possibility for their revision or addition of new possible measures, there was a need to create long-term strategy on safety in schools.

Activities that have been carried out so far, did not give any concrete result, at least when it comes to Measures whose implementation is on the Coordinating Body. The first recommendation of the so-called "locking the school", during transmission through the media reached almost the status of restraining pupils and teachers , even in emergency situations[13] .Of course, the essence of the measure and that proposal was completely put aside, and it is as followed: schoolyards represent a public area, and it is impossible to comply with the law, to prohibit third parties[14] the access to public space. In this regard, the parliamentary body for public order and security of the City of Novi Sad, at its meeting held on 27/11/2014 formed an initiative and sent it to the Ministry of Education and Technological Development, and the City Assembly adopted the same text at its meeting in December 2014, saying : "that the Minister of Education and Technological Development should prescribe detailed requirements, shape, dimensions, methods, procedures and guidelines for the protection and safety of children and students at the institution which will provide technical and other require-

6 Official gazette RS, nr. 85/2005,88/2005,107/2005,72/2009,111/2009, 121/2012,104/2013, 108/2014

7 Law on organization and jurisdiction of public office for figthting against hi-tech crimes , Official gazette RS. 61/2005, 104/2009,

8 Official Journal of the City of Novi Sad, Year XXXII - No. 22 of 15 May 2013, http://www.skupstinans.rs/cirilica/mere-za-prevenciju-nasilja-i-zlostavljanja-u-osnovnim-i-srednjim-skolama-i-clanovi-koordinacionog-tela, access to website: January 2015

9 Article 2 of these Measures is determined by the composition of the Coordination Body, "representatives of the Ministry of Interior, Police Administration Novi Sad - Department for combating juvenile delinquency, the Center for Social Work, Center for the Prevention of deviant behavior among young people, educational inspection, the principals of primary and secondary schools ,members of the City Council responsible for education and a member of the City Council of the City of Novi Sad responsible for youth and sport, and a person nominated by the Mayor of the City of Novi Sad. "

10 Otherwise, according to the poll in 2013, which was conducted by TNS Medium Gallup, two-thirds of citizens believe that they cannot do anything to change state of security in their local communities or that they cannot better and more cooperate with the police in their communities. But , the formation of the Council of Parents of elementary schools in Novi Sad, and announcement of forming similar council of parents of high schools,on the one hand and then the active participation of representatives of the police, specifically Chief of the department for combating juvenile delinquency in the report mentioned the Coordinating Body on the other hand, refute these claims, at least in this community. The survey results are available at: http://www.mup.gov.rs/cms_lat/sadrzaj.nsf/javno-mnjenje-2013.pdf, date of access: January 2015

11 This council is currently in its third, informal mandate and commitment of parents to cooperate with the institutions of the system in terms of improving safety in schools attended by their children was evaluated positively in public. There is a strong support for forming such a body and its advisory function.

12 This council is constituted again every year, according to the law that regulates the basics of education, in part relating to the constitution of the Council of parents in primary schools, as an advisory body. This council consists of two representatives from each of the 38 primary schools in the city of Novi Sad, and the mandate of the President and vice-presidents is also a year, as in the case of parent councils in schools.

13 The lack of media understanding ,that was present from the beginning when publishing news in this area, showed the need for making special instructions and explanations on the use of existing or new measures for the prevention of violence, especially for representatives of media.

14 Third parties, meaning that they are not students, teachers, parents.

ments for the control of entry and exit from the school yard, as a measure to protect students in the institution. [15]"

Coordination Body has so far held five meetings, one of them was attended by the representatives of the parents' council from all primary and secondary schools in the city. It is important to take certain actions to improve the safety of pupils in primary and secondary schools, such as the requirement to set up a large number of the so-called "School policemen"[16], editing and updating the video surveillance system, constant visits to schools from the members of the Coordinating Body schools and contunuing cooperation with all stakeholders in this process (pupils, parents, teachers, school principals).

DEFINING SECURITY AS WELL AS THE FORMS OF THREATS TO THE SAFETY OF CHILDREN IN SCHOOLS

The subjective perception of the concept of security and vulnerability, as well as sources of danger is completely different from the one that can give objectified science. Individual endangering of one's safety is viewed through the prism of personal vulnerability, threat to his / her integrity which inspired the subjective, emotional relationship to a particular situation, which does not necessarily mean a true danger to safety. The science of safety, on the other hand, sees the concept of security through negation and positive approach. A negated approach to defining security involves defining the absence of something, and in this regard, "is the absence of compromising security, i.e, the absence of all forms and all the factors threatening to someone's safety"[17]. Security is "in fact-a value (national, political, moral, economic, personal, etc.),and instrumental value, which can be explained as a way to achieve something, not only as a phenomenon in itself. Theoretically, it is possible to live in a conflict-free society and the environment without justice, ideology, education, and that it is theoretically safe society. " But, there are no data from the "field" that indicates that this theoretically possible conflict-free society is really possible in practice.

"Security does not create anything in particular, but creates conditions for a lot of things, even of material goods.[18]" Security is still "property of a social, legal, or technical building manifested as established, maintained or improved state and (or) a value that is expressed through the fulfillment of certain minimum standards of security inherent to this subject, which enables real basis for survival, growth or work".[19] In this regard, it becomes clear what is missing in this theoretical understanding of security.

As a significant source when talking about safety in schools, we take Protocol of treatment at the school facility in response to violence, abuse and neglect, which prescribes the "contents and methods of implementation of prevention and intervention activities, conditions and methods for risk assessment, methods of protection from violence, abuse and neglect, monitoring effects of the measures and activities "[20]. Violence and abuse occurs as physical, psychological (emotional) and socially, while abuse can be: sexual, electronic, exploitation of labor and other. All these sources endangering the safety are graded into three levels, while the case of the third level of violence includes reacting of the so-called "outer protective mesh"[21]: Centre for Social Welfare, Ministry of the Interior Department to combat juvenile delinquency, courts, and other authorities.

15 Available on: http://www.skupstinans.rs/cirilica/vesti/2255-sednica-saveta-za-javni-red-i-mir-i-bezbednost, as well as the resolution of the City Assembley: http://www.skupstinans.rs/cirilica/vesti/2258-odrzana-sednica-skupstine-grada-novog-sada, access to site: January 2015.

16 What is solved by establishing specific police(patrole) reon, and with the possibilities that mobile police patrols daily and occasionally visit the schools, more often/

17 Љубомир Стајић: Основи система безбедности-са основама истраживања безбедносних појава, пето измењено и допуњено издање, Правни Факултет у Новом Саду, 2013, p. 23

18 Ibid.

19 Ibid, pg.28.

20 Official gazette RS. Nr. 30/2010

21 For example, the most severe levels of violence are the following:
"The forms of physical violence and abuse are, in particular: brass, choking, throwing, causing burns and other injuries, food and sleep deprivation, exposure to cold temperatures, assault by weapons.
Forms of psychological violence and abuse are, in particular: intimidation, extortion with a serious threat, extortion of money or goods, restricting movement, guidance on the use of narcotics and psychotropic substances, engage in destructive groups and organizations.
The forms of social violence and abuse are, in particular: threats, isolation, bullying group to an individual or group, organization of closed groups (clans) which has the effect of harming others.
Forms of sexual violence and abuse are, in particular: seduction by adults, procuring, abuse, guidance, extortion and coercion to perform sexual acts, rape and incest.
The forms of violence and abuse, misuse of information technologies are, in particular: the recording of violent scenes, distributing recordings and images, child pornography ". Regulations on protocol treatment at the facility in response to violence, abuse and neglect, available at: http://www.paragraf.rs/propisi/pravilnik_o_protokolu_postupanja_u_ustanovi.html. Access to the website: January 2015.

STRATEGIC DIRECTIONS FOR IMPROVING SAFETY IN SCHOOLS

All possible ways and means of improving the level of safety in schools can be clearly identified and defined. However, their implementation depends largely on cooperation between: school administration-councel of parents- psychological-pedagogical service-external circuit of protection (which in some cases includes educational inspection, the participation of the Ministry of Interior, Center for Social Work, etc.). The main aspects of this cooperation are provided by the legal framework, which consists of General[22] and Special[23] protocols for the protection of children from violence, abuse and neglect in educational institutions and also by Special protocol on the conduct of police officers in the protection of minors from abuse and neglect and other regulations[24].

Therefore, one of the fundamental strategic objectives is to achieve a true networking and cooperation at the macro level of all relevant institutions and then "dropping" a successful model of cooperation on the level of individual schools, as described in the previous paragraph.

In order to improve safety in schools, it is necessary to promote the proper reactions and behavior, whether through a project of UNICEF schools without violence, or other similar projects. The draft Strategy in this sense relies on frequent meetings and open discussion of all participants in this process at the micro level of each school, as an important mechanism of reconciliation of differences and a kind of mediation.

We should not forget a very important thing: the foundation of every culture and thus the security culture is in the family, as the basic cell of society[25]. The family, due to the temptations of the transition process, had weakened and progressively loses its integrative function. Because family is a base where people build the basic value judgments, and helps their members to understand the importance of their own safety culture on a personal, individual and societal level[26].

Measures for the prevention of violence and abuse in primary and secondary schools in the City of Novi Sad[27] should be noted as very important mechanism for increasing security at schools in the city as followed:

I. The Coordinating Body (as a special body for fighting against violence in primary and secondary schools in Novi Sad) will apply the preventive measures and activities while working with students, teachers, psychological and educational services. Preventive measures include compulsory education through professional meetings, workshops, special discussions for students and staff in schools, organization of conferences and seminars for representatives of schools, as well as the active cooperation and communication with parents of students.

Twice a year, the Coordinating Body would report the Assembly of the City of Novi Sad on its work, of the security of pupils in the City of Novi Sad.

II. Submission of quarterly reports of Coordination Body on implementation of preventive activities to the public will be held as one of the priorities in fighting problems of the safety of students and gaining new plans for their overcoming in primary and secondary schools.

III. Increasing the number of teachers on duty during the breaks[28] in schools , to ensure effective oversight over the activities of several hundred students, both in the school yard, and in school hallways, because these are precisely the places where conflict situations and violence can occur, which would significantly have preventive and psychological impact on students.

IV. The formation of primary and secondary schools teams to combat violence which consists of students, which will operate in parallel with the Team for protection from violence, abuse and neglect, which consists of directors and teachers. The aim of these peer teams is to raise awareness of general security in society and in micro societies as schools..

V. Organization of panel discussions on the Novi Sad Television[29] and Television of Vojvodina[30], in order to achieve full transparency of problems, as well as broadcasting thematic programs, in which every

22 Available on: http://www.unicef.org/serbia/opsti_protokol-_za_web.pdf, access to site : January 2015..
23 Available on: http://www.paragraf.rs/propisi/posebni_protokol_za_zastitu_dece_i_ucenika_od_nasilja_zlostavljanja_i_zanemarivanja_u_obrazovno-vaspitnim_ustanovama.html. Access to site: January 2015.
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25 Crajuh, pg. 61.
26 Crajuh, ibid.
27 Available on: http://www.skupstinans.rs/images/stories/doc/2013/mere-za-prevenciju-nasilja.pdf, access to site: january 2015.
28 In schools that have complied with this recommendation , the number of cases of bullying was lowered (based on data from periodic reports that schools submit to the Coordination Body)
29 City television, in ownership of the City.
30 Television with regional broadcasting.

month another school would be "host", in order to raise awareness of the concept, types and consequences of forms of violence and abuse.

VI. Performing periodic unannounced inspection of the contents of school bags, with the consent of the parents' council, in order to gain psychological impact on students, as well as detecting firearms and other weapons.

VII. Recommendation for primary and secondary schools, with the consent of parents' council, to have standardized uniforms, or some other form of recognition of their pupils (for example: T-shirts with the logo of the school, etc.).

VIII. The recommendation that during school classes, the entrance door and the school yard must be locked,due to all the prescribed rules of evacuation in case of emergency situations (fire, flood, etc.). At time when there are not held classes or extracurricular school activities, entrance doors and garden school must be necesseraly locked. "

PARTICIPANTS IN THE PROCESS OF IMPROVING SECURITY IN SCHOOLS

Participants in this process of implementation and promotion of security measures in schools should not be strictly only members of the Coordinating Body, but also other interested individuals, organizations, local government authorities and institutions. In this sense, (Draft) Strategy emphasizes the opportunities that certain civil society organizations already have specific capacity to contribute to security issues, because they have already done a variety of trainings, workshops and similar type of cooperation with direct users in this area.

Furthermore, the function of the Mayor, as the promoter of school safety, as shown by the possibilities of meeting with Mayor-first pupils parliaments, then representatives of the parents' council and in the end, special meeting with school principals, indicated great potential and influence that a public official may have in this area.

Also, the strategy relies on the support of the parents, as they are the key to successful implementation of safety attitudes in the earliest period of childhood, and before them the peer group to take "further education", which often ends up accepting the false idols, distorted value attitudes and others.

THE PRINCIPLES UNDERLYING THE STRATEGY

The strategy is based on the following principles:

1) Respect for the Integrity of the Child

The integrity of the child in this context is multifaceted and pursuant to the Special Protocol includes:

- the right to life, survival and development;
- the best interests of the child: as stated in this document, "the interest of the child / student is primary to the interests of all adults who participate in the life and work of the institution. In the process of protecting the child / student, it is necessary to ensure the confidentiality and protection of the right to privacy[31]. "
- Non-discrimination and
- participation of children, which is "provided in that manner so that we timely and continuously receive all the necessary information, they are given the opportunity to express their views at all stages of care and in a manner appropriate to their age and understanding of the situation. [32]"

2) Promotion of security as the value and promotion of codes of conduct

Safety, and its achievement, are the key elements of the state and its policies. Guarantees given can remain a "dead letter" on paper, if addressees (autonomous or heteronomous) do not accept the prescribed standards, or, even worse, if the competent national authorities do not implement a consistent policy of punishing the perpetrators and other security incidents.

3) Mutual cooperation and coordinated activities of the relevant institutions, primarily in the field of prevention of violence, as well as cooperation with civil society organizations

31 Special Protocol for the protection of children from violence, abuse and neglect
32 Special Protocol http://www.unicef.org/serbia/Posebni_protokol_-_obrazovanje(1).pdf

Civil society organizations, especially those specializing in the provision of certain types of aid, or lobbying for adequate changes in applicable legislation, as never before, became very important factors. Their capability to work at the micro level, detailed than their own state authorities, their significant approach to end-users, the direct addressees of certain norms, made them almost irreplaceable in the exercise of the legal system but also in its constant improvement.

4) Greater involvement of parents, psychological and pedagogical services but also involvement of the school principals in solving problems ,at the first and second levels of violence, according to the protocols on the protection of minors from violence, abuse and neglect.

Earlier in our paper we mentioned our standpoint that every culture, as well as security culture originate from the family as the basic cell of each society. If the youngest members of society have a "need" to commit violent acts, then there is something very wrong in the "base", i.e. the family. In this case, we see the urgent need to activate measures to improve the interfamily relationships themselves, in order to prevent any escalation of the conflict in the family or outside the family.

OBJECTIVES OF THE STRATEGY

The objectives of this strategy, which would have local significance, have been taken in most part from the National Strategy for Prevention and protection of children from violence, which was adopted in 2008[33]. The authors tried to accommodate the local "needs" in order to this act.

OVERALL GOAL*: The development of a safe environment in which the right of every child to be protected from all forms of violence should be accomplished.*

Only a safe environment, free from any kind of pressure, is a healthy environment in which children can develop their potential.

Specific objective 1: Raising awareness of citizens, especially children, about their active participation, the problem of violence and forming attitudes about the unacceptability of all forms of violence

It is necessary to be constantly informed about examples of good practice, as well as preventive measures. The Measures of prevention, as listed above, unfortunately come late and often do not have a real impact on an offender. This kind of giving information and education of all involved should be combined with involving children and parents and they must also be encouraged to be more involved. Furthermore, we consider as rather important ~~and~~ the involvement of local media as well, since the informations about "false idols" come mostly from them .Also, there is a proposal to amend the sensitization of the media, first in Novi Sad, in the reporting of incidents of local character, involving minors. In the case of wider acceptance and efficiency of this work with the media, the same practice would be established with representatives of regional as well as the media with national coverage.

Measure 1.1. Informing about the extent and consequences of violence and the importance of combating violence against children

There is a need for constant reports in the media, not only on accidents and incidents, but also about the implementation of complete monitoring of the case: starting from the moment of the beginning of the procedure, until the end of the procedure and the determination of the penalty. Otherwise, the average daily news consumers have the impression that anyone can get away unpunished from any situation.

Specific objective 2: Developing tolerance, understanding and acceptance of diversity and fostering non-violent forms of communication

Ways of achieving this objective will be described more in detail in the local action plan, which follows this Strategy. Here we expect great support from civil society organizations that are profiled in their activities in this area and as such, already familiar with their micro-environments, and have access to direct users and react to their real problems more efficiently than with the state authorities.

Specific Objective 3: Strengthening and supporting the family (biological, foster, adoptive) in the prevention and protection of children from violence

The family as a basic unit of society has suffered in the last decades great challenges-, economic, social, psychological and other challenges. Supporting the family in this context would refer to counseling parents individually or children about the problems of juvenile delinquency and peer violence, as well as on the causes of violence, is more than needed. In this sense, the participation of representatives of the Council of Parents of elementary schools is valuable, because parents provide a different perspective of seeing and solving the problem of bullying.

Measure 3.1. : Socio-educational development and prevention programs for family

33 Official gazette RS, nr/. 122/2008

For several years, kindergartens in Novi Sad have had special family therapy meetings, special workshops for parents and children in kindergartens, counseling services intended for single parents.We propose the creation of similar mechanisms : counseling centers, of all kinds,in primary and secondary schools, but also in other relevant institutions.

Specific Objective 4: Support the development of programs for prevention of violence against children

Measure 4.1.: Improvement of urban infrastructure for the prevention of violence against children

The crucial question here is –specified need for security guards in school buildings and also in schoolyards, as well as school police officer. Those police officers as their unique police area have particular school, in which they spend all their working hours. As a proposal of authors financing security guards coincide with technical guarding of schools (ie, in addition to video surveillance) of the City, at least during one school year.

Measure 4.2.: The development and implementation of prevention programs for children in the education system

Promoting the role and work of student parliaments in violence prevention. In the majority of elementary schools, students are not even aware of the existence of this possibility, nor do they know their representatives in that body. Therefore, it is necessary to do more to promote it and raise awareness about the existence, as well as criteria and selection of students for this body. Otherwise, the pupils' parliaments may become another inefficient and imposed solution, which did not serve its primary purpose.

Specific Objective 5: Developing effective multisectoral networks to prevent and protect children from abuse, neglect and exploitation

5.1. Establishing a mechanism for cross-sectoral cooperation for the implementation of the General Protocol for the Prevention of Child Abuse and Neglect

This measure is partly connected with the formation of a Coordinating body. However, it is necessary to give legitimacy to the Coordination Body Its work shouldn't be seen through the prism of daily political struggles, as it is often happening in local communities. Question of safety of children and young people, in particular, security in educational institutions is more important than any political options or political will. It is necessary to build a unified position of all members of this body in terms of occurrence in jobs for which they are responsible

Measure 5.2: Support for local systems, key actors and stakeholders in the implementation of the Strategy for the Prevention and Protection of Children from Violence

Support would go towards ensuring the modalities for the implementation of penalties for minors and frequent notification of the execution of these penalties, for psychological reasons.

Measure 5.3: Development of an integrated system of monitoring the implementation of the objectives and measures established by the Strategy for the Prevention and Protection of Children from Violence

There is a real need for the inclusion of the representatives of the Ministry of Health, specifically the Health Center Novi Sad in the work of the Coordination Body, because our positive law provides the obligation to inform the authorities about suspicious injuries and reporting of bullying and other acts of violence. Representatives of city kindergartens, although not mentioned in the decision on the establishment of the Coordinating Body mention, however, are involved in the work of this body.

Specific Objective 6: Support research on attitudes about violence against children, the causes, consequences, costs, prevention and protection from violence against children

Measure 6.1.: Standardization and harmonization of monitoring and research of these phenomena

Coordinating Body has an obligation to send reports on its work and measures taken to the City Assembley, as its founder. Assembley can reject those reports, if there are not satisfactory, or can ask for an explanation.

The authors noticed that after almost a year of functioning of Coordinating Body, reports sent by primary and secondary schools in the city of Novi Sad about their security status are not standardized. Schools often do not submit timely reports on the prevention and treatment of persons who have committed incidents from the first to the third level of violence, or even those reports do not even compile.We noted some cases of hiding the real situation- failure to report cases of violence on the third degree, even though the majority of the members as direct actors were involved in solving that particular incident. We can, in a way, understand school principals that they are interested in making the best picture in public abut their schools, because of the enrollment policy in their school, but we cannot support these cases of hiding violent acts. Keeping in mind all that, we emphasize that a standardized form, which is made just for the purpose of uniform reporting (which is tabular type) may prevent excessive narrative quality of the reports on security issues in schools and also would provide sufficient basis for an examination of the security situation in schools.

LOCAL ACTION PLAN FOR THE IMPLEMENTATION OF THE NATIONAL STRATEGY FOR PREVENTION AND PROTECTION OF CHILDREN FROM VIOLENCE (DRAFT)

Local Action Plan (hereinafter referred to as LAP) pursues the objectives of the National Strategy for Prevention and protection of children from violence, as well as the goals that are achievable and acceptable at the local level.

Thus, in terms of ways of achieving the overall objective of the Strategy: raising awareness of citizens and especially children about violence and forming attitudes about the unacceptability of violence, we consider as very important the creation of public image of "false idols" and "good boys / girls". This activity could be performed by authorities through (electronic) media and their official Web pages.

Further, the objective set in the national strategy refering to the introduction of special programs within the education program is being implemented in Novi Sad in a different way. Out of the framework of the educational program, which, because of their broadcast time is rarely available to those just referred to, and does not exist and its equivalent in an electronic form, on any network, the City of Novi Sad is launching a campaign promoting the right values with the participation of locally recognizable "good guys / girls." A number of humanitarian actions, which remain outside the public eye, must be greater and more visible in media, even more visible than reports from crime scenes or reports on some trials lasting for years. Otherwise, it appears that those who receive more media attention, but also greater attention to ordinary people, are the "heroes of our time."

A special proposal activity in this LAP-in is meant to achieve the goal: an empowerment in the prevention and protection of children from violence. Guided with successfully established and effective youth offices in municipalities, the authors propose the establishment of the Office(s) for Children on a similar key. These offices would pose a gathering place for members of student parliaments, the exchange of arguments and a kind of peer education.

Activities that would most effectively achieve the objective: to support the development of programs for prevention of violence against children, are not usual. It is planned to improve the program "School policeman", with the active involvement of police officers on violence prevention. During the 2013/2014 school year, the policemen/women held in schools in the City of more than 300 hours about traffic culture, abuse of psychoactive and other harmful substances, and also participated in numerous public school classes that are held. Also important is the promotion of pupils' work and role of parliaments as well as peer mediators.

What certainly distinguishes the Local Action Plan from the National Action Plan are actors which would be entrusted the implementation of these and other proposed activities. Besides ministries, jurisdiction passes to the City Administration for education, child and social protection, youth and sport. Also Centre for Social Welfare of the City, aand City Hospital as well as regional organizational units would take over the implementation of certain activities.

But the key to prevention would be just in schools, as well as microorganisms.

CONCLUDING REMARKS

As noted at the beginning, both Strategy and LAP are the drafts, a set of ideas stemming from the different experience of the authors. Those ideas can and must continue to evolve, change its apparent shape. In this regard any further comments and suggestions are welcome and in order to improve the safety of children and young people, not only in educational institutions, but also in general.

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STRUCTURE, ACTIVITY AND MEDIA PRESENTATION OF POLICE IN NIŠ FROM 1935-1945[1]

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Abstract: After the introduction of integral *Yugoslavhood* and establishment of *Banovinas* in 1929, there were changes in the organizational and working structure of the Police. Two years later, in 1931, Police Departments were formed in places in which there were *Banovina* Administrations. Their task was to keep order and to follow the political activities, especially of Communists and those who belonged to Ljotić. These were also the primary tasks during the German and Bulgarian occupation of cities in the period from 1941 to 1944, but the special police, with the Ljotić man Mirko Živanović as a person in charge, took over the decisive role in the City of Niš. The security was organized not only in the quarters but also in the streets with the Ljotić organization "*Zbor*" (Serbian abbreviation for: Joint Combat Labor Organization) in charge and its most prominent man was the head of the police in the city. The Special Police was under the command of Nazis and they organized arrests and liquidations of almost complete Jewish organization in Niš. This Police organization existed until 1944 when Russian and Partisan units entered the city. The first man of the special Police, Mirko Živanović escaped to Argentina where he was even the advisor of the Security President.

In this article, the authors, based on rich and often insufficiently known documentation, analyze the structure and the manner of work as well as the media presentation of police activities during the period from 1935 to 1945 together with the role of the police chief Mirko Živanović, which up to these days has not been much researched.

Keywords: police, special police, Ljotić, Jews, media.

INTRODUCTION

The period between the First and Second World Wars was extremely important for police development in the Niš region. Once municipal guards started acting according to the Regulations on Municipal Guards issued in 1862, they started to develop into modern police which represented significant part of Yugoslav police organization. In most of the cities of the Yugoslav Kingdom, and also in Niš, by the end of the third and at the beginning of the fourth decade of the twentieth century, municipal guards became state guards. In this way local police authorities were formed. The period between 1935 and 1945 was especially important for their development and we will further focus on this subject matter.

As our interest in this article is focused on the pre-war and war period, our research is divided into these periods. In the first part we talk about police organization and its activities during the period of *Banovinas* formation, according to which the Yugoslav Kingdom was divided into in 1929, while in the second part the attention is focused on cooperation and influences of the Yugoslav national movement "*Zbor*" and its exponent, the chief of the Special police Mirko Živanović on Niš police. The "*Zbor*" movement became stronger immediately after the 1941 breakdown. The estimations of its influence are controversial, and many segments have not yet been revealed. However, we will not go into details of the "*Zbor*" status, its methods, ways and activities, because this would require much more space, but we will point out to the importance of its operations. This part of the article refers to the suffering of a great number of Communist Party of Yugoslavia members and a number of Ravna Gora movement members. The paper also describes the persecution of Jews from Niš which was governed by German and Bulgarian occupiers with the immense support of the police.

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Using the historical method, based on a large number of available sources from different archives, as well as on content analysis of the texts published in media, we will try to restore this very complex period important not only for police work and police development, but for the whole of Serbian and Yugoslav society. The aim is to point to the fact that this was the period when the police were much more directed towards persecution of the current regime's political opponents, communists, than it was dedicated to everyday needs of citizens, who financed the police work through the state budget.

PREWAR DEVISION ON DEPARTMENTS

The year 1929 was very important for the state-legal development of the first Yugoslavia. King Aleksandar Karadjordjevic, dissatisfied by the situation in the country, introduced dictatorship (January 6th, 1929). The name of the country was changed. Instead of the Kingdom of Serbs, Croatians and Slovenians, the new name was the Kingdom of Yugoslavia.

The so-called "integral Yugoslavhood" was introduced, which actually was further denationalization of the Serbian people, although it seemed in favor of Serbs.[4] The whole of the territory was divided into *Banovinas*, separate territorial and administrative units.[5] Niš was the center of the *Morava Banovina*.[6] The Dictatorship was very strong until 1931 when it started to weaken. In that year (1931) the new Constitution was made. The new state organization was followed by new governing and administration division of authorities. One of the important branches of state Administration, police, was also changed. In 1931, separate police directorates were formed in the places which were the headquarters of *Banovina* administrations on the whole of Yugoslav territory. Police directorates as governing bodies were formed in the cities with over 30,000 inhabitants. They were subordinated to the *Banovina* governments. In places with fewer than 30,000 inhabitants, there were police representatives, and commissariats were organized in smaller places, called "*palanka*".

The Police Directorate financed by Morava Banovina[7] was founded in Niš. It was the duty of Morava financing division. The Police Directorate had new structural organization which was only slightly changed after the 1941 occupation. There were eight departments within the Directorate. The first and maybe the most important was the General Department with the duty to fight against Communism, to care about foreigners and passports. This department had the governor, chief of the department (the other name was the Political Department of the Police Directorate), two commissioners, three sub-supervisors agents and 40 agents. The second one, Criminal department, was dealing only with crime prevention. The third department was in charge of Traffic and the fourth of Trade. The fifth was the Department of the City Police Guard with the duty to keep public order. The other name for this department was 'State Police Guard'. The Commissariat of Railroad Police was the sixth Department of the Police Directorate and was protecting railroad traffic because Niš was the location of important railroad crossroads. From there the railroad went into two directions – one to Sofia and Istanbul and the other to Skopje and Thessaloniki. Also, there was the Railroad workshop in the city. The Technical Department was the seventh, whereas the Border Police Commissariat was the last, eighth Department. The city was divided into for quarts and each had a police station with the commander. The First Quart was in Nikole Pašića street across the Tričković palace, the Second was in Jugovića street, the Third was in Voždova street number 48 and the Forth Quart in Beograd mala near the elementary school. Each of the stations had a platoon of 40 policemen. With the Cavalry Platoon there were a total of 140.[8]

The Police Directorate sent reports to Ministry of Internal Affairs in Belgrade into the Department for State Protection. The same report was sent to Morava Banovina Administration- Second District Office

4 The concept of "integral Yugoslavhood" was for the first time introduced in the Constitution in 1921. The creators of this Constitution, known as the "Vidovdan" Constitution, declared the existence of one nation with three names - Serbs, Croats and Slovenians.

5 According to administrative-territorial division of the Yugoslav Kingdom as of October 1929, the state was divided into nine Banovinas: Drava with the center in Zagreb, Vrbaska in Banja Luka, Drina in Sarajevo, Primorska in Split, Zeta with the center in Cetinje, Danube in Novi Sad, Morava centered in Niš and Vardar in Skopje, Belgrade together with Pančevo and Zemun was a separate district – City of Belgrade Administration. The Banovina formation had an important aim – solving of nationality question in the Kingdom of Yugoslavia. Banovinas were geographical entities, regardless of the nationality, historical, religious and cultural characteristics, which happened later with the formation of republics and provinces in the second, communist Yugoslavia.

6 Morava Banovina covered 10.5% of up to then territory of the Kingdom of Yugoslavia. It covered 26.212 km^2 and according to the 1931 population census there were 267,645 households with 1,452 967 inhabitants which was 10.4% of the total population of the country. The first governor of Morava Banovina was Djordje B. Nestorovic, a jurist, lawyer, judge and law professor. On this duty, in 1931 he was followed by Jeremija Zivanovic, a literature professor. Morava Banovina was administrative unit of the Yugoslav Kingdom from 1929 until 1941 and also in Nedic's Serbia during German occupation.

7 Nis, the center of Morava Banovina, according to official census in 1931 had 35.384 inhabitants in 7664 households. By religion, Orthodox were 89.89 %, Catholics were 5.37%, Moslems 3.7% and Jews 1.04%. Today in Nis, according to the last census there are 255,528 inhabitants and is the third largest city in the country, the largest city of Central Serbia and the headquarters of Nisava District.

8 The data are given according to original documentation in the archives of state bodies and Kingdom of Yugoslavia service, occupation authorities in Serbia, DFY, FNRY, SFRY.

and District Prefect in Niš. This District Office had the separate department that was dealing with political activities known as the Second Directorate department or – "Political Police".

There are few reports left about the work of Police Directorate in Niš between two World Wars. One of the reports is from 1936 in which Police Directorate informs Morava Administration in Niš on state political conference of the "Stambol Kapija" Radical Party Board (28.12.1936) held in "Kursula" inn. The report says that convener of the conference was Milan Kitanović, a former monopoly clerk from Niš. At the conference were about 50 people, mostly peasants because it was market day. The speakers were Dragutin Petković, Vujica Pantelić and Tešman Nikolić. On the conference was pointed that people's freedom conquered by Radical Party was quelled, and that this freedom should be returned by any costs. This was only possible with Radical Party and the Main Board. The report about Radical dinner in Niš as of 23.1.1937 is also interesting, Lazar Marković, former Minister and the Main Party Board member and Stojan Spadijer, deputy should have been present. They were announced but did not arrive from Belgrade. The meeting was in the inn "Velika Kasina" at Kralj Milan square in Niš. Tasman Nikolic was talking about that it was the period when there should be full freedom of people to criticize bad things. He also mentioned the "Croat question" saying that it in fact did not exist, but people should have all the rights and freedom to create welfare and thus to solve the Croat question. He pleaded for the return of free and secret election, freedom of press, freedom of assembly and arrangement. Dragutin Petković talked about that it was the evening celebration according to Radical tradition and by the order of national leader Aca Stanojević. He also said that twenty guest members of the Democrat Party were present with whom, shoulder to shoulder, they were fighting in the United Opposition. The main Board of the Radical Party appointed Ante Radojević, a former minister, who asked for full freedom and all citizen rights, consistency and consequence of ideal of Radical ideology. He explained that they left Yugoslav Radical Union (YRU) because it did not provide issuance of political laws that would allow people free expression and election of leaders. The representative of youth, Predrag Vucković, the law student also said that they did not arrive as followers of Radicals, Democrats or farmers but as aware youth for United opposition[9].

In 1939, Niš had about 50 000 inhabitants. The most important police activities were directed towards Communist Party of Yugoslavia. During 1939 and 1940, police by infiltrating of their people into Communist organization managed to reveal many operations of the CPY. With the correctly chosen arrests of some the high leaders of the Communist Party, the work of party cells, SKOJ organization and governing party quorums were disorganized. In 1940 was very strong police operation. Then was imprisoned Laslo Kihler Laci, member of the Local SKOJ Committee in Niš. He revealed to the police all of SKOY Committee members and they all were arrested. This year almost the whole of CPY in Niš organization was completely destroyed. Ratomir Stefanovic was arrested, and as he was very weak and he confided almost complete organization. Then 21 CPY members in Niš were arrested. Some of them were on the positions of the District and Local committee.

THE ROLE OF SPECIAL POLICE

After April war in 1941 and the city occupation by the Germans, they organized occupation government. Morava Banovina was disestablished. A District Office was formed as an organizational unit of Nedić's state apparatus. The District Office had the function of a governing and administrative body, that is, a body coordinating between the Serbian authorities and the Germans from 1941 to 1944. Lower units of the District Office were: the Regional Office, Municipal Directorate and Serbian State Guard Command. The District office was organized as follows: first, there was the General Department, the Directorate was the second, the third was the Agricultural Department, the fourth was Education, the fifth was Technical, the sixth was Sanitary, the seventh was Financial and the eight was Trade Department. In the District Office clerks worked divided into three categories. In the first category there were police scribes of governing political service with faculty education. In the second category were scribes with secondary education and in the third category there were governing office clerks with incomplete secondary education. The District Officer was obliged to give reports to German Feldkommandantur.[10]

9 The political scene in Nis between the two Wars was marked by activities of two politicians highly ranked in the state policy itself of the Kingdom of Yugoslavia. They were Nikola Uzunovic and Dragisa Cvetkovic. Each of them was on the position of the Prime Minister of the Kingdom. Although they were from Nis, they were in conflict as of 1926. Dragisa Cvetkovic, on the elections in 1928 acquired the position of a deputy. In the Anton Korosac government, he was Minister of religion. He was discharged from government after the 6th January Dictatorship (6.1.1929) when the Prime Minister became Petar Zivkovic and vice president Nikola Uzunovic. Later, 1935, the Yugoslav Radical Union was formed by Radicals headed by Aca Stanojevic (an old Radical from Timok riot), Mehmed Spah and Antonio Korosec. Next year, Aca Stanojevic left the YRU and formed the Radical Main Board. In the same year, Dragisa Cvetkovic became the Minister of Health and social Policy in the Kingdom Government. Several years later (1939) he became the Prime Minister of Kingdom of Yugoslavia Government.

10 Feldkommandantur in Nis was the highest German occupational body. Its official name was "Field Command 809 in Nis" and there were total of 23 people. Lower body was Krajskommandaur.

The District Office organization initiated certain structural changes in the Police directorate. Seven separate departments were introduced:1) Political Department (until 1943, that is separation of special Police); 2) Criminal Department; 3) Governing Department, Personal service, secretariat and overhead service; 4) Executive Department (execution of penalties); 5) Traffic Department; 6) Trade Department; 7) Administrative Department. During 1943 the Special Police as a state security body, was separated from the Police Directorate. Marko Živanović, one of the most important Ljotić man in Niš, was head of the Special Police. The Police Directorate was in Dušanova street number 52 during the War. The governor was in charge and under him were police scribes administrative stuff. The pre war organization of four police stations was not changed - they were in each of the town regions.[11]

The Special Police was in the building near the stone bridge on the left side where, after the war, the Higher Pedagogy Boarding School[12] was situated. From that time there is a letter of the District Office sent to Police Directorate in Niš which included the telegram of the Ministry of Internal Affairs which forbade the work of Draža Mihajlović Organization management in the job of reserve officers and rural population mobilization for otherwise German punitive expeditions would destroy this area.[13]

Besides the District Office, there was the Regional Office situated in the building of the District Court. The Regional Prefect was the main governing and political authority of the region, and all Municipal Offices were subordinated to his authority. The Regional Prefect had his deputy, a person officially appointed or the oldest police scribe in the Regional Office.

The most important change in the police work in Niš was, during the occupation the fact that the total organization was at the disposal of German Nazi occupiers. The most important occupier's institution was Gestapo - secret state police. Immediately on arrival in Niš (and also in the whole of Yugoslavia), Gestapo tried to organize its bodies in the police and to occupy prisons with political prisoners. Also, Gestapo immediately took over all file registers of the police /directorate in Niš and placed Censors in the Post office. The Gestapo tasks was the fight against political opponents, foreign intelligence services (USSR, French, England, USA) and preventing sabotages in companies that served Germans (Tobacco factory, Ristić factory, Pejić and Stefanović, Beer factory Apelovac). Gestapo immediately made its own agents network that had double character. The first group consisted of loyal and checked agents, and in the second group only checked. People from Niš, who worked for Gestapo were sent to Pancevo to attend different courses which were organized. The most of the agents were from Ljotić organization. Gestapo was the main executive authority in the city, it arrested, shot people and sent them to forced labor.

Under the supervision of Gestapo, the activities of Police Directorate in Niš were continued. Immediately upon the German attack on USSR, during the night between Jun 22nd and 23rd 1941 was mass arrest of Communists. For this operation, Niš police was helped by Belgrade. As of then, activities did not stop. In august 1941, from Aleksinac in Niš arrived Jelka Radulović, Communist Leader. She should have taken over the party work in Tobacco factory with rather good organization of Communist party. In a serious police operation, Jelka Radulović was arrested.[14]

In February 1942, Niš Police totally destroyed Communist movement in Niš. In a very important operation, first were arrested Branislav Mitrovic "Nacko" and Aleksandar Stefanovic "Ljuba", members of Local committee for the City of Niš. They revealed almost the whole of Communist organization. After their arrest, during the night between February 11th and 12th 1942, there was one of the biggest arrests in Niš, when 150 people were arrested. In this way, almost all of the party units were destroyed. After that there was total disorganization of the movement. At that time there was famous and well known escape from the Concentration Camp Red Cross in Niš. It is interesting that the special police new for the escape. Two police operations showed that. The first was the capture of the Jasterbac Partisan Platoon courier near Penitentiaries who carried eight pistols for detainees. Perhaps, the stronger activity was infiltration of agent Branko Stojanovic called "Ladovina" into Jastrebac Partisan Platoon acting a partisan.

After arrest all persons were taken to penitentiaries, where Special Police had a unit. From there, prisoners were taken to court marshal, internment or simply were given to Germans. Gestapo and German Nazi

11 Serbian State Guard Headquarters (SSG), that is, State Police Guards (united SSG) in Nis was in Sokolana, Quarters had commanders in the rank of sergeant. State Police Guard existed in Nis until September 15th, 1944. Then it was disestablished. The part was joined Ravna Gora movement, smaller number joined partisans and the part waited for the new authority and gave in. The surrender of Nis Police to the new Communist authority after 1944 was in the village of Krupac between Nis and Aleksinac. Majority of the surrendered policemen were shot to death without court or judgment in the village Kravlje near Nis (the data of the event were told to the authors by Mile Radenkovic, a prominent Communist from Knjazevac who personally took part in the shooting in Kravlje).

12 A lot of data was received from the late Archpriest Zivota Jankovic, former head of St Nikola church in Nis. Archpriest, as Deacon was arrested together with 160 people from Nis in the autumn of 1941 and taken to the concentration camp Red Cross (among the imprisoned were prominent people from Nis – Vukasin Antic, National Bank Director; Mile Vasic, Ford Representative in Nis; Tosa Sekulic, French-Serbian Bank President, Sotir Zivkovic, the President of Mortgage Bank, Andon Andonovic, Trader). They were kept hostage for 36 days in the camp and after that they were released.

13 Telegram No. 976 as of 21.2.1943.

14 Jelka Radulovic was an inspiration for a character in a well-known filmed communist propaganda program "Written off". It is about saving of a woman from a Belgrade hospital.

Police totally relied on Mirko Živanović, who was constantly asked for advice about people, appearances and events in the city[15].

LJOTIĆ, ZBOR AND MIRKO ŽIVANOVIĆ

For the work of police in Niš, as well as the rest of the city, during the Second World War, Yugoslav people's Movement *Zbor* headed by Dimitrije Ljotić, a lawyer from Smederevska Palanka, played very important role. The movement *Zbor* was founded in Ljubljana January 6th, 1935. It was formed of several organizations: the Yugoslav Association of Combatants from Slovenia, Yugoslav Action formed 1930, then the group of intellectuals and some other smaller groups and individuals. Finally, people gathered about the papers *Zbor*, *Fatherland* and *Awakening* headed by Dimitrije Ljotić (former Minister of Justice in the Kingdom of Yugoslavia from 28 June to 02 Sept. 1931), who very quickly became the President of the movement.

The idea of the Zbor was "integral Yugoslavhood", considering that Serbs, Croats and Slovenians make the Yugoslav people's social and spiritual community connected by blood relations and the feeling of the same destiny. In the Zbor program was written that "to Yugoslav people, as a whole, all separate interests are subordinated". Besides, Zbor movement committed to feudal control system of government, fought against Communism, Liberal Democracy, and especially to political parties. Also, the *Zbor* was against "Freemasons, the Jews, who according to them were behind Communism and Parliamentary Democracy."[16] *Zbor* members believed that parties separate people and only organic state order, cooperative economy and classes instead of parties may bring welfare to Yugoslav people. Class, according to *Zbor* members were all those of different professions that would be elected on municipal elections or delegated by professions themselves. The movement was for greater power of the king, with special attention to religion and spirit in general. And because of this recognition of religion some of the authors, among whom was Desimir Tošić, immigrant and publicist do not equal Ljotić's *Zbor* with German Nazis. The great difference between Ljotić and Hitler is that Ljotić's followers were religious and God worshipers, and Hitler's Nazis basically were atheists.[17] Dragan Subotić states "that a great number of *Zbor* members, among whom there were a lot of priests and monks, and laymen, were at the same time in Bigot's movement which was founded under the auspices of and with the blessing of the bishop of Žiča (monastery), Dr Nikolaj (Velimirović), a close friend of Ljotić".[18]

Bishop Nikolaj thought of Ljotić, Draža Mihailović and Milan Nedić as people who fought for Serbs - Mihailovic as a traditional rebel like Karadjordje, and Nedić and Ljotić as sufferers in the name of the people, resembling Prince Miloš[19]

It is certain, however, that in spite of this God worshiping, there are many reasons due to which domestic historians estimated Dimitrije Ljotić and activities of his *Zbor* members during the war period as being typical of the fifth column, domestic traitors, Quisling.[20]

The *Zbor* movement was formally founded 1935, and since the members did not like publicity and public exposure, there are no much proof on their activities. What is certain, there are proof in state, police and military archive, is that *Zbor* members had perfect documentation on members of other political parties that had different programs and ideologies and that this documentation helped in police purges that happened at the beginning of the war. Politicians from the top of the ruling parties were targeted, as well as young people who favored Communist ideology.

The President of Ljotić organization in Niš was trader Petar Vuković, who had, immediately before the war, managed this organization. From a report of the Main Secretariat of Yugoslav People's Movement "*Zbor*" in Belgrade as of May 19th, 1940 it can be seen that there were municipal and local organizations in Niš region.[21] Petar Vukotić's son, Zoran Vukotić, was the closes associate and adjutant of Dimitrije Ljotić. For some time, he was head of the *Zbor* Youth Organization, and at the beginning of the War he managed Ljotić intelligence service, worked for Sipo and SD. Later he had a conflict with Ljotić, considering him as mild and indecisive, and that is why he was the one to have the leading role in the "*Zbor*", because of which he was excluded from the organization, but the role he had in Sipo and SD was not lessened.[22]

15 Data was given according to original documents kept in state bodies' archives and service of Kingdom of Yugoslavia, occupiers in Serbia, DFY, FNRY, SFRY.

16 Ljotic, Dimitrije (2001), Complete Works I-XII, Novi Sad, Cooperative.

17 Tosic, Desimir (2003): Right Epic, Belgrade, NIN, November 28th 2002.

18 Subotic, Dragan (1996), Bishop Nikolai and Orthodox God Worshiping Movement, Belgrade: New Spark.

19 More about Bishop Nikolaj and Dimitrije Ljotic to see in: Dimitrijevic, Vladimir (2007): Dimitrijevic, Vladimir (2007): Slandered Saint: Bishop Nikolai and Serbophobia, Gornji Milanovac:Lio,pgs 77-78.

20 Aftre the war Ljotic was accused that he was a dedicated Fascist, and he could not defend himself from this accusation before the War either, during the political fight in the Kingdom. Anyway, Desimir Tosic claimed that Ljotic ideology was based on Charles Maurras, French rightist, and not on Hitler followers or ideology, and Slavisa Peric in his essay on Dimitrije Ljotic proved that his "understanding of Christianity was partially identical with that of Tolstoy in the sense of total non-defiance to the evil. (NIN, November 28th 2002).

21 NRGFSP, the letter of 28.08.1941.

22 Zivkovic, D., Dejanovic, D., Milovanovic. M., Stamenkovic, Dj., (1968): Niš in the Whirlwind of the War of Liberation, Novi Sad: Dnevnik.

Upon occupation of Niš in 1941, Germans organized their military-police authority, and the members of local authority were left to members of *Zbor*. The Municipality President was one of the Movement leaders Jovan Cemerkovic. District Prefect was Jovan Barjaktarevic while on the position of head of the Special Police was Mirko Živanović. Extremely active in forming of local authority was Mirko Pesic, lawyer.

It is remembered that the most loyal associates of the occupiers in suppressing Partisan movement, in filling prisons and camps, during the Second World War were the Special Police and Dimitrije Ljotić organization. Miroslav Milovanović wrote that the General Department of Police Directorate in Niš, headed a police commissioner, Ljotić's Mirko Živanović, who before the War fought against advanced forces, developed into Special Police that from the beginning of the war collaborated, as its branch, with the Special Police of City of Belgrade Directorate, that had before the war been prepared mostly for the fight against CPY and thus knew most of the Communist Party members. Its staff was in the greatest part the instrument of Gestapo and Feldkommandantur 809. The Special Police was independent and authorized to arrest and persecute the collaborators of the National Liberation Movement (NLM) associates, not only in Niš.

Region but also in Knjazevac, Zaječar, Negotin, Toplica, Leskovac, in other words on Feldkommandantur 809 territory."[23]

Although all the Departments of the Police Directorate fought against Communists, General Department of Police Directorate, known as Special Police, exclusively was dealing with "political criminal". The same job did the Second Directorate Department of Morava Banovina and Police Departments of District Offices. However, the head of the special Police Mirko Živanović through Police Directorate most often sent his reports on "political criminal" to the Ministry of Internal Affairs, the Department of State safety protection in Belgrade, that is, to its headquarters in the City of Belgrade Directorate. He was personally responsible for this problem. "By different channels the most fantastic accusations were sent, behind which there was fight for power and position. In this fight, Ljotić's followers wanted their man, Mirko Živanović, to be the chief of Police to whom official circles around Nedić government were opposed. But Živanović, even without this, was the best support to occupiers during the war. In January 1943, Djordje Djordjevic was appointed the head of police, who as a German exponent was released from captivity. After him, in February 1944, as the head of the whole of police was appointed Mirko Živanović and he was on this duty until his escape from Niš in September of the same year when Andra Milutinović replaced him.[24]

Special police within the Police Directorate had the special treatment and special role in system of occupation, which consisted of in revealing and ruthless persecution and destruction of partisan squads. This was done with the following organizational composition:

a)Chief, deputy and agents,

b) Police guard: First, second, third and Fourth police station.

The Chief of the special police was born in Pirot 1905, and came to Niš before the War to the branch of Special Police City of Belgrade Directorate. He was a higher police commissioner. Very often he himself decided on mass arrests of NLM collaborators and on who was to be shot. Of his independency speaks the fact that he did not recognize interventions of the highest authorities to release someone from the prison. So, for example, he personally responded to the Ministry of Internal Affairs that "there is no any condition for release of Dragojlović Dragoljub who was arrested because of communism." As a cover for this decision, he invoked the authority of commander of Feld-Gendarmerie Jening, who allegedly did not allow anyone to be released. Ljotić's Milovan Kostić wrote to Belgrade about that.[25] He was in constant touch with the Gestapo and Feldkommandantur 809, held meetings with agents, received their reports on the situation in the field and twice a week he went to give reports to the German authorities; he was in contact with SDS, Kosta Pećanac Chetniks and other collaborators of the occupiers. He held political speeches and meetings in Niš and other places "denied material understanding of the world", sometimes disfigured combat readiness of SDS units and celebrated volunteer (Ljotić's) units which made revolt among SDS and DM.[26]

Population from South East of Serbia well remembered the terror of Special police from Belgrade, who as experts arrived to help special Police in Niš. In February and March of 1942, they organized tracking down of the Communist party and SKOY organizations in cities and performed mass arrests. They were: Nikola Guberev, commissioner of the City of Belgrade Directorate, Bosko Becarevic, the head of Communist department YGB, Ljubiša Petrović, Petar Damnjanović and Svetolik Popović, agents.

Special police only fought against Communists, but there is evidence that it at the same time recorded, arrested, processed and transferred to camps also the members of Ravna Gora movement.' It was especially active in that as of the beginning of 1942 and almost till the end of the occupation. Many of the officials,

23 Milovanovic, Miroslav (1983), *Camp at the Red Cross in Nis, German Concentration Camp at Red Cross in Nis and Shooting at the Bubanj Hill*, Belgrade: Institute for Modern History, Nis: Municipal Committee SUBNOR, Belgrade, National Book.
24 Milovanovic, 1983.
25 NRGFSP, documents of Ljotic organization, letter as of 10.09.1941. In the same letter he informs Petar Vukovic on distribution of the paper "Our Fight" and that they ordered the next issue 2000 copies.
26 NRGFSP: 'New times" as of 13th and 27th) 8/1941, g. IaN,Mf.H/12/16.

chief and their deputies were exposed against Chetnik movement, and upon received data proclaimed traitors and put under letter "Z" (which according to some understandings meant to "slaughter"), and their names were read on radio London several times. Among high police officials on the list of 100 and more people put under the letter "Z" were: Milan Acimovic, Tanasije Dinic and Ceka Djordjevic, and among clerks of special Police of city of Belgrade Directorate: Nikola Guberev (chief of the Second, then Third Department authorized for police processing of Chetnik Ravana Gora movement. Novak Bogdanov, Žika Marković, Svetislav Popović, Stojan Filipović, all employed at the third Department. The list included members of Niš Special Police: Mirko Živanović, the head of the Special Police and Radovan Savić, Special Police agent. There were some others and among them clerk Žika Vasić".[27]

The historian Aleksandar Dinčić says that Special Police in Niš had special merits for the activities against Chetnik organization as of the moment Mirko Živanović became its chief, because two former chiefs were absolutely inclined for Draža Mihailović and his comrades.[28] The greatest damage Živanović's police did to Ravna Gora movement in December 1942. His agents stopped in the street important courier of the Supreme Command and brought him in for questioning in the Police Directorate. Later, upon the request of the Gestapo, he was sent to them and they sent him to the concentration camp.[29] By the arrest of the aircraft clerk Sreten Radenković from the village Drenova near Užice the Niš underground suffered severe blow, after which it recovered for long time. In the search of his apartment, there were found lists of confidential people in the city. The greatest loss, except for these very precious people, was the radio station which was located, discovered and seized together with the operator, police clerk Duan Luzajic, who because of this was shot on Bubanj. Gestapo, Ungar and Wienecke reported that in Niš were arrested 75 members of DM organization as of the beginning of December until 18th of the same month".[30]

POLICE AND JEWS

Special Police in Niš attacked Jews that lived in this town. This is understandable if it is considered that its head was Mirko Živanović, member of Ljotić organization *Zbor*, to which the fight against Jews was one of the most important objective. In fact, the police in this liquidation of German occupiers acted as support, whereas the mass execution was performed by Germans just as in other cities.[31]

That is why in the Study on Jews which was submitted to Provincial Commission for determining the crimes of the occupier and their supporters by City trustee for the determination of war crimes occupiers and their supporters in Niš, among other things is pointed that main perpetrators, who were applying all measures against the Jews and participated the in their execution may be indicated: Dr Hamer, the captain of Stettin, and the head of the Gestapo Erich Vinek, a lawyer, a native of Hamburg, Freiherr von feldkomandant Botmeur, in Hanover, etc. Eduard Hanke, chief Steering Group in Feldkomandi in Niš, a native of Magdeburg.[32] From "ethnic Germans" as a feud proved Carlo Ungar and Stefan Zivkovic, both agents of the Gestapo, of domestic traitors Mirko Živanović, head of the special police in Niš, originally from Pirot.

Before the Second World War 107 Jewish families with about 360 members lived in Niš, organized within the Jewish Municipality. "They had their Mahalla, school, synagogue, and a football scout troupe, singing society "David".[33] Most of them were of Sephardic origin, rather than Ashkenazi. According to data of the Study of Jews, after the war 4 persons remained in their homes in the city. These were the women who were married to Christians. From the Jews, who during the occupation were taken to concentration camps or fled only seven people have returned to their homes to date. During the War all the male Jews, with the assistance of the Special Police were taken to the concentration camp Red Cross. In February 1942 there was a mass shooting on the hill Bubanj, not only of Jews, but all other arrested Serbs and Roma. Immediately after the shooting, all Jewish women and all Jewish children, were deported to the concentration camp Red Cross and from there to Belgrade Fairgrounds. In July 1942, new mass executions of Jews took place, followed by individual shootings of camp prisoners. In the middle of 1943, from Niš Jews in the camp there were only Dr Pijade and installer Gros. In late 1943 the last two Jews were shot. Mirko Živanović had a prominent role in all of this.

27 Bozovic, Branislav (2003): Special Police in Belgrade 1941-1944, Belgrade; Serbian School Book, pg 16.
28 Dincic, Aleksandar (2013): Special Police Against Chetnik Ravna Gora Movement, http://www.pogledi.rs, accessed 22.01.2015.
29 HA Nis, microfilm 1, frame 604.
30 VA,FRZ, K.1 doc. NOKW-1550.
31 Andrija gams in his book In the quest for God - A Tragic Historical Path of Judaism, pointed that shootings of Jews in Serbia were exclusively done by Germans, and that Nedic "Serbian guard and Ljotic's were as supporting stuff (distributing calls, reports on Jews and similar) (Gems, 1994).
32 May be read at http://elmundosefard.wikidot.com.
33 Ciric, Jasna (2008): The Guardian of Jewish History, Belgrade: Politika.

CENSORED MEDIA

In the decade we wrote about (1935-1945) in media there was not much about police work, especially not about activities of Special Police. In daily and weekly papers dominated topics from everyday life, and in connection to this news about arrests of the criminals, speculator, Communists. This is understandable if it is considered that it was the period in which the police had a censorship role in media. Prohibitions (papers) were possible in the case of insult the king and members of the royal family, foreign rulers, authorities, or direct calling citizens to change the earthly laws, inciting hatred against the state as a whole, religious and tribal strife or if it is hard work committed any offense against the state punishable under the Criminal Code or the Act on the Protection of the State. Decisions on the Prohibition brought by state prosecutors or police authorities against their decision there was no remedy.[34]

Police acted according to the rules given by Central Press Bureau, founded in April 1929 by the Presidency of the government, immediately after the January 6th dictatorship.[35] It was pointed out that in the censorship of articles devoted to internal matters should be "very liberal" to discussions and proposals on corporate and municipal issues, and "to some extent" to presenting defects or abuse of administrative power. In all economic issues was supposed to allow free discussion and initiative "if it was real and benevolent, although it showed some critical direction." It only should take into account, as stood in this manual, "that the tendency of these criticisms and discussions not to be defeatist and with no significance of anti-state or anti-regime tendencies". However, the paper "Niška free tribune", of the owner and director Dragiša Cvetković, who later became the Prime Minister of the Kingdom of Yugoslavia, was confiscated because the text on economic conference in Moravia Banovina written that some delegates criticized the large clerical salaries, and that the problem of economic crisis cannot be solved at conferences and assemblies, but with scientific and practical work.[36]

However, in such political climate in which censorship dominated, in Niš during the decade immediately before the Second World War, were founded new and renews old papers and magazines. In this sense, at the beginning of 1930 the old Niš paper "Niš papers" was renewed which first issue was connected to the last day of the First World War. And this paper had destiny to be seized by the police on January 19th, 1936 because state Prosecutor Bora Dimitrijević found "that its editorial "Yes or No" referred to Mr Dragiša Cvetković, the Minister, and that it insulted him."

In Niš, in years before the Second World War were issued two political papers: Our word and people's word. For the later is claimed that "undoubtedly it was only opposition political paper in Morava Banovina".[37] In this paper, in 1936, was written about Ljotić's *Zbor* as Fascist organization. "*Zbor* is the organization of younger and elder politicians who are eager for mandates and power, but unable to achieve this in a regular way, through elections and winning the trust of people… *Zbor*, as all other Fascist movements, has two faces as Janus. One is at the time of gathering of supporters and the other is revealed when in power. The latter face is true. The first one is an actor's face from which all signs of ugliness or old age or malice are removed using make-up and a wig".[38]

Sometime later, during 1937, yet another paper with opposition content was issued. It was weekly paper "*Our Paper*" issued by Niš Communists. The first number was published on November 12th 1937, but as the police immediately recognized unacceptable ideological contents for that time, it was permanently prohibited after only five issues.

" It is characteristic for almost all political-economy, purely political, and other (apart from religious and expert which were donated by religious organizations and different expert associations) papers that circulated in Niš, during the period between two World Wars that they were short time and disappeared just as "dragonflies", and that their lives depended on, first of all, economic moment. Police and state censorship suppressed the freedom of speech, but only for "*Our Paper*" has to be said and may be said that it was stopped by the decision of police censorship. Only this paper was not subordinated to ruling regime."[39]

During the occupation of Niš, none of the papers or magazines was issued apart from occasional issues of some religious papers. People read the *New Times*, Belgrade Quisling body of Nedić's governments, then the *Monday*, the paper that on Monday replaced *New Times* and Ljotić's paper *Renewal*, as well as many German illustrated magazines.[40]

34 Dobrivojevic, Ivana (2013): *The Seizure of the Press for Criticizing High Salaries of Clerks,* www.danas.rs, accessed 23-01-2015

35 Central Press Bureau organized according to the German model is considered one of the first institutions of intelligence and propaganda services this kind in Europe. It was placed under the direct leadership of the President of the Ministerial Council, and there was a chief of the Central Press Bureau headed it, as an immediate referent of the Prime Minister. Press Bureau had four Departments - Department of the domestic press, Department of foreign press, the Department of Broadcasting and the Department of Administration.

36 Dobrivojevic, 2013.

37 Mircetic, Dragoljub (1972): *Nis Press*, Nis, Gradina, pg 91.

38 People's word. Year II , July 21-25, 1936.

39 Mircetic, 1972-99.

40 The first issue of "New Times' was published on May 16th 1941. Its editor was Serbian publishing company made by fusion of the largest Belgrade paper companies: Politika, Times and Justice.

Issuing of papers and magazines during the German occupation was regulated by special Regulation on Press issued by Military Commander in Serbia May 20th, 1941. The essence of this Regulation was that nothing was to be published unless the German military authority approved it and none could work for the press without their prior consent. Everything that was published was under the censorship performed by Propaganda Department "S" of the Military commander in Serbia."[41]

It was very interesting that Niš found its place in *New Times* after two months of the issuance of the first number. The analysis of the articles published in this paper connected to Niš showed that topics included events in everyday life - thefts, suicides, police hour, public order, culture, sport… It was the attempt to present that the life in the city was normal. The most articles about Niš were during 1942, and central topics were conferences and speeches of Milan Acimović, Minister of Internal Affairs.[42] It is interesting and comprehensible because it the press of that time there was no even a hint of the escape of captives from the Red cross concentration camp on February 12th 1942. On occupiers and police activities was written always in superlatives.

INSTEAD OF CONCLUSION

Basic on the structure analysis, activities and media presentation of the police in Niš during the period of 1935 to 1945, it may be estimated that for that time the organization was modern, with more directorates among which there was the one that took care on railroad. However, it is completely clear that its most important task was political, that is fight against Communists, and later against Ravna Gora movement, whereas in the background were tasks connected to public security and attitude to citizen needs and rights. In this direction was the activity of the Special Police.

This was especially visible during the occupation of the country when the members of *Zbor* movement of Dimitrije Ljotić, had the crucial influence on the police work. His exponent Mirko Živanović was on the head of the Special Police that was remembered for it brutality especially to members of Partisan movement and Jews although there is the evidence of the participation in arresting of Draža Mihailović Chetniks. By the end of occupation the special Police in Niš disintegrated. Part of its members left their head Mirko Živanović and joined Dražaʼs Chetniks. Živanović did not do that, who in his memoirs written in emigration in Brazil, boasted that he seriously supported Draža's Chetnik movement, but he did not explain the reason why he had not joined the, but via Italy escaped to Brazil.[43] After the end of the War in Serbia, the State Commission declared Živanović war criminal responsible for death of many victims from Niš or surrounding. However, "in our research we have not found any evidence that any court after the end of the Second World War, either military or civil, prosecuted in absence Mirko Živanović and issued any judgment. Also, it has been unknown whether the state of FNRY or SFRY ever requested extradition from the country where Mirko Živanović was residing without identity change for determining the guilt or trial."[44] But it should never be forgotten that Živanović was responsible for liquidation of Jews in Niš, which he has never been declared responsible for, nor has it ever been written or mentioned.

Media picture about the police work is very poor, which is understandable considering that the press during the period this article is referring to was censored, and that along with the state prosecutor, the main censors were the police themselves. This in any case contributed to the absence of texts which would point out to the brutality, today popularly referred to as "excessive use of power", which was present in most of their activities.

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COMPARATIVE ANALYSES OF CODE OF POLICE ETHICS OF THE COUNTRIES IN THE WESTERN BALKANS

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Abstract: Police is one of the the most recognizable authorities in a democratic society that takes care of law and order, peace, security and safety of persons and property. With the powers that have, police enters significantly in fundamental human rights and freedoms, so it is essential that they comply with international norms and standards and national legislation concerning the community policing.

The existence of the Code of Police Ethics aims to point out the most important norms and rules that each police officer should adhere to in the daily work. The paper that follows aims to make a comparative analysis of the code of police ethics of the countries in the Western Balkans. The main goal is to perceive similarities and differences, and to give recommendations for possible improvements to the provisions of this important document for policing. The following analysis refers to the Code of Police Ethics of Macedonia, Serbia, Montenegro and Croatia.

Keywords: police, police ethics, code, analyses.

INTRODUCTION

The introduction of new standards of police activities means new, contemporary approach to police work. In the past, we used the term "Police is in the service of the state". After the democratic changes, social relations have led the Police to turn to the citizens instead of the state, and now theoreticians as well as practitioners are using the term "Police is in the service of citizens. Police is the servant of people". Police act pro-actively and in co-operation with the community through the concept "Community Policing"[2]. The role of the Police in a democratic society emphasizes the importance of the Code of Police Ethics. Police take the traditional preventive activities, fight against crime, maintain public peace and order, support and respect human rights and freedoms. Police promote democracy and democratic values, fulfill the same values.

Following the constant social changes, and changes in the police organization, the Council of Europe has adopted the Code of Police Ethics[3]. The Code is a basic document whose provisions are found in almost all Codes of Police Ethics of the Western Balkans. Two different approaches to the Codes are notable in the countries of the WB. Macedonia and Serbia have comprehensive documents, which sometimes in details regulate the police procedures. On the other hand, the Codes of Montenegro and Croatia, are short documents, with solemn and declarative character, that adequately manage to fulfill their role of understandable and simple documents that police officers may have with themselves and constantly remind and adhere to their provisions.

Police Ethics begins by exploring the role of ethics in the policing of a civil society, then examines societal and professional codes—in particular, the Charter, the UN Declaration, and policing codes. Individual chapters on freedom, goodness, equality, justice, and truth provide an in-depth look at the five principles of ethical reasoning and conduct, with a focus on how these principles are reflected in real-world policing scenarios.[4]Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.[5]In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.[6]

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2 More about the concept "Community Policing" at: Community Policing Defined, 2009 U. S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, N. W. Washington, DC 20530
3 The Council of Europe Publishing, F-67075 Strasbourg Cedex, ISBN 92-871-4831-7, © Council of Europe, March 2002, Reprinted October 2002, Printed at the Council of Europe
4 Bjorkquist, Brust. 2013 *Police ethics and standards.* Canada: Montreal University Press;.
5 Article 1 of Code of Conduct for Law Enforcement Officials, Adopted by General Assembly of the UN;
6 Article 2 of Code of Conduct for Law Enforcement Officials, Adopted by General Assembly of the UN

The paper that follows deals with the codes of police ethics of WB, making comparative analysis with the European Code of Police Ethics, giving comments i.e. recommendations as to consistently apply the provisions of the Code. Besides, we will argue the police behavior in the certain countries by presenting data about criminal investigations and total number of cases taken against police officers.

EUROPEAN CODE OF POLICE ETHICS

European Code of Police Ethics was established by the Recommendation Rec (2001)10, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 on their 765th Meeting[7] of the Minister's Deputies.The Recommendation was prepared by the Committee of experts on Police Ethics and Problems of Policing. Many European countries are reorganising their police structures to promote and consolidate democratic

values. They are also concerned to secure common policing standards across national boundaries both to meet the expectations of increasingly mobile Europeans, who wish to be confident of uniform, fair and predictable treatment by police, and to enhance their powers of cooperation,and hence their effectiveness, in the fight against international crime. The provision of the code also supports the Council of Europe's aim of achieving greater unity between its members.

Although a code of police ethics is only the beginning of any process to secure common police standards, such a process has little hope of succeeding without it. By laying the foundation for ethical norms, a code of police ethics enhances the possibility that ethical problems are more readily identified, more fully understood, analysed more carefully and more readily resolved. It also prompts questions about the values served by the police as an organisation, and their proper application. Key concepts within the police, such as 'loyalty', 'consent', 'impartiality',discretion' and 'professionalism' all benefit from the common reference and shared meaning, and hence understanding, made possible by a code. Moreover, it can help articulate personal standards of conduct, which capture a sense of pride in being members of a police organisation. [8]This is of particular importance to police recruits, who need to know from the outset the core values that should define and govern their work. The mention of police recruits is a reminder of how important codes are for police training. Without such an objective reference for standards and values, the trainer's task is made doubly difficult. Both the origin and authority of standards have to be argued for, with the risk that they are seen as merely local and the creation of no one but the trainer. It should be added that a police code of ethics has merit at all levels of training.

A well publicised police code of ethics, by underlining the common standards, purposes and values of the police, can help to promote public trust in the police and further good public relations and co-operation. The same standards, by making clear the range and scope of police services, help safeguard the police against unwarranted, frivolous and vexatious demands, and, above all, limit their liability for failures of service.police code of ethics can work as a regulatory instrument for the internal organisation of the police. This is one of the striking features of the European Code of Police Ethics. By providing minimum standards, values and ethical frameworks, it may serve a regulatory function in at least four ways: to maintain quality control of the personnel of the police organisation (including civilian staff) ; to help in the exercise of leadership, management and supervision; to make senior members of the organisation more accountable; and to provide a norm for the adjudication of difficult, internal disputes. In terms of its possible influence upon police practice, a police code of ethics recommends best practice for the police, and is a specialised version of habitual, everyday, common-sense principled conduct.

The European Code of Police Ethics aims to provide a set of principles and guidelines for the overall objectives, performance and control of the police in democratic societies governed by the rule of law, and it is to a large extent influenced by the European Convention on Human Rights. The code is concerned to make specific and definite requirements and arrangements that fit the police to meet the difficult, demanding and delicate task of preventing and detecting crime and maintaining law and order in civil, democratic society. Even if the recommendation is aimed primarily at governments, the guidelines are drafted in such a way that they may also be a source of inspiration to those dealing with the police and police matters at a more pragmatic level. Besides these provisions in the Code, part of it is the Preamble, which further indicates the need for adoption of such a code and respect standards of Police work.This is a sufficient starting point to successfully make a comparative analysis of the codes of Police ethics of the WB countries with the European Code of Police Ethics, which is a challenge of this paper.

7 Ibid;
8 Explanatory Memorandum of the Code of Police Ethics, p. 16;

MACEDONIAN CODE OF POLICE ETHICS

Minister of Interior has adopted the Code of Police Ethics according to the Law on Internal Affairs. The Code was published in the Official Gazette of the Republic of Macedonia on 26 January 2004.[9]

Macedonian Code of police Ethics is adopted in a very specific time. Changes of social and political system promoted the concept of plural society, the separation of powers, role of law and democracy led to the new conditions and relations in the Republic of Macedonia. Open society also increases crime, especially organized crime, and new types of crime, unknown in the previous system.

Intention to be a member of the EU and NATO means the adoption of standards and procedures of all agencies and officials. Harmonization of legislation with the 'acquis' is of a crucial importance for WB countries. This will allow Macedonian citizens to enjoy the same rights as the citizens of the EU member states. The reforms in the Police are the part of broader reforms of Macedonian security agencies and of the Macedonian society as a whole. Reforms should fulfill the following:

– Prevention and suppression of crime;
– Protection of constitutional law and order;
– Developing proactive policing;
– Providing better services to citizens.

The main goals of the process of reforms in the Police are:[10]

– designing a police organization according to the concepts and standards of the Police of the EU MS;
– decentralization of Police as a conception in profiling a contemporary model of Police organization;
– Strategic goals are:[11]
– Greater efficiency and economy of the police work;
– Organization and professionalism in the work;
– Responsibility and motivation of employees;
– Technical equipment;
– Community policing;

Preparing of the Code of Police ethics is a result of using different methods, including the method of deduction and comparative analyses. Numerous domestic and international documents in the field of deontology and ethics were consulted. Important contribution to the preparation of the Code was given by professors of the Police Academy, experts, Ombudsman, NGOs, mayors, members of Parliament, representatives of government institutions, judges and others. This shows the seriousness, professionalism and openness of the MoI in the preparation of the Code.

"Code of Police ethics has a strong influence on the Police profession. It contains ethical guidelines that the police officer use in performing of his duty. They include impartial treatment, discretion, the use of minimum force as the ultimate tool in policing, confidentiality, integrity and professional conduct, avoiding conflicts of interest and corruption. Ethical guidelines, together with the qualitative education and professional leadership, encourage police officers to become part of an ethical profession." (FBI Law Enforcement Bulletin, 12/02 p. 11-14)

The basic principle of developing a new police culture based on good behavior, morality and ethics is communication. A part of process of communication contains few elements that should be followed by all police officers:

– **connection**, as a link between the transmitted message and the current situation
– **repeating**, to memorize the message should be repeated (implementation of this element is of a crucial meaning, because incorrect implementation may cause a negative impression, which may also involve the inconvenience of the employees);
– **continuity**: changes should be continuous. If we come to the end of communication on a specific topic, it could be understood as a lack of interest for that topic;

Some of possible actions to be taken in order to improve communication about the Code of Police ethics are:

– Displaying posters of some of the elements of the Code (for example: police as a service of the citizens, fight against corruption, multiculturalism etc.);
– Organizing of meeting in order to inform police chiefs or the syndicate about problems related to the implementation of the Code;
– Exchange of experience collected after the introduction of the Code;

9 Published in the "Official Gazette of the Republic of Macedonia" no. 3 on 26 January 2004
10 Stojanovski, T. 2006: 50;
11 Ibid;

Another thing which may be very important for police work when talking about implementation of the Code is introducing a charter of values. The charter should emphasize the most important parts of the Code and foresee measures and activities to support all police officers in correct, human, and moral implementation of all provisions of the Code.

Implementation of the Code When we are talking about implementation of the Code, there is a need for clear and transparent strategy for ethical training, emphasizing that the Code should be accepted by the majority of police staff.

Police unlike a private company, do not do not sell anything to the citizens. Their work is with citizens. Police work in a public interest. At the same time, police must conduct tasks that may prove unpleasant for citizens that are in that situation, for example impose penalties or other punishments. (Stojanovski, 2006: 50)

Police officers represent a structure that serves to the citizens, the community and only after that to the government. Police is a service with legal ground and basis on legal system of the state. Respect of basic provisions of police profession is obligatory for all members of the Police staff. Not only the elementary needs, but the Police officers should give an effort to do more in fulfilling their everyday duties and responsibilities. Having in mind that Police profession is one of the most valuable and respectable jobs in a democratic society, police officers must show sense for morality, integrity, honesty and many other values that make a good picture of the police.

It is always a question what if the Police officers do not do their best in respecting laws? There is a mechanism that protects willful behavior. There are a lot of minor offenses committed by officers in their everyday work. A set of measures are available to the superiors in order to motivate police officers to act according to the rules. Macedonia's Ministry of Interior has a Sector for Internal Control and Professional Standards, which is the main body of the Ministry taking care of good and professional behavior of all police staff. In 2014 they took a lot of measures, like warning, fining, repositioning to lower positions, dismissal, etc.

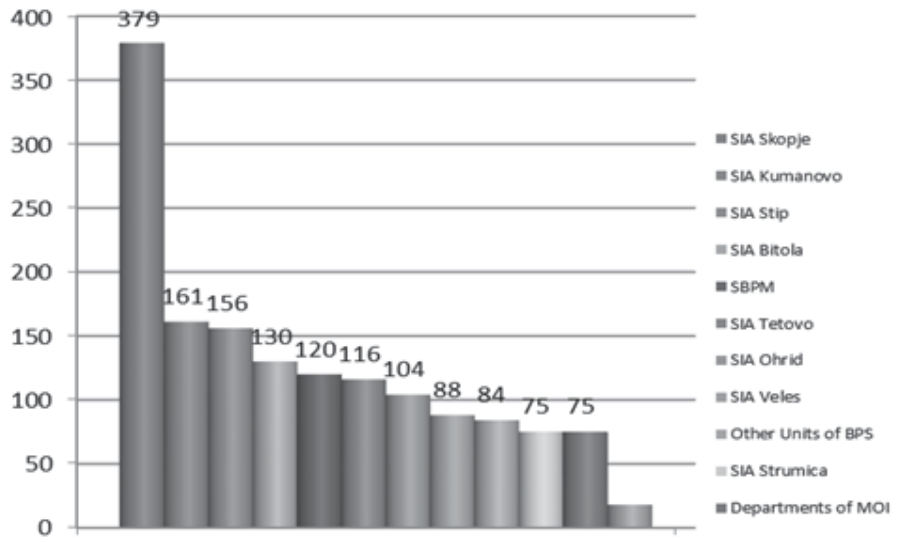

Figure 1 *Number of taken measures in Sectors for Internal Affairs in 2014*

According to Figure 1, in 2014 the SICPS took numerous measures in all Sectors and other organizational units of the Ministry. In SIA Skopje there were 379, in SIA Kumanovo 161, in SIA Stip 156, in SIA Bitola 130, in SIA Tetovo 116, in SIA Ohrid 104, in SIA Veles 88, and in SIA Strumica 75 cases. Additionally, in 2014 120 measures were taken in the Sector for Border Police and Migrations, 84 in other Units, and 75 in other Organs of the Ministry. This Figure shows that SIA Skopje as the biggest sector with most police officers is on the top, but other SIA's do not follow the number of police officers or population. For example, SIA Tetovo is on the second place according to the number of police officers and population, but is on the fifth place with taken measures. On the other hand, SIA Stip is on the seventh place by numbers of police officers and population, but on the third place by taken measures.

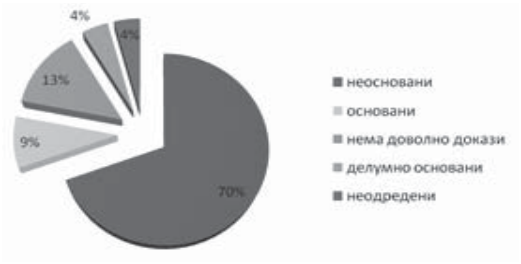

Figure 2 *Distribution of percentage of reviewed cases in 2014*

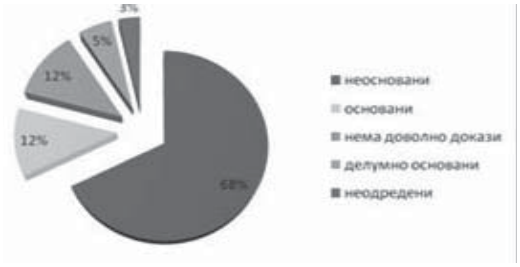

Figure 3 *Distribution of percentage of reviewed cases in 2013*

Figures 2 and 3 show no major deviations. Almost 2/3 of all reported cases are rejected as unfounded. This data may prove to be in-correct if we compare the data issued by the Ombudsman. According to their statistics, almost 60% of all reported cases for police brutality or offences were taken as correct. If there is an independent body outside the MOI, the percentage of rejected cases will not be as such.

Table 1 *Number of Police officers and compulsory measures imposed by the SICPS by type and year*

	Total cases that are taken	Criminal Charges	Initiation of a disciplinary proceedings	Indication with warnings	Procedure for compensation of material damage	Distancing from workplace	The employment termination decision without conducting disciplinary proceedings
2008	1148	75	173	122	32	39	
2009	1355	50	201	193	84	28	66
2010	1261	29	219	161	85	9	14
2011	1250	30	228	230	62	9	29
2012	1644	23	347	244	74	11	6
2013	1584	12	277	261	45	4	20
2014	1506	25	188	217	39	4	16

Table 1 contains data about Police officers against whom the compulsory measures were taken by the SICPS. It is evident that most difficult measure, the employment termination decision, decreased over the years. Or, in 2009 – 66 Police officers were fired, in 2010 only 14, in 2011 – 29, in 2012 the lowest number – 6, in 2013 – 20 and in 2014 – 16. Are these numbers and data correct as regards the police officer's behavior? Are the police complying with the European standards? Are the police a guarantor of high standards of respecting human rights and freedom and respect of professional standards? There a lot of questions to be answered. One is a fact. From year to year Macedonian police are becoming more and more efficient and effective. Police incomers are more and more educated and with better education. New programs for police training, prepared according the highest standards lead to a new profile of police profession as a very attractive one for young and perspective persons who are more and more interested in becoming police officers. This new way of policing supports Macedonian efforts to fulfill European standards and all challenges of European integrations.

Table 2 *Submissions against police officers used physical force.*

	Total number of Proceedings	founded	unfounded	no evidences	partly founded
2008	64	4	36	24	/
2009	79	6	37	36	/
2010	64	5	38	20	1
2011	63	8	44	11	/
2012	73	4	46	23	/
2013	57	1	33	23	/
2014	71	4	46	21	/

Regarding the context of Table 1, Table 2 gives the data on the use of physical force which is in relation with a decreasing number of fired police officers. As founded cases in 2008 to 2014 for the use of force do not vary a lot, we are free to conclude that police officers in Macedonia do not use unduly force against citizens (offenders, criminals, etc.).

Macedonian code is a basic document of police profession, and its provisions should be respected by all police officers. Having in mind that the reforms in the police are still ongoing, introduction and implementation of the Code have left a significant mark on the development of the police as a democratic service in Macedonian society. Accepting European values recognized in the European code of police ethics means a strong support to the Macedonian European integration process.

According to the Macedonian approach, the Code is similar to the European code, even broader and including provisions which are not regulated with the European code. Almost all provisions regulated by the European code are appropriately adopted in Macedonia, and articles are 65 in Macedonian and 66 in European, code.

Macedonian Code was introduced in 2004 but with permanent values that do not require any changes, although in certain segments the Macedonian society has changed considerably in the last decade. For example, the former investigation procedure was changed and now the Republic of Macedonia conducts the so-called "prosecutorial investigation". The code determines that in the process of implementation of their powers, the police establishe functional cooperation with the Public Prosecution Office and Judiciary.

Related to other provisions of the Code, it fully meets the expectations of a document that aims to enable police officers to act ethically and according to European standards, as well as a good reminder in daily work. From a practical point of view, the Code is a comprehensive document hard to remember and missing the solemn thread which such documents should contain.

CODE OF POLICE ETHICS OF SERBIA[12]

Although apparently there are some differences in the distribution of Chapters between Police Codes of Ethics of Serbia and Macedonia, essentially both documents extensively follow the content and orientation of the European Police Code.It is quite understandable if we consider the role of the police in the state, and democratic values of the two countries.

Serbian police is obliged to adopt their powers and behavior with principles and regulations of the Code, as well as with the Constitution and laws, and with international documents related to the police work. Divided into chapters it provides a better visibility of the text. This approach reduces the solemn nature of the code that needs to be declarative document, easily applicable and accessible to the police officers and the citizens. The Code abounds with solutions that support the protection and promotion of human rights on the one hand and the limitation of police powers on the other hand. However, some articles of the Code recognize the rights and duties of police officers who are or should be part of the regulations and other acts of police actions, and their character is more than necessary detailed including provisions not necessary to contain.

The Code appropriately treats the questions related to the legality and role of law, and co-operation between police and other state agencies. The topics on organization and functioning of the police, and police powers are regulated in detail by other laws and by-laws, so the author is of the opinion that the Code is enough clear and precise even if it does not have such regulations. The procedure regarding the selection for the police is regulated by other acts. It is good that the Code treats the questions of equality and non-discrimination. Police training is as much as possible open to the society, with clear provisions for fight against xenophobia and racism.

Unlike the Code of police ethics in other countries in the WB, the Code of Serbia is brought by the Government, which gives a greater meaning and importance of the Code. In other countries, the Minister of Interior is responsible to sign the Code.

Comparative analyses of the data issued by the bodies for internal control in the Police show that both, Serbian and Macedonian Police are with similar characteristics regarding police behavior.

12 Published in "Official Gazette of the Republic of Serbia" No. 92/06

Table 3 *Criminal Charges against Police Officers in Serbia in the period 2008 - 2013*

Criminal charges	Abuse of power	Accepting bribes	Falsifying documents	Fraud	Trading in influence	Abuse and torture	Fraud in service	Falsification of official documents	Total
2008	54	22	46	9	6	3	58	9	207
2009	82	28	95	11	4	6	7	3	236
2010	57	33[13]	19	18	24[14]	6	10	13	180
2011	226	27	35	6	8	4	6	9	323
2012	87	16	15	10	6	6	6	3	149
2013	82	27	13	6	5	4	4	3	144

Analyzing table 3, it is apparent that in 2011 323 police officers were charged which is more than double than in 2012 and 2013. The reason for such a high number may be of different nature. Political changes, new police supervisors, changes in the laws, lack of education, lack of police control done by police chiefs, etc.

Table 4 *Proceeded documents in the period 2008 – 2013 by the Sector of Internal Control*

Proceeded documents	2008	2009	2010	2011	2012	2013
Founded or partially founded	437	608	550	459	514	560
Unfounded	1087	1523	1773	1679	1587	1835
Proceeded to the other organizational units for further proceeding	263	270	378	455	594	831
Proceeded to other services	250	267	286	321	332	379
Resolved with other measures (minutes, putting ad Act etc.)	574	591	799	779	617	787
Total	2611	3277	3786	3693	3644	4392

Having in mind that police officers are well trained servants, it is very reasonable that citizens expect a high level of services and good policing. However, there are a lot of negative examples. In every country in WB, we still read about the abuse of force, lack of professionalism, non-competent servants, lack of trust in police, unreasonable procedures, etc.

The analyzed data are very similar in the WB countries. The situation has been getting better from year to year, and every day measures taken in order to fulfill European standards, lead to a modern police service ready to respond to all needs and requirements.This means that each country pays attention to ethical and moral police behavior.

ETHICAL CODE OF THE POLICE OFFICERS OF CROATIA[15]

The Code of Ethics for police officers of Croatia was brought under the article 30 paragraph 2 of the Police Law[16], signed by the Minister of Interior. The Code of Ethics for the Police officers of Croatia is a short and concise document, which permanently fulfills the role of a declarative text whose aim is to inform police officers about the highest ethical and moral principles of police profession. All provisions strongly highlight the need of respect of human rights and freedoms, defining the police powers and actions of police officers. Although these codes allow certain inconsistencies and incomplete coverage of police procedures, the author recognizes this approach as a better way for all police officers and the public to get familiar with the most important principles of police ethics and to be able to apply them in everyday work and life in general. The offered text is not intended to regulate the activities of the police who are not directly related to the proper and professional behavior; neither has it regulated matters that are not closely related to the relationship officer - citizen. Such issues are regulated by many laws and regulations that have greater legal power than the Code of Ethics.

The goal of the Code of Ethics is to introduce the ethical and moral standards of the police profession. Those standards should be respected by all police officers. The text is not ambitious and has no intention to regulate all the questions related to the police work, or with labor relations. All regulations that are not provided in this Code, in Croatia are regulated by the Code of Ethics for civil servants. Therefore, the code

13 Illicit production and trafficking of narcotic drugs
14 Enabling the use of narcotics
15 Published in "Narodne novine" 11/2012 from 29. May 2012;
16 Narodne novine br 34/2011;

of ethics of the police has adequate legal power and precisely regulates the majority of issues that interfere with the ethical and moral conduct of police officers.

CODE OF POLICE ETHICS OF MONTENEGRO

The Code of Police Ethics of Montenegro is brought by the Minister of Interior under the Article 10, paragraph 3 of the Police Law, on the proposal of the Police Chiefs.[17]Police emphasize the importance and meaning of the Code and their commitment to respect basic human rights and freedoms in the implementation of their powers, in particular to act legally, professionally, and in a tolerant and fair way. The Code of Montenegro is more similar to the Code of Croatia. It is a short and declarative document composed of 22 articles arranged chronologically and systematically, without allocated specific chapters or sections. It is a set of principles based on the norms of international and domestic laws ,necessary for the ethical conduct of police officers.

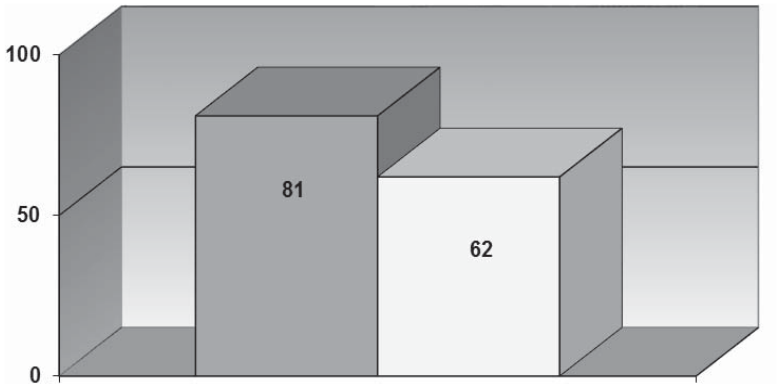

Figure 4 *Number of Complaints against Police work, in 2013 and 2014*

The Unit for Internal Control follows the Police work and it acts preventively, but more often after filing an appeal by the citizens or other employees of the Ministry. On the basis of the compared data for 2013 and 2014, it is obvious that in 2014 there were 19 appeals more than in 2013, which is more by 23.45 %. Table 5 presents the number of accepted and founded appeals, as well as those rejected and unfounded.

Table 5 *Complaints on the conduct of the Police Officers in 2013 and 2014*

Complaints on the conduct of the Police Officers	Year 2014		Year 2013	
	Number	%	Number	%
Founded	13	16.05	8	12.90
Unfounded	68	83.95	54	*87.10*
T O T A L:	81	100	62	100

Comparing the data between WB police services, it is obvious that the Unit for Internal Control of Montenegro police has rejected the greatest number of appeals, i.e. almost 84% in 2013 and more than 87% in 2013. At the same time, Macedonian Sector for Internal Control and Professional Standards has rejected 70% in 2014 and 68% in 2013. Serbian Police Internal Control Service has rejected 77% in 2013 and 74.5% in 2014.

Most of appeals in 2014 were submitted on the work of Police officers from Public Peace and Order Department, 34 which is 41.97% of total number of appeals. Most of the time, citizens expressed doubts about the failure or inadequate conduct of police officers, as well as suspicion of abuse, unethical conduct, unauthorized use of force etc. 'Second on the list' are police officers from Road Traffic Safety Department with 24 appeals, or 25.80%. Citizens complained after inadequate, impolite and unprofessional behavior of police officers during traffic control. However, after the procedure of internal control, based on the complaints against police officers of the traffic police, UIC did not identify evidence that would indicate unlawful or unprofessional conduct of police officers.

17 Official Gazette of Montenegro number 1/2006 from 10.1.2006

To examine the ethics of police actions, Montenegrin police have formed an ethical committee composed of seven members, three of them are not police officers. The committee members are appointed by the Minister, and their responsibilities and way of working are determined by the Rulebook.

Analyses of the Code of Police Ethics of Montenegro show that although it is a short and simple document that all police officers should consistently respect, there is the fact that the Code sends important messages which represent the foundation of police work in modern society. The Code leaves space for strengthening confidence between police and citizens. It is prepared according to the highest principles of the Universal declaration on Human rights and freedoms of the UN, as well as the basic documents for human rights of the CoE and other international documents. Besides, the Code regulates some internal relations within the police through the promotion of ethical values of police officers, mutual respect and confidence, assisting in different situations, etc. Training and education of police officers compulsory contain ethics in police behavior. The Ethical Committee is a body of crucial importance for the police work, and only if the police's activities are transparent and open to the community, it will give enough space for building confidence and good relations between the police and citizens.

CONCLUSION

The Codes of Police Ethics of the countries of WB are more or less similar. Serbia and Macedonia have documents more resembling the European Code of Police Ethics while Croatia and Montenegro have short and declarative documents that are more similar to the Code of Police Ethics of the USA. Each approach is good enough and there is no obvious need to change any provisions of the Codes.

However, all Codes fulfill their main goal: they address the ethics in everyday police work and lead police officers to appropriate behavior and acting. The basic standards of police ethics, foreseen in the Codes, are:

– Strictly respect a human being in performing police tasks and leading the subordinates;

– Strictly respecting the Law in adoption internal and external decisions for police work;

– Transparency of the police work i.e. publicity in police work;

The Code of Police Ethics most of the time is here to remind police officials on law and ethical standards when using force, but it is also good to remind persons who enforce the law on a very old and general moral principle: Do not treat other people in the way you do not want to be treated.

The Code of Police Ethics in the western countries, as well as in the countries in the Western Balkans, has a strong influence on the police profession. It contains ethical guidelines to be used by police officers when dealing with citizens i.e. with their duties. They include impartial treatment, discretion, and the use of minimum force only when it is necessary, professional secrecy, integrity, avoiding conflicts and corruption. Ethical guidelines, together with qualitative training and education, as well as professional leadership, support the police officers to become part of an ethical profession.

However, the Codes are only words on paper. It is always necessary to do more about ethical and moral standards. There are still a lot of police officers prosecuted for crimes, excessive use of force, corruption, non-professional behavior, etc. Some recommendations that can make things better are:

– Contemporary police education must follow the highest ethical standards;

– International police co-operation must be organized in a way to meet the best practices and ethical standards (there are no numerous courses and seminars related to police ethics);

– Internal control of the police is not enough to maintain the highest standards in police profession;

– Each country should support an independent body (outside of the police and state agencies) to control and monitor police behavior especially in the cases when police officers are prosecuted for non-ethical actions;

– The best way to support ethics in the police, are continuous trainings and education how to deal with ethical standards and greater needs of community.

Furthermore, numerous cases taken after inappropriate police behavior indicate that the countries of the region are still far away from fulfilling European standards and promoting human rights and freedoms. There are a lot of things to be done in a near future. International police co-operation, exchange of experience, a new modern way of policing, tactics and new techniques of police investigations, are sufficient pre-conditions for further development and success of police service.

In this context, police ethics and morality are two very important parts of police profession. The existence of the documents regulating police ethics, as well as European Code of Police Ethics, presents successful means for continuous promotion and authority of police profession in Europe. The Western Balkan countries, most of them still working on European Agenda, will need further assistance and support in establishing European standards of policing.

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EDUCATIONAL REFORM AS A BASIS OF POLICE ACTIVITIES

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Educational Complex of Police of the Republic of Armenia

Abstract: The article is dedicated to the education reforms implemented by the Armenian Police on the example of the Educational Complex. The author describes the multistage reforming of policing and emphasizes major importance of educational reforms. The article covers general development trends within the systems of professional education of police officers, aims and content of professional police education. The paper, being based on separate research of educational system of the Armenian Police, covers assessments and results of the reform implementation which reflect conformity of laws and regulations with educational reforms, as well as define the new legal status of the Police Educational Complex, objectives and functions of learning in the professional development of police officers, include introduction of progressive pedagogical technologies and interactive forms of training in learning, differ by the implementation of test-based entrance exams.

The article is accompanied by references on the normative-legal acts which basically regulate learning on the basic, vocational and higher levels of education.

Keywords: Educational reforms, the Armenian Police, professional police training, professional development, modular system of training, academic programs.

INTRODUCTION

Police of the Republic of Armenia is a public administration body forming a single system, designed to protect human life and health, property as well as other rights and freedoms, the interests of society and state against criminal and other illegal encroachments, with the right to use coercive measures within the limits provided by the international norms and laws of the Republic of Armenia. Police activities are based on the principles of legality, respect for human rights and freedoms, honor and dignity and publicity.[2] The Armenian Police, except performing the functions of maintaining public order in the interests of society as a whole, also provide assistance in guaranteeing protection of the rights of citizens and their property as well as protection of democratic institutions on which the law and order of the state are based. While performing their tasks, at the same time, police officers exclude demonstration of brutality, discrimination, physical and moral violence against citizens and reduce corruption risks.

The modern Armenian Police have gone through hard times /collapse of the USSR, the transitional years of the 90s, the declaration of independence, building up statehood/ to conform to the requirements of democratic principles of law enforcement, transparency and accountability.

However, at the beginning of the 21st century, significant achievements of the state in economy, politics and social field entail the need for wide-ranging reforms in the state institutions including the police.[3] These reforms cover all areas of policing: protection of the rights and freedoms of citizens, migration issues of the population, effective fight against trafficking, illicit traffic of narcotic drugs, organized crimes, corruption, money laundering, cybercrime, various organizational and structural reforms.[4] Reforming stood out as continuous leading to partnership with international organizations, study visits to several countries /Portugal, Switzerland, Finland, Estonia, Georgia, Lithuania, the Netherlands/, signing cooperation agreements with Russia, Italy, Poland, Germany, Iran, development of measures for improving the maintenance of public order and public safety, effective use of police resources, development of information technology, improving working conditions, staff recruitment, identification and solution of legal and social problems of police officers.[5]

Not only have the principles of the Armenian Police changed, but also the work style has changed. In particular, thanks to the efforts of the OSCE, the website called police.am has been launched. The website

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2 Закон о полиции 2001г.
3 Указ Президента Республики Армении 06.05. 2009г. НК-68-А
4 Постонавление правительства РА 01.04. 2010г. № 354-Н „Реформы в сфере деятелности Полиции на 2010-2011г"
5 Постонавление правительства РА 07.02. 2013г. № 109-Н „Реформы в сфере деятелности Полиции на 2013-2014г"

is to provide support to citizens regarding legal issues and to ensure close contact with the police. Besides, with the help of the hot line the citizens have the opportunity to address their complaints, comments, suggestions to the police, to be in the know of the activities carried out by the territorial police authorities, to allow access to the contact details of community police officers. The official website provides the accountability and transparency of policing, helps to reduce bureaucracy, increases public trust, etc.

Innovations in policing also involved road police and passport system. Thanks to the efforts of the road police officers, modern systems and equipment were introduced in public places of the capital to ensure road traffic safety. Electronic passports containing biometric data, and identification cards were introduced in the territory of Armenia.

Democratic law enforcement supposes police accountability to the public, its representatives, law, and the state. Accordingly, the activities of the police, ranging from the behavior of each police officer to issues of law enforcement strategy and policy, remain open to the public.[6]

Therefore, one of the major benefits of reforming is to achieve partnership between the police and the community. The concept of community-oriented policing has emerged as a major strategic complement to the traditional style of policing. This approach is characterized by a deeper involvement in policing of other agencies and the public with a view to providing more efficient and effective fight against crime and strengthening the relations between the police and the local population. However, the extent to which the community is involved in policing, and the need for setting new tasks before the police are defined by the new culture of policing introduced within the police.

Building partnerships between the police and the community constitutes a multifaceted process requiring changes at any level and in any field of policing.[7] An example of this is setting up community police stations throughout the capital /the number of the stations reached 11/ contributing to the collaboration between the police and the population.

Professional police work is complicated. For its successful implementation there is a need for deep knowledge of the basics of management and the ways of its implementation, strong practical skills and capacity, intellectual, decisive, physical and other traits required for rapid, accurate and proper implementation of their professional tasks. The analysis of the structure and functioning of the current system of Police of the Republic of Armenia showed that the cornerstone of the reform program of the entire police is education reform. Police reforms include the shaping of a new image of a police officer with a new way of thinking, professionally educated and competent. In order to achieve the goal it deemed necessary to create a new education basis and adapt the teaching to accommodate relevant democratic principles of policing. Therefore, a Memorandum of Co-operation was signed between the Police of the Republic of Armenia and the OSCE office in Yerevan as well as a working group on improving police education system was established.

Educational reforms in policing had certain directions:

- including the profession of a police officer in the list of professions,[8]
- establishment of the Educational Complex,
- introducing a three-stage education system,
- application of new interactive teaching methods in educational institutions,
- development of new training programs,
- lifelong learning and periodic retraining of police officers are taken as a ground for promotion in service,
- integration into the international police education system,
- improvement of the material and technical base.

At present, general trends of development of professional training have been revealed abroad ensuring adaptation of education and training of police staff to accommodate the requirements moving over time and changes in policing. Such trends include: democratization of police selection process, withdrawal from the military traditions and creating own traditions, humanization of the teaching and learning process, intellectualization of education; institutional commitment of higher education to meet the standards of civic and university education, formation of creative thinking and development of personal skills of specialists in various directions of policing, making use of technologies of distance, open and continuous education in teaching police officers, pursuit of integration by police education systems of various countries.

The aim of the professional police education is to train professional police officers of any rank and for any kind of policing. The professionalism of a police officer includes: full understanding and acceptance

6 Наилучшая практика первоначальной полицейской подготовки-аспекты учебной программы. ОБСЕ 2009
7 Наилучшая практика построения партнерства между полицей и обществом. ОБСЕ 2008
8 [7]Постонавление правительства РА 30. 08. 2007г 1038-Н

of police mission in society, sense of commonality with colleagues, respect for the Code of Ethics and complying with its provisions in life and in service, sharp intellect, availability and constant updating of knowledge, mastering all methods of professional activities (the ability to transfer knowledge into practice), awareness of own strengths and weaknesses, psychological and ethical preparedness, lifelong learning regarding new techniques of policing, raising professional qualification, etc. More specifically, the professional requirements are connected with the specialization of a police officer, his/her position and place in the police hierarchy.

The content of professional police education is defined by the aims and the level of the development of society and state, the police role in society, the development of legislation, science and technology, the requirements and tasks of a certain law enforcement activity, the pedagogical theories related to the content of education/ theory of humanitarian education, an individual-oriented education of police officers, etc. / and other factors. The content of each education level and grade correspond to certain standards and directly depends on the timeframe and mode of receiving education, qualitative composition of learners and others.

Presently, based on the research on the education system of the Armenian Police, the process and the results of the reforms can be assessed.

AMENDMENT OF THE NORMATIVE-LEGAL BASE AIMED AT:

- conformity of law with the police education reforms/introducing a three-level educational system [9] [10]
- merging Academy, College and Training Centre into Police Educational Complex,[11]

STRUCTURE OF THE EDUCATIONAL COMPLEX

At present, the Police Educational Complex consists of the following structural units:

- Training Centre
- College
- Academy
- Master's Program Department
- Postgraduate Studies Department
- Retraining Department

The goal of the Educational Complex is to fulfill educational, scientific, expertise, advisory and publishing activities. The Educational Complex trains:

– specialists with law background,

– specialists with police education,

– specialists with scientific-pedagogical education

– carries out retraining and qualification raising of acting senior, middle and junior police officers

The Training Center provides basic professional training for junior officers.[12] The overall course duration is from 3 to 6 months. Upon successful completion of the program, the cadets get the qualification "Police officer" and will be appointed to police entry-level positions. The Training Centre also provides retraining and professional development courses for junior police officers. Besides, the Training Centre provides special non-state-funded course for civilians for training security guard and bodyguard.[13]

The College provides professional intermediate-level education. The overall duration of the program is 2 years. Upon successful completion of the program, the graduates get the qualification of "Police officer", the rank of lieutenant and will be appointed to the position of inspector.[14]

The Academy trains police officers with higher legal education /Bachelor's[15], Master's[16] programs/[17]. The overall duration of the state-funded program is 4 years. Upon successful completion of the program, the

9 Закон о службе в полиции 2002г
10 Закон об образовании 1999г.
11 Постонавление правительства РА 09.11. 2006г 1791-Н
12 Закон РА о первоначальной и средней профессиональной образовании 2005г
13 Приказ министра науки и образования 1676- Н 08.12.2010г.
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16 Приказ министра науки и образования 1193- Н 06.12.2007г.
17 Закон РА о высшей и послевузовской образовании 2004г

graduates get the qualification of "Bachelor of Laws", and will be awarded the rank of police lieutenant and will be appointed to police mid-level positions /detective, officer specialized in community policing, etc./.

The Academy also offers non-state-funded program for civilians. Upon successful completion of the program the graduates get higher legal education.

PROFESSIONAL DEVELOPMENT

The system of professional development within the Armenian Police constitutes an additional learning following the basic education for individuals, who are engaged in professional service, aimed at ensuring modern and quality performance of functional responsibilities. The main goal of such learning is deepening and perfecting professional knowledge, capacity and skills required to perform functional responsibilities in accordance with the requirements of the current legislation as well as by implementation of best practices of the Armenian and foreign law enforcement agencies in the fight against crime. This function within the Educational Complex is performed by the Retraining Department that provides retraining and professional development courses both for police officers and other law enforcement officials.[18]

The aim of the professional development is:

– ensuring efficient performance of new complex tasks,

– increasing their innovative potential,

– assimilation of new professional requirements including a transfer at work,

– getting higher qualification,

– acquisition of knowledge that goes well beyond the knowledge they need for the current position,

– developing the skills managers need for decision making,

– ensuring maximum favorable conditions for mental, moral, emotional and physical development of an individual,

– providing professional education at a level that meets current legislation requirements and modern tactics and ways of combating crime,

– developing curricula in conformity with the international requirements,

– developing personality with sharp intellect and culture, ready to make a conscious choice and assimilate professional knowledge.

The professional development training aims at fulfilling educational, educative and developing functions:

1) The educational function of the training supposes assimilation of knowledge, building up a system of professional knowledge, capacity and skills.
2) The educative function of the training is building up a system of value-based and emotional attitude of an individual towards the world.
3) The developing function of the training determines the development of general and professional capabilities of police officers.

Apart from the above mentioned the Master's and Postgraduate Studies Departments of the Educational Complex train scientific-pedagogical police staff.[19] [20]

FACULTY

The faculty of the Educational Complex involves highly qualified staff, as well as specialists from other higher education institutions of the country. In accordance with the European standards, the Educational complex introduced a modular system of training which is considered to be one of the possible ways of improving the effectiveness of the education process. Modular training is one of the modern progressive pedagogical techniques that is widely spread in civic and departmental educational institutions.

This technique takes first place as to the frequency of its application among other educational innovations. The modular organization of the learning process allows modernizing traditional methods of training: adaptive system of training, collective ways of training, and wide use of methods intensifying the training.

18 Постонавление правительства РА 28. 04. 2011г 174-Н
19 Постонавление правительства РА 20. 07. 2001г 662-Н
20 Приказ министра науки и образования 740- Н 15.09.2006г.

Moreover, the learning process is enriched with interactive methods, their efficiency being dependent on the proper use of technical equipment in learning both for displaying diagrams, tables, pictures, charts, and photos, recordings during classes and for controlling knowledge. It allows efficiently assessing the level of mastering the material by students, increasing the effectiveness of controlling their cognitive activity. The use of equipment in learning creates a basis for designing role plays, consolidating the acquired knowledge, revising the previous material. Active forms of learning have educative potential. Each class addresses not only developing necessary professional traits but also high legal culture.

Thus, the application of innovative forms of the organization of learning may be viewed upon as one of the main ways of developing key professional skills and capacities of a modern police officer. All this acquires increasing significance for short-term additional professional training.

As a result of reforming, the following courses were included in the academic curricula of the Educational Complex:

– Human right and the police,
– Democratic grounds of policing,
– Pedagogy and psychology in policing,
– Norms of police ethics,
– Communication skills,
– Community policing management,
– Corruption and its prevention,
– Trafficking and its prevention,
– Illicit traffic in narcotic drugs and psychotropic substances.

ADMISSION

The admission process is governed by various legal norms.[21] [22]Since 2012, within the framework of education reforms, a computerized system for test-based entrance exams was put in place. This method ensures transparency of entrance exams and reduces corruption risks. The test allows checking the literacy, the general development, the psychological traits of applicants, and the ability to perceive, coordinate and analyze information. The entrance exam commission is composed of the representatives of police, Ministry of Education, OSCE and independent non-governmental organizations. Physical fitness of applicants is also assessed.

INTERNATIONAL RELATIONS AND COOPERATION

The Educational Complex is a member of the Association of Higher Education Institutions of Ministry of the Interior /Police/ of CIS Participating Countries. With the assistance of the police headquarters, close contacts have been established with a number of law enforcement educational institutions of CIS countries and Europe. Since May 2011, with the efforts of the OSCE office in Yerevan, contacts were established with the European Police College (CEPOL), Germany, Slovenia, Czech Republic, etc. Activities aimed at developing an individual agreement on further cooperation are under way.

In 2012, the delegation of the Police Educational Complex headed by Lieutenant-General Varyan, head of the Educational Complex, attended the CEPOL meeting, where various issues including cooperation development with European Neighborhood Policy countries were discussed. In this connection, in 2013, the CEPOL delegation paid an official visit to the Educational Complex to present the structure, the mission of the organization, and the cooperation directions.

In May 2014, CEPOL came up with a draft working agreement between the European Police College and the Police Educational Complex OF Armenia. In November 2014, the Educational Complex officially participated in the internet-survey of CEPOL national coordinators regarding the European organizations the Armenian Police prefers to pay a study visit to.

21 Приказ начальника Полиции 8- Н 18.05.2012г.
22 Приказ начальника Полиции 8- Н 01.11.2006г.

PHYSICAL CULTURE AND SPORT

The Educational Complex provides all the necessary conditions for the implementation of educational and educative activity, the involvement of students in scientific research and their physical and spiritual development. All the facilities are made available not only for productive learning but also for recreation and sports. The Educational Complex has an outdoor sports ground, wrestling, fitness, boxing rooms, a gym, and an interactive and indoor shooting range, a swimming-pool. All the sports instructors are highly qualified sportsmen. Fitness, judo and other sports sections are operational on a non-stop basis.

Today the police increase legitimacy of the state since the fair and impartial attitude of the police toward citizens enables to gain the respect, support and partnership of the society. That is why, at the current stage of development of public relations, democratization of policing, effective functioning of the police, based on the best practices in the field it deems necessary to demonstrate professionalism and practical skills that meet the requirements of the legislation and the principles of humanism.

CONCLUSION

Today the police increase legitimacy of the state since the fair and impartial attitude of the police toward citizens enables to gain the respect, support and partnership of the society. That is why, at the current stage of development of public relations, democratization of policing, effective functioning of the police, based on the best practices in the field it deems necessary to demonstrate professionalism and practical skills that meet the requirements of the legislation and the principles of humanism. Thus, it can be concluded that all the changes implemented in the framework of reforms are interrelated and serve as a core basis for the police to effectively perform their functions and tasks. However, educational reforms in policing are key factors. Presently, within the framework of democratic law enforcement police takes human rights, democratic principles of policing, partnership between the police and population as a cornerstone. Research on educational reforms has demonstrated that the Armenian Police need new staff that will meet the new principles of policing, are professionally educated and are able to perform their duties professionally. To achieve these objectives it deemed necessary to do the following: development of professional training system, amendment of normative-legal base, organization of a new educational institution, updating professional development courses for police officers engaged in professional service, application of innovative methods in the organizations of training, introduction of computer –based admission system, development of international relations and cooperation, creation of new possibilities for successful study and physical preparedness.

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CAPABILITY BASED POLICE DEVELOPMENT PLANNING

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Abstract: This article presents a model of capability based police development planning. A police capability is the ability of the police to perform coordinated tasks and utilize available resources in order to achieve particular results. Capability based development planning aims to determine the police necessary capabilities according to the possible scenarios in which the police forces could be involved. The major police capability inputs are police procedures and rules, personnel, equipment, organization, training, education, facilities, and interoperability.

Keywords: the police, development, capability, capability based police development planning, capability inputs.

INTRODUCTION

Changeable and widespread security treats requires constant development and transformation of the police in order to face those threats. Trends of security threats evolution have shown that the spectrum of future security threats would be more extensive. On the other hand, economic, political, technological and legal constraints channel and shape the development paths of the police. All of this describes future police environment as unstable and complex system. The question is how to build an efficient and effective police organization in the context of the unpredictable environment and a large number of different constraints.

Modern approaches in the development planning must provide the police forces with necessary capability that enables to perform future missions and tasks. Capability Based Development planning approach is one of the many approaches in the development planning process. By using this approach security environment, missions and tasks of the police are analyzed, in order to determine the required police capabilities, and then develop a plan to achieve necessary capabilities with respect to the resources and constrains. In this way Capability Based Development planning enables the police to face the future.

Capability could be referenced to the answer of the question: What should the police be able to do in order to be perpetrated for the future assigned missions? In order to implement the process of Capability Based Development Planning in the police the first step is identification and description of the police capability required to face the future threats.

Required capabilities should be developed by the synergetic action of the capability inputs. The capability inputs transform incoming resources of the police organization in the appropriate set of options, which enable required capabilities to become achieved and maintained.

POLICE DEVELOPMENT PLANNING

Police Development Planning can be defined as the process of determining the police development goals and a course of action in achieving them, through the development of plans and programs. Previously mentioned approach starts with the prediction of the possible future environment that is used as a basis for the creation of the police development plan and the adjustment of the police in facing future threats, as well as taking any limitations into consideration.

There are numerous development planning approaches that are used in commercial sector or in the security institutions. Some of those approaches that could be used in the police institutions are: resource-constrained planning (budget-based planning), historical extension, scenario-based planning and capability based planning.[3]

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– **Resource-constrained Planning (budget-based planning).** The objective of this planning approach is to provide a viable police capability that is sustainable within the provided budget. It attempts to maximize police capability for the funds available.
– **Historical extension.** The basic premise is that what worked in the past will work again in the future. The analysis of future operational effectiveness of various options is based on a historical analysis. Past police operations or another police usage are evaluated to identify the factors that most significantly contributed to success and/or failure. The police capabilities are then designed to take greatest advantage of the positive factors while avoiding the negative ones.
– **Scenario-based planning.** This approach utilizes a representative set of hypothetical situations for the employment of police forces. The situations are specified in terms of environmental and operational parameters. Police capability requirements are determined from the assessments of the ability to achieve formulated mission objectives.
– **Capability based planning** approach first analyzes the initial policy guidance and security environment in order to model the future environment and to determine the mission and tasks of the police. Modelling future environment identifies possible scenarios of security threats. Based on the developed scenarios required capabilities are identified to carry out the mission and tasks of police in the future. At the end of the planning process different options for bridging capability gap between required and existing capability are developed and best options are chosen.

Every approach has particular advantages and disadvantages. Advanced police development planning should integrate different approaches in order to achieve best result. In this way, advantages of some approaches could be maximised and disadvantages could be minimised. Capability based planning approach is finding solutions to police development issues by dealing with the police capabilities and ways of achieving appropriate capability levels.

POLICE CAPABILITY

Authors have different but essentially similar views when it comes to defining the term of "capability". Some authors define capability as an organizational ability to perform coordinated tasks, to utilize organizational resources in achieving a particular result.[4] Other authors define capability as knowledge of the way to act, potentials of actions that result from the combination and coordination of different resources, knowledge and competencies of the organization through the value chain that fulfils strategic objectives.[5] Capability could also be defined as an organizational capacity to deploy resources for a desired result.[6] This definition emphasizes that resources are not productive on their own and a group of resources must work together to perform missions and tasks.

Definitions indicate that a capability means organizational ability to perform activities in order to achieve the planned objectives. It is important to emphasize that activities should be performed and objectives achieved under specified standards and conditions. Standards are quantitative or qualitative measures and criteria for specifying the levels of activity performance. Standards are acceptable levels of performing the activities to assure successful achievement of the objectives. Conditions are environmental or situational variables that affect the performance of activities. [7]

According to the definition above, the police capability could be defined as the ability of the police to perform the activity in order to realize the assigned missions, considering specific standards and conditions. With the need to sustain and develop, the police capabilities provide a foundation for long-term planning and key factors decision-making. In addition, capabilities coordinate and constrain short-term planning process and provide a logical basis for the physical structure of the police.

It is necessary to keep in mind that modern organizations exist and function in an unstable and rapidly changing environment. Having that in mind, the police capabilities have to evolve and change constantly over time. The capability ability to adapt changes over time makes an important influence on the success of the police forces. If capabilities are inert, organisation will gradually lose ability to perform activities and execute tasks and objectives.

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6 Grant, R. M. Contemporary strategy analysis. John Wiley & Sons, 2010
7 Stojkovic, D., Kovac, M., Mitic, V., The model of organizational capabilities development, SYMORG 2014, Zlatibor, 2014, p 1.

Capabilities can be classified considering different criteria. Authors identify various types of capabilities depending on the selected criteria. To select capabilities in police development planning process, the following approaches could be used: functional analysis and process analysis.

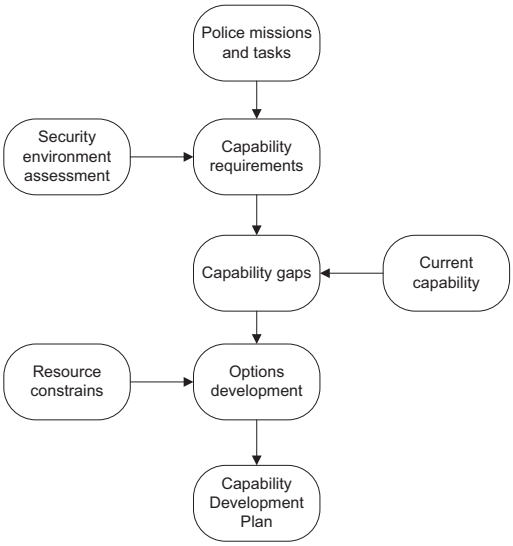
One of the commonly used approaches for the police capabilities classification could be the functional analysis. The functional analysis identifies capabilities in relation to each of the principal functional areas of the police. For instance, there is criminal police capability, emergency management capability, traffic control capability etc. The specific capability that could be recognized within the criminal police capability could be criminal intelligence capability, analytical capability etc.

The process approach is to be another way of the police capabilities classification. In accordance with that approach, all police capabilities can be grouped into the primary capabilities, the support capabilities and the management capabilities. The primary capabilities are related to the primary police processes which lead the police in the fulfilments of their missions. An example of the primary police capability could be: criminal police capability, border control capability, public order capability etc. Support capabilities enable performing of support processes within the police. Support processes are not directly involved in achieving mission of the police, but they are directly responsible for providing all kinds of support and resources that are necessary for the execution of the primary processes. Some examples of supporting capability in the police could be: human resource management capability, the information and telecommunication capability, the logistic capability, etc. The management process performances that guide primary and support processes are directly linked with the management capabilities. For the police, the management capability could be: strategic management capability, operation planning capability etc.

Regardless of the approach that is applied, the identified capabilities are likely to be widely defined and should be disaggregated into capabilities that are more specific. For example, the logistic capability can be disaggregated into the transport capability, medical capability, equipment maintenance capability etc.

THE MODEL OF POLICE CAPABILITIES DEVELOPMENT

Contemporary organizations are aware of capabilities development importance to the overall organisational performances. Capabilities development is a high priority for many of them but they have not yet figured out how to deal with that in an effective and efficient way. To produce the necessary capability, the whole organizational effort must be made, which includes the management and coordination of all resources and process. The police capability development model is presented in Figure 1.



The model of police capabilities development[8]

According to the previously mentioned model, *the analysis of the police missions and tasks* is the first step to be performed. This step provides information on what the police should do. Next step, *security envi-*

8 Adapted from: Stojkovic, D., Kovac, M., Mitic, V., The model of organizational capabilities development, SYMORG 2014, Zlatibor, 2014, pp 3.

ronment assessment, gives the description of the future environment in which the police perform their tasks, as well as future tasks in providing security in constantly changing environment. This would give planners the answer to the question: What for should the police be prepared?

The purpose of the next steps in generic model of organizational capabilities is to give the answer to two questions: what police capability is needed in order to face the future environment and how to develop required capability.

The basic step in the capability development process is the *identification of capability requirements*. That is probably the most complex part of the process and requires a combination of imagination and subject matter expertise. The purpose of this stage is to identify types and quantities of police organization capabilities required to accomplish the police missions. A crucial part in capability requirement step is the description of capabilities. That is a very sensitive part of the planning process because it is important to establish a common understanding of how a capability is conceived and expressed. Description usually contains the key capability characteristics (attributes) with appropriate parameters and metrics, e.g., time, distance, effect (including scale). Capability description should give an answer to the question of "what capabilities do we need?". On the other hand, the capacity dimension of capability should give an answer to the question of "how much of each capability do we need?".

Capability assessment is a stage that considers identification of capability requirements stage. The purpose of this stage is to assess the achievement of the previously identified capability requirements. Using the identified police capability requirements and current police capabilities as primary inputs, in this stage a list of capability gaps that require solutions is produced. Capability assessment could also provide the relative priority of the gaps identified.

Option development is the next step in the process during which planners develop options that solves capability gaps taking both materiel and non-material solutions into account. At first, planners identify non-material solution, and if they don't bridge capability gap, material solution could be find. The development of realistic options is a crucial step in linking capability gaps to the resources. There is a general agreement on the fact that capabilities are the result of the combined effect of multiple inputs. They cannot be simply built by purchasing new equipment or spending on research and development. Achieving necessary capabilities requires coordinated efforts in many areas and processes.

The main capability development process output is the Capability Development Plan. This plan needs to be carefully developed to ensure that the police will have appropriate capability to fulfil their own mission. Some organizations determine the so called the capability strategy that defines what the organisation needs to do with the aim to develop and maintain its capabilities.

The implementation of the police capability development plan considers official approval by the police management. This is a very complex process, and it is essential to be well prepared and led. A part of the police organization that is responsible for planning process prepare the necessary partial plans and programs which would specify the capability development plan and support its implementation.

POLICE CAPABILITY DEVELOPMENT INPUTS

Police capabilities are a result of the combined influence of multiple inputs. It is not the sum of those influences, but the synergy that arises from the way those inputs are combined and applied. Capability inputs aim to develop options for bridging capability gaps.

The defence institutions are the example of organisations that pay special attention to the capability development. They identify different but similar capability inputs. By analyzing the structure of capability inputs in different countries, presented in table, different approaches of determination are noted.

There are a lot of similarities between the defence and police institution, and according to the previous examples of defence capability inputs, the police capability development inputs could be identified. The major police capability inputs are police procedures and rules, personnel, equipment, organization, training, education, facility, and interoperability.

Procedures and rules are fundamental principles by which the police guide actions in the fulfilment of the given missions and tasks.

Personnel are individuals required in the police to accomplish the assigned missions and tasks. This is one of the crucial inputs of the police capability.

Equipment represents all kinds of material necessary to supply the police forces in order to perform missions and tasks.

Organization is a system of the police elements that enables the execution of police missions and tasks. This capability input shows how the police organize their resources in order to provide desired effects.

Training is a process by which the police personnel are taught the skills that are needed for carrying out the police tasks. Training can individual or collective.

Education is a process of teaching the police personnel in order to develop necessary knowledge.

Facility is a police capability input that provides the police with required infrastructure, in order to meet required capability.

Interoperability provides the police with the possibility to cooperate with another security subjects.

Review of defence capability inputs in different countries

USA[9]	Australia[10]	Canada[11]	Czech Republic[12]	Serbia
Doctrine			Doctrines	(Strategy and) doctrine
Organization	Organization	Infrastructure & Organization	Organization	Organization
Training and education	Collective training	Concepts, Doctrine & collective training	Training	Training
Material	Major systems	Equipment, supplies & services	Material	Weapons and military equipment
Leadership	Command & management		Leadership	Education
People		Personnel	Personnel	Personnel
Facility	Facility and training areas		Facilities	Infrastructure
		IT Infrastructure		
	Support			
	Supplies	Research & Development / Ops research		
Policy			Interoperability	Interoperability

CONCLUSION

Capability Based Planning is a planning approach that identifies and provides capabilities that an organization needs to address a range of challenges. This approach is successfully used in defence institutions around the world for decades, helping them to solve problems while balancing between defence needs and resource constrains. This approach could also be used by the police.

The implementation of the Capability Based Planning can be very useful for the police development. That planning methodology enables development of the police capabilities according to the security threats and scenarios in which the police could be involved in future, but taking into consideration the available resources.

The police capabilities can be developed by different options, which depend on the various capability inputs. The police major capability inputs could be: the procedures and rules, the personnel, the equipment, the organization, the training, the education, the facility, and the interoperability.

The implementation of the Capability Based Planning requires educated, trained and experienced people. The approach must be accepted and supported by top managers and applied through a well organised and led process.

9 Chairman Of The Joint Chiefs Of Staff Instruction, Joint Capabilities Integration And Development System, 2012, pp. 2, Retrieved from: http://www.dtic.mil/cjcs_directives/cdata/unlimit/3170_01.pdf

10 Australian Government, Department of Defence, Defence Capability Development Handbook, Canberra, 2014, pp. 2- 3, Retrieved from: http://www.defence.gov.au.

11 National Defence and the Canadian Armed Forces, Evaluation of Land Force Readiness and Training, 2012, Retrieved from:http://www.crs-csex.forces.gc.ca/reports-rapports/2011/167P0861-eng.aspx

12 The Ministry of Defence of the Czech Republic, The White Paper on Defence, 2011, pp. 93, Retrieved from: http://www.mocr.army.cz/scripts/file.php?id=98276&down=yes

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13. Rauffet, P., Da Cunha, C., Bernard, A. Organisational capabilities assessment: a dynamic methodology, methods and a tool for supporting organisational diagnosis. Institut de Recherche en Communications et en Cybernétique de Nantes (IRCCyN). 2010. Retrieved from http://hal.archives-ouvertes.fr/hal-00497933;
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METHODOLOGY SOLUTIONS IN POLICE EFFICIENCY MEASUREMENT[1]

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Abstract: The public sector is not profit-oriented, but serves to meet public needs. Members of the public sector and taxpayers must be satisfied with the quality of services and efficiency of the public sector. Methods of measurement and analysis of efficiency provided by for-profit entities cannot be applied to the public sector, and it is necessary to define the methods and analysis tailored to definition and structure of the public sector. The idea of measuring the effectiveness of the police and other public services is present for a long time, and it is gaining in importance due to the increasing demand for accountability of public managers. Design and implementation of the model for measuring the efficiency of the police as a policy of the state administration is a very complex job. The main objective of this paper is to point out the necessity and importance of building appropriate contemporary models for measuring efficiency, more appropriate to the needs and specifications of public services.

Keywords: measurement, efficiency, police, managers, problem, designing.

INTRODUCTION

Various organizations and institutions operate in the public sector providing and distributing public benefits. In this sense, the public benefits are different: the benefits of public order, the benefits of general interest and the benefits of particular interests. The benefits of public order guarantee public safety and national security (police, army, and judiciary) whose business causes relatively high costs. It is, essentially pure public expenditure, which are costs of the administrative apparatus of the state. Benefits are generally higher than the cost incurred, whereby the principle of economic evaluation is difficult.

Police is not established, or is here with the aim of generating profits, but only to provide public goods and services, which are required for all people of the community, which is one of the basic features of the organization of the public and non-profit sectors.[5] As part of the government, the police have the characteristics peculiar to government authorities, but also some specific characteristics. Available social resources are part of the gross social product which is intended for consumption in different areas of social life and work, including the field of public safety. Police and other security sectors in Serbia are important users of

1 This paper is the result of the realisation of the Scientific Research Project entitled "*The Development of Institutional Capacities, Standards and Procedures for Combating Organized Crime and Terrorism in the International Integration Conditions*". The Project is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011–2015). The leader of the Project is Associate Professor Saša Mijalković, PhD

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5 Non-profit sector consists of entities whose main motive of establishing and operating a business is other than the maximization of results (profits), such as the police, schools, health institutions, army, museums, churches, charitable foundations, nonprofit organizations, public sector organizations that provide services of transporting people and different types of transport, processing and distribution of water, maintenance of the road network, NGOs, voluntary organizations, voluntary associations, and others. Listed entities can be grouped in two categories. The first category is the organization founded by the government at national and local levels, which is predominantly financed from the budget, while another group category consists of organizations that receive funds from donations, grants, contributions and other benefits of third parties. (Cvetković, D. (2013) Designing indicators of economic efficiency of nonprofit organizations - with special emphasis on combating illicit proceeds in investment (thesis), Faculty of Economics - University of Novi Sad)

the state budget. Accordingly, the police are not the owner of the available funds, but only the user which provides safe and secure social development. Given the demands of the general criteria of rationality and social activities in the police use and exploitation of these resources should be subject to the basic economic principle, which states to achieve maximum results with minimal investment. Specifically, in the course of their activities, the police should strive to fully meet their tasks and work with as lower costs as possible, and have to be more efficient. At the same time, the application of economic principles must neither jeopardize the quality and quantity of duty performance, nor weaken the efficiency and effectiveness of the police force.

Efficiency could be briefly defined as the ability to achieve the desired goals with minimal use of available resources. Generally, efficiency is defined as the ratio of the results of organization functioning (outputs) and investments (inputs) necessary to achieve these results. Efficiency can be analyzed as a financial and in-kind efficiency. The primary objective of measuring efficiency is continuously monitoring the activities and results as significant information base, primarily for managers at all levels of management, which enables them to analyze the results, or the dynamic aspect to a more comprehensive understanding of the causes of achieved results and direct effect in improving them in the future. Properly designed and implemented, measuring efficiency process can be substantial motivation and stimulation for police and other public services performances.

Unlike profit-oriented organization, the outputs of the police and other government institutions usually do not have a market valuation of their activities, which causes many problems related to measuring the efficiency of these organizations. In addition, public services have a wide range of different objectives for which it was not possible to compare the effectiveness with the efficiency of others. The measurement of output in many public and non-profit organizations rarely can be done in a meaningful way. For profit-oriented organization it is unlikely to continue to perform a specific job which rejects negative contribution, while the public services required providing a full range of services, although some of them are known to be low cost-effective. In other words, there is no obvious link between success in achieving the objectives and obtaining additional funding. In many cases poor performance draws even more investments. For example, inefficient and ineffective police will not be dismantled, but probably will cause additional government investment. Finally, these entities have to provide services to all users, without exception. Specifics of the police and other public services gave rise to, among other things, the problem of performance measuring of such organizations.[6]

The police, as well as others state bodies, have no clear indicators for overall performance, such as profit. However, the police are different from other administrative bodies because police include a large number of various public activities. The police are required not only to prevent crime and find and catch offenders, but also perform various other tasks such as traffic regulation, maintenance of public order, protection of personal and property safety and rescuing people in natural disasters and other exceptional events, etc. Given such broad powers and duties, police managers are not able to determine progress or regress of police in society.[7]

The issue of measurement performance is very little cultivated in actual practice, as well as in the scientific literature, and this issue certainly deserves attention and research. The need for research of this problem stems from the fact that the police and other public sector services are separated in getting substantial funds from the available budget. Measurement of effective performance is crucial for the successful implementation of strategy and development of each institution and organization, including the police.

PROBLEMS AND COMPLEXITY IN MEASURING EFFICIENCY OF THE POLICE

If the results are not measured, you cannot distinguish success. If you do not see success, it cannot be rewarded. If you cannot reward success, then you probably reward failure. If you cannot recognize failure, it cannot be corrected. If you cannot display the corresponding results you cannot obtain public support. What is measured may be implemented.[8] The measuring of a phenomenon still represents one of the most important scientific questions.[9] How to measure the observed phenomena, how methods can provide high-

6 Milicevic, V., (2005) Measuring performance in non-profit organizations, Accounting, 9/05, Belgrade, p.79 -86.
7 Michael W., O Neil, Jerome A., (1980) appraising the Performance of Police Agencies: The PPPM System, Journal of police science and administration, vol. 8, no. 3, Gaithersburg, p. 255.
8 Osborne and Gabler (2002) Reinventing Government Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector, A Plume Book.
9 According to William Thomas Kelvin: "... if you cannot measure what you are talking about and to careers in numbers, then you know something about it; if it cannot weigh it, and if you cannot express it in numbers, your knowledge is meager and unsatisfactory. If you cannot measure it you cannot improve yourself." Quoted by: Begovic, B., (2007) Economic analysis of corruption, the Centre for Liberal Democratic Studies, Belgrade.

er accuracy, or reliability of the measurements, and give precision? All these issues are relevant for understanding the problem of measuring the efficiency of the police.

Measuring efficiency in the public sector is more complex, more complicated than measuring efficiency of profit organizations, because of numerous methodological problems regarding the specifics of public sector. Mintzberg argues that "if many activities of the public sector are crystal clear, these activities would have long ago been in the private sector."[10]

Athanassopoulus emphasizes that the problem of measuring performance has a multidimensional character and in this context, political states, accounting economic and managerial dimension. The same author also notes the need to create an integrated framework, which would encompass the individual activities and discipline that observed the assessment of performance only partially, in the unique discipline of measurement performance.[11]

Generally speaking, the specificity of the public sector leads to the fact that it is not possible to use the indicators whose calculation is based on the profit (income) such as rates of return (yield), and a host of other indicators that are derived and based on the accounting concept of income (e.g., net earnings per share). Great complexity in terms of measuring and assessing the performance of the police and other public services stems from the fact that it is necessary to specigy the target function of organization and set normative measures of performance.[12]

In an organization which uses input to produce an output, or organizations that have multiple inputs and multiple outputs, but that can be reduced to one input and one output, efficiency is defined as the quotient of them. The problem arises in determining the effectiveness of the organization, especially in the public and non-profit, where more diverse inputs and outputs must usually be considered that are expressed in different units of measure. In this case, you cannot draw a conclusion about global efficiency by using partial indicators of efficiency (productivity, efficiency and profitability), because they measure the effectiveness of only some resources, but is necessary to define a summary indicator of efficiency that will address all significant multiple results and all resources which are used for their implementation. In addition, problems arise as follows:[13]

- scaling problem (expression of input and output data in the areas of values that are comparable to each other);
- weighting problem (assigning weight coefficients, i.e., determining the relative importance of individual inputs and outputs.

Taking into account the fact that measuring performance in the police and other public and non-profit organizations involves the establishment of appropriate links between input and output, in terms of assessment the level of fulfilment the mission and realization of goals, and that these organizations are obliged to customers, it follows that the point of measuring and evaluating performance in non-profit organizations, according to V. Milićević[14] in the analysis of the "three E" dimensions of performance, or in the evaluation and assessment of economy, effectiveness and efficiency of service to wide range of users. The analysis of the effectiveness of these organizations includes control or evaluation of utilization of available resources. It is conducted by comparing the actual quantity and quality of outputs to inputs. The efficiency of public/non-profit sector will be achieved if the maximum output was achieved for a given amount of inputs or if a certain amount of output achieved with minimum amount of resources.

Given a large number of targets, police and other public services cannot be expressed in the respective financial sizes, because non-financial indicators in this area take a dominant role. If we add to this the fact that these organizations are increasingly focused on customers and quality of services provided, then we should expect measuring the performance of these organizations becomes very interesting area of research for many theorists and practitioners in this field.

Another problem related to measuring of efficiency of public sector refers to financial constraints which are particularly exposed to the organization in this field. Specifically, the police and other public sector organizations have very little control over the goals that should be achieved. On the other hand, the ability of borrowing funds in the commercial, for-profit sector is primarily determined by the operator caution and willingness of creditors that under certain conditions placed equity in the organization. In contrast, the ability of public sector organizations is to provide additional sources of funding, either through borrowing or from public funds, under the strict control of the government.

10 http://www.hal.ca/
11 Athanassopoulus, AD (1995) The Evolutions of Non-Parametric Methodologies for Assessing the Performance: A Review and Recent Developments, Journal of Spoudai, str.11- 48.
12 Maric, R., (2009) The management of non-profit organizations, Belgrade Business School - University College of Professional Studies, Belgrade, p. 99.
13 Cvijanović, J., Dimitrijevic V., Grujčić, G., (2002) Efficacy of non-profit organizations, the Institute of Economics, Belgrade, p.111.
14 Milicevic, V., (2005) Measuring performance in non-profit organizations, Accounting, 9/05, Belgrade, str.79-86.

In addition to the outlined problems relating to the measurement of business performance and functioning of the police and other public/non-profit organizations, there are a number of other issues that are directly related to measuring and assessing the performance of these organizations.

Problems can be conditionally divided into three groups:[15]

- Problems related to the identification of the non-profit success and a unique list of priorities;
- Problems related to the measurement and presentation of performance in terms of general limitations of non-profit;
- Problems related to the application and interpretation of results obtained by comparing the operational performance and target values to each other.

A particular problem relating to measurement of business success of the police and the public/non-profit organizations is the impossibility of determining and disclosing the exact results of their work. More so the overall success of these entities cannot be expressed numerically, but it is necessary, in addition to cash, to check other important indicators of success which requires additional representations in the form of explanations, notes, descriptions, graphical and tabular views, as well as other reporting form the basis for the perceived performance, the comprehensive and the only acceptable way for this sector. Therefore, the evaluation - measuring the success of these entities is an important approach itself - the way it performs interpretation of the achieved results of their operations and activities.[16]

Despite these problems, the management must show that it can effectively and efficiently use the resources that are available to them. Despite all the limitations, the perspectives of performance measurement are clear, and the construction of measurement system performance seems to be both the art and science. It is science because of the need for systematic movement towards the goals and the parameters within which they must be designed, and because the system must be based on the real logical basis for the operation. It is also an art, because it is a creative process in terms of defined indicators, reporting forms, software applications and achievement of the results for the people who will use it to build and give their support.[17]

Allocations for the police exceed most other public expenditures in many modern states. Linking the funds invested in this state organization and the results that they achieved in the performance of their duties, particularly activities of counter crime, has become a constant topic of relevant state bodies. Performing a correlation percent of tangible assets that are invested in the police and percentages that show the effectiveness of the police is the reality which modern police organization is faced with. Lately, this segment of police functioning devotes more attention to the various forms of statistical records and so the police reports dealing with this issue.[18]

METHODOLOGY AND SOLUTIONS IN MEASURING POLICE EFFECTIVENESS

– The classic approach of measuring efficiency of the police

The success of police and other public services has been evaluated only according to a subjective scale of satisfaction or dissatisfaction with holders of government's work.

Measuring the success of police organization, as well as any other public sector organization, it is necessary to assess the degree of objectives realization for which the organization was established. Actual results of the organization are related to the aims and tasks and thus measure the level of achieved goals success.[19] With them, the management of the organization can confirm or deny the practice and methods that the organization uses in carrying out their tasks. Good results in police work mean that their practices and working methods properly targeted the objectives for which they exist, and poor results are the sign that the organization and working methods are not properly formed and that they need to change and look for better solutions.

The performance of the police service is subject to various types of assessment since the police was established. In 1820, Sir Robert Peel introduced a negative assessment of applicable sentinel system which was implemented by the London Metropolitan Police, the forerunner of modern policing. It involves continuous methodological collecting and sorting police operations and police management data. Until 1830,

15 Ijačić, N., (2007) Measuring the performance of non-profit organizations and accounting aspects, Thesis, Faculty of Economics, Belgrade, str.115-120.
16 Maric, R., (2009) The management of non-profit organizations, Belgrade Business School - University College of Professional Studies, Belgrade, p.104.
17 Petrovic, T., (2007) Measuring performance in public and non-profit organizations, Proceedings No.3, Faculty of Economics, Brcko
18 Budimlić, M., (2010) Applied Criminology, script, http://www.fknbih.edu
19 Leonarad, VV, & More, HW (1993) Police Organization and Management, 8th ed., Westbury, NY: The Foundation Press, str.248-249.

there have been attempts to develop and implement a methodology for measuring and assessing performance of the police.[20]

One of the most comprehensive efforts to assess and measure the activity of the police was achieved in 1935 by Arthur Bellman, a follower of Augusta Vollmer. Bellman designed and developed a plan review evaluation, so that all the designated spaces are filled by experienced police analysts. Those skilled persons registered their professional assessment of 685 elements (items), relating to the patrol activity, control and regulation of traffic and so on.[21] In addition to the benefits arising from professional experience of Bellman's associates, the Bellman's measurement method has several disadvantages. One of them is that, in the framework of this method, the grouping is not performed to the relevant and irrelevant data, and all the data have been summarized. Even greater error of Bellman's criteria is the concept of measurement and assessment. Using these criteria, it aims to grade the overall quality of the department (which has never been closer defined) on the way to determine whether the activity of the departments under the applicable criteria fall into good management practices.

This helps prevent innovation and hinders the improvement of services. Police departments understanding unsoundness of existing practices and engaging innovation will receive negative reviews. The fact that it was the innovation that contributed to a better success was completely ignored, so that departments received bad reviews from other, less dynamic classes. The next important shortcoming of Bellman's evaluation criteria consists in the fact that the range of estimates is rather limited. Focusing exclusively on personnel policy departments, operational practices and technical equipment, the holders of such assessment only deal with the internal issues. This procedure ignores the aspect of police work that concerns the public.[22]

To avoid the disadvantages that are present in the application of Bellman's evaluation criteria, Parrat proposed an alternative method of determining the "efficiency of functioning police". Parrat designed a project, investigating the attitude of the public, in order to determine the degree of confidence in the police. The focus of this examination includes many issues of police activities, such as the impact of the political environment, media relations, crime prevention, treatment of minorities, implementation of pre-trial and investigation procedures, etc. And this approach has a lot of shortcomings. In fact, this is the wrong approach because it is unacceptable that the perception of citizens or their degree of satisfaction is the best indicator of the success of the service.

In connection with the proposed Parrat's concept determining the efficiency of the police, Michael O'Neil and his associates believe that it is perfectly reasonable effort to determine the degree of citizen satisfaction as the goal of state bodies' activities. However, it is unacceptable to suggest that public opinion is taken as the sole indicator of the police efficiency. In most cases, people do not differ and do not know the technical finesse required for a thorough measurement and assessment of the police efficiency. In addition, the majority of citizens do not come into direct contact with the police. Their perceptions of the police are based on the observation of others and by the influence of media.[23] However, it does not matter from which point of view it is considered, it should be noted that the police function is much wider than just meeting the citizens. In addition, there are some questions about the quality of policing that have nothing to do with the satisfaction of citizens. One of these issues is certainly operational activity. Regardless of police reputation in public, the police must have the ability to identify problems in the environment in which they operate, such as threat and danger of criminal offenses.

Although the popularity among the people is an important element of police service success, relying only on this criterion includes the risk of demagogic manipulation. So measuring the efficiency of the police based only on degree of citizens' satisfaction is one-sided and incomplete. Because of that, this method of measuring police public support had to complete other relevant indicators in order to make it more complete and comprehensive. Some European countries begin with use of statistical data on crime as an indicator for measuring the performance of the police. Stopping the rise, especially the decline in the volume of crime, considered the only real success of the police and the sole criterion for assessing its overall performance. Such an approach to the performance of the police organization is called classical approach.

The data provided by crime statistics are undoubtedly useful for police performance quantitative assessment of one of the most important areas of its work. By itself it is clear that the data are not relevant to other areas of police work, because in these areas they do not apply. So, from that fact alone follows the necessity of formulating new indicators for measuring the performance of the police in those areas of their work that do not belong to the prevention and repression of crime.[24] In regard to this, one can reasonably ask the

20 O'Neil, WM, Needle, Jerome A., Galvin, T. Raymond (1980) appraising the Performance of Police Agencies: The PPPM System, Journal of Police Science and Administration, No 3, Gaithersburg, str.253-264.
21 Smith, V. (1984) Selection of articles in international journals, RSUP SRH, no. 1, Zagreb, p.5-16.
22 O'Neil, WM, Needle, Jerome A., Galvin, T. Raymond (1980) appraising the Performance of Police Agencies: The PPPM System, Journal of Police Science and Administration, No 3, Gaithersburg, str.253-264.
23 O'Neil, WM, Needle, Jerome A., Galvin, T. Raymond (1980) appraising the Performance of Police Agencies: The PPPM System, Journal of Police Science and Administration, No 3, Gaithersburg, p. 253-264.
24 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 466-467.

question whether the selective data provided by the statistics of crime are sufficient as the sole indicators of police performance in the area of prevention and repression of crime. The existence of a large number of arguments pointing to the shortcomings of unilateral interpretation of statistical data leads to the fact that it is necessary to use the data in conjunction with other indicators to measure the police performance. One of the first drawbacks and limitations of crime statistics is the phenomenon of dark figures of crime.[25] The statistics do not cover all criminal acts but only the reported ones. Since it does not reflect the real level of crime, these statistics, especially in times of war or crisis, should be interpreted carefully.[26]

It has been clear that the increase or decrease of crime can lead to immediate connection with the operation of the police only. In every society there are many factors of crime trends which act independently of police activities, and police are always just one part of a larger social system that fights crime. If other agencies and institutions in this SISG (courts, prosecutors' offices, correction facilities, social services, which should take care of the re-socialization of convicts, other public and private organizations in the security system, medical emergency services, etc.) are not successful in carrying out their tasks, even the police will not be able to see their role in the fight against crime was implemented successfully. The same applies to the citizens and the public in general. It tells us that measuring performance of police work in this area must take into account the other components of the system of social control because of their influence on the results of police work.

Since it is difficult to determine how many other components of social control system influence crime trends, using crime statistics cannot easily determine the extent to which the police have an impact on reducing crime.

On the other hand, the studies of detective work reveal a multitude of complex moments from the influence of the percentage of solved criminal cases and provide a much more realistic picture of the performance of the police in this area than the crime statistics per se is able to provide. Such studies have provided statistical data on the number of solved crimes, according to which the police in most countries recorded a small success.[27]

Early British studies of this problem were tended to quantify the relationship between the numbers of detective staff and increase the percentage of solved crimes. However, their findings were disappointing:[28] it has been calculated that as much as 10% more staff in providing detective services can increase the percentage of solved cases only slightly (less than 1%). Most recent studies therefore turned essentially questions - crucial factors that affect the process of solving crimes. A key finding of a significant number of these studies (Reiner said the results of 13 such studies)[29] led to the conclusion according to which the main determinant of police success represents the information given by citizens to patrol staff or detectives immediately upon their arrival at the scene, however.

Based on these findings, we conclude that the classical approach to measuring the performance of police organization has more limitations and shortcomings, as well as crime statistics, which served as the basis for this approach, and today can only be used as an indicator for measuring the success of police organizations in combating crime.

– Development of new approach basic features

No significant changes of policing success criteria, there was only the introduction of the system of budget financing plans and programs. The system of budget financing plans and work programs of police management directed at achieving certain goals have served as additional elements for finding a method of measuring and assessing the performance of police work. The goals themselves or the results of police work became another dimension of training and completing the method for measuring the efficiency of the police.

As a result of the investigation that followed, it created an extensive catalogue of new benchmarks of police services. Thus, in the field of preventing and combating offenses quality indicators are identified of performing preventive activities, finding and catching offenders, reactions to events, achieving a sense of security for citizens, efficiency in preventing juvenile delinquency, and so on.

25 The dark figure is the difference between the actually officially recorded crimes. Officially unregistered, and their actions are referred to by different names: the French and the Italians referred to as the "dark figure" (i.e., chifre noir. Numero oscuro), in the German literature the term "dark field" (Dunkelfeld), and in Anglo-Saxon, with these two (Dark figures and Darkfield) and "latent, hidden crime" (Hidden criminality) Read more at: Ignjatovic, Đ., Crime in Serbia and legal means to react, Part IV, Belgrade, str.53-57.
26 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 468.
27 For example, the British police before the Second World War usually had more than 50% of solved crimes, and in 1983 this percentage had fallen below 37% (the highest percentage was in 1983 for crimes of violence against the person, sexual offenses, fraud and forgery - about 80%, and the lowest for theft, robbery and certain other offenses against property - about 30%). Similarly, offenses that are classified as violent crime in 1990 in the United States were clarified in 45.6% of cases, and criminal acts in the field of property crimes is only 18.1% of cases (Milosavljevic, B., (1997) Police Science Police Academy, Belgrade, pp. 469-470).
28 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 470.
29 Reiner, R. (1971) The Politics of the Police, Bright: Wheatsheaf Books, p. 121-122.

A significant shift in the perception of the issue of measuring the police performance is due to the reaction of taxpayers and the penetration of the idea of measuring the performance of public services, on the one hand, and the increasing interest of the public in matters of public order and all pleased with the situation in the field, on the other hand. The public has in fact always accepted the fact that the police is an important part of a wider process that community is more secure and less vulnerable to crime and violence, but now insisting on how to determine the police contribution in ensuring security and whether this contribution is to determine precisely with respect to the cost that the community gives to the police. Roughly, you can specify the time period in which the public in the European countries began to be interested in the question of efficiency of police organization, and this period we could locate at the end of the 19th and early 20th century.

Additional argument that public uses for such insistence is quite reasonable: a large increase in cost and increase in the number of police officers were achieved mainly as the request by the police force and regularly justified by the need of its greater efficiency in combating crime. However, the use of statistical data on the number of detected and solved criminal cases, as the sole indicator of police success, has become not only an inadequate measure for the evaluation and performance but also police organizations came up in uncomfortable position. Namely, the statistics showed that the level of crime is constantly growing, and that the percentage of detected and solved work has decreased, so it can be concluded from these data that police are less successful.

Persistently using the data exclusively from crime statistics, the police, according to Rainer, brought themselves into a paradoxical situation:[30] these data indirectly confirm that more financial resources, manpower, technology, specialization and professionalization of the police, result in a fall, rather than increase of their performance. Since it is obvious that the increase of material and human resources of the police, together with the improvement of their technology and professional skills, must lead them to better results, it was concluded that the existing (conventional) approach evaluating the performance of the police has something wrong and that they must seek new indicators to adequately measure the quality of policing. Universal and complete solution to this problem is still there, but for now it is practiced by certain countries tested and selected a number of new models for measuring the performance of the police. At the same time, a number of theoretical works, most of which were created after 1980, built a more conceptual approach to this problem, paving the way to faster and better formulate a comprehensive strategy for assessing the performance of the police.[31]

Among a large number of new conceptual approaches and their corresponding practical model for measuring the performance of the police organization, special attention is paid to the concepts of productivity, efficiency and effectiveness, as well as their combinations.

Productivity is the ratio of actual output (which arises in certain activities) and energy input. Increasing productivity means get higher output per effort unit. Police services cannot be regarded as manufacturing processes. In fact, the understanding of productivity cannot easily be replicated in its raw form from economies of production activities (operations) of the police organization. Generally speaking, the productivity of the police could be made higher in one of the following three ways: (1) improving performance while maintaining higher level employees; (2) reduction of employees while maintaining the same level of performance; (3) increase the number of employees.[32]

To determine whether the productivity increased, the first approach is more complete for determination of the results achieved in policing. For this purpose, in addition to the data on crime statistics (the number of detected and solved criminal DSLA and arrested the perpetrators, filed criminal and misdemeanour charges, etc.), a wide variety of quantitative data are used on activities carried out in other areas of police work. Virtually every area of police work keeps information on all aspects of work activities, including those that can only be expressed in terms of the time spent (i.e., in number of hours spent on preventive patrol, security facilities and persons on duty, reporting, administration, answering phone calls, providing advice to citizens, etc.), distance covered, the number of controlled vehicles, etc. Thus, the data obtained are related to resources (number of employees, technical resources and costs) and obtain indicators of productivity.[33]

The main drawback of the concept of productivity is that it seeks to extent strictly quantity and treats it just like the production of ordinary market goods. Noticing the lack, Leonard and More[34] propose to increase the productivity of the police viewed in more elastic manner and that it is expressed in the following four ways: (1) as improving the existing police practice to the best known level in proportion to the increased cost; (2) in terms of allocation of resources to those activities which give the highest score for each dinar invested; (3) as well as increasing certainty of any of the police tasks to be fulfilled; and (4) in terms of police personnel best development.

30 Reiner, R. (1971) The Politics of the Police, Bright: Wheatsheaf Books, p. 120.
31 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 471-472.
32 Leonard, VV, More, HW (1993) Police Organization and Management, 8th ed., Westbury, NY: The Foundation Press, p. 290.
33 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 473.
34 Leonarad, VV, More, HW (1993) Police Organization and Management, 8th ed., Westbury, NY: The Foundation Press, str.291-292.

Efficiency is seen from two basic aspects: - as production efficiency, which is measured by the average cost of producing goods or providing services, and represents the organization's ability to achieve a certain output with minimal use of inputs; - as allocative efficiency, which is measured by the amount from which the system produces goods and provides services that reflect the preferences of users expressed through the decisions of consumers and users. According to the auditing standards issued by the International Organization of Supreme Audit Institutions (INTOSAI), efficiency is defined as "the relationship between the effects, in terms of goods, services or other results and costs incurred to produce them."[35]

The efficiency of the police as a strategic part of the state administration is a public interest in the community in which they operate because it provides an appropriate ratio of output and input. Efficiency involves minimizing costs and unnecessary consumption of the labour force (effort). This is the most commonly used concept for determining the performance of the police organization. Many use this term as a generic term for performance in general, without further specifying the meaning of that performance. For police action is said to be effective if it has provided visible result (effective is any action that results in the discovery and arrest of criminals, filing criminal complaints, etc.).[36] However, measuring the efficiency of the police and the state administration as a whole is a complex and multi-layered problem.

Effectiveness means not any success, but success due to the quality of the results achieved and the quality is assessed from the standpoint of the organization's objectives. Unlike efficiency, as effective to be considered, for example, not any police action results in discovery and arrest of criminals, but only those actions that were performed in accordance with the legal rules and suitable to result in a conviction. Effectiveness means the achievement of desired result or objective. Effectiveness is possible without efficiency, but not without effectiveness and efficiency, because any effort that does not achieve the desired goal is in vain. Effectiveness has a positive impact on reducing crime, reducing the fear of crime and improving the quality of life. These goals are achieved primarily by pooling efforts and resources of the police and other relevant government entities and members of the community.

For the police organization it is not essential to achieve any results and they justify their costs, but they should achieve such results which will most fully realize the objectives for which they were established. The concept of effectiveness rests on it - is important only for the results that indicate the quality of police services in the light of their objectives. For example, in the field of combating crime the police objective is to reduce the real crime and criminals; police should discover them and arrest with little cost, but at the same time not make important omissions for which the court could make them free.[37]

The possibilities of achieving higher levels of productivity indicate the need for the establishment of models measuring the success of the police. The choice between one of three approaches and their combination should depend primarily on the purpose to be achieved by measuring the performance. In principle, this purpose can be set narrower or wider, i.e. according to internal and/or social needs. In the first case, the measurement of performance would have to order the police to provide accurate information to management for (1) the internal assessment of the performance of service, (2) identifying and diagnosing the problem areas of labour, and (3) finding the factors to increase the performance of police work. Such a purpose would fit the concept of efficiency, and if we joined in and control expenditure, then the concept of total productivity of labour imposed as a logical choice. On the other hand, performance measurement may have intended to allow public assessment of objectives achievement for which the police were established and correction of police work in the case of an unsatisfactory degree of achievement of these goals, and it would obviously fit the concept of economic efficiency.

The analysis of resources quantities of productivity are obtained by the following expression:

$$P = \frac{Q}{M + R + I} \quad (1)$$

Since the spending of resources cannot be added and reported in value,[38] i.e.

$$P = E = \frac{Q}{T} \quad (2)$$

P - Total labour productivity

Q - Actual level of production or services

M - Actual material consumptions

I - Actual consumptions funds for work

R - Actual consumptions workforce

35 International Organization of Supreme Audit Institutions, Code of Ethics and Auditing Standards, IN Tosa, 2001, p.70.
36 Milosavljevic, B., (1997), Police Science, Police Academy, Belgrade, p. 474.
37 Ibid, p. 474.
38 Jakovčević, K., (2006) Economics of Enterprise - Economic efficiency of capital involvement in reproduction, Faculty of Economics, Subotica, str.19-22.

E – Economy

T - The amount of labour time

Finally, the purpose of measuring police performance can be set in combination - to serve leadership and the public. In this case there was a combination of all three approaches, which over the past decade in some countries tends to be the only meaningful model. This approach has the motive to establish all three aspects of performance: performance from the standpoint of internal efficiency, effectiveness from the standpoint of productivity and effectiveness of impact that internally efficient and effective police have in achieving the objectives for which it was established. In other words, the combined approach has resulted in such a model of measuring the success of police organization which starts both from quantitative and qualitative indicators (in-kind and value) in order to obtain complete information about the activities and their effects, which could then be used not only for management but for the community.

CONCLUSION

The aim of the principle of police tasks efficiency is to perform a set of tasks with the least cost. Using the results obtained by measuring and analyzing performance the management can confirm or deny the practice and methods that department/organization is carrying out their tasks. Good results in police work mean that their practices and working methods properly targeted the objectives for which they exist, and poor results are a sign that the organization and working methods are not properly formed and that they need to change and look for better solutions.

There is a whole range of problems related to measuring operational performance of public organizations and non-profit sectors, which are directly related to measuring and assessing the performance of these organizations. The activity of the police at their target and social substance does not contain "natural mechanisms" that are forcing operators to achieve the necessary degree of economic efficiency and defined objectives. They must therefore be applied by different "instruments" that will enable the defined objectives achievement with meeting the demands of the criteria of economic efficiency. The essence of the problem consists of the fact that the application of economic principles must neither jeopardize the quality and quantity of duties performance, nor weaken the efficiency and effectiveness of the police force. The aim of the application of economic principles in performing police duties is an effective and efficient performance of assigned tasks with the least cost, and the goal is the same meaning to achieve greater effects for the community safety.

The complexity of the organization, operations and, in general, the functioning of modern organizational systems requires considerable effort and special attention in searching for appropriate ways of effectiveness measuring. Universal and complete solution to this problem is still there. Many of the measures which are currently applicable to police agencies do not provide managers with the information they need to improve the activities.

We can conclude that designing an adequate model for measuring the efficiency of the public sector would ensure a clear focus on the objective and strategy, improve management and decision-making, increase accountability of government agencies and organizations, including the financing thereof.

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MULTIAGENCY APPROACH TO THE PROBLEM OF DOMESTIC VIOLENCE IN THE LOCAL COMMUNITY AND THE ROLE OF POLICE[1]

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Abstract: The local community is a contextual framework in which the real potential for the emancipation of citizens is realised in the best possible way, the citizen needs and their level of (in)security are realistically assessed, and the needs for prevention and response to security issues, risks and threats at the local level are defined. Domestic violence is a phenomenon that threatens the system and the principles of the local community and quality of life of its members. It violates basic human rights and freedoms, threatens the institution of the family as the basic social unit, and exposes vulnerable social groups - women, children, elderly and incapacitated persons - to the continuous, direct or indirect victimization. A successful response to the problem of domestic violence in the community involves a complex, planned, coordinated, timely and methodologically unified response of all agencies (institutions) in the local community. Coordination and harmonization of their activities is formally based on the adoption of a protocol on the agency or institution response. Among the community participants designated by current legislation to be stakeholders in the prevention and/or combating domestic violence, in addition to the prosecution, judiciary, centres for social services, non-governmental organizations (NGOs) and others, the police have a prominent place.

Keywords: local community, domestic violence, multiagency approach, protocol on response.

INTRODUCTION

Local community is a place, a social and cultural framework for the most direct citizen participation in different aspects of social life. It is a context which enables exploring the real quality of social life in the best possible way (Đurić, 2008). Indicators of quality of life in the local community can represent a means to initiate different activities at the local level. In other words, investigation of a phenomenon, a problem or an event in the local community, the analysis of the work of the local community institutions and agencies, and identification of causal links, relationships and correlations between community phenomena, directly or indirectly strive to improve quality of life in the local community.

Quality of life of the community members indirectly depends of resources available within community and its infrastructure. However, solving particular problems within the community and meeting the needs of the community members are not guaranteed by existence and identification of resources and planning of their use, per se. Community resources have to be considered a part of the complete and complex community infrastructure. Infrastructure of the community is defined as a complex system comprising objects, programmes and social networks, whose goal is to improve quality of life of all community members (Clutterbuck & Howarth, 2002).

With everyday challenges and issues following the development of modern society, life within the community creates complex situations and circumstances, requiring engagement of different community resources, synthesis of knowledge and expertise, increased financial resources, etc.These are phenomena that threaten the life, health and safety of an individual, the safety of his/her family, and also interfere with the

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community through increased economic loss, slow development and distorted value system. It is the reason why the community makes efforts to promptly and effectively respond and prevent all phenomena and behaviours that stop or hinder its development. In such circumstances, there is a need to establish *coalitions* or *partnerships* in the community.

An evaluation study whose results are presented in this paper includes the local communities within which the concept of community policing was introduced in the early 2000s (Kragujevac, Novi Beograd, Vrnjačka Banja, Novi Sad, Požega), with the aim to establish the existence of local partnerships, or multi-agency responses to the problem of domestic violence in the local community. The qualitative methodological approach included the interviews with the heads of district police organizations, and also a secondary analysis of the existing documents of local institutions (police, centres for social services, medical facilities).

DOMESTIC VIOLENCE AS THE LOCAL COMMUNITY PROBLEM

Domestic violence is acomplex issue in the local community. It is an endemic, criminal, criminological and socio-pathological phenomenon of both local and global nature and character. According to Article 3 (b) of the *Convention on preventing and combating violence against women and domestic violence* (2011) "domestic violence" means *all acts of physical, sexual, psychological or economic violence that occurs within the family or household, or between former or current spouses or partners, regardless of whether or not the perpetrator shares or has shared the same residence with the victim*. In theory and professional practice, three dominant forms of domestic violence are identified, in addition to other forms of violence based on the principles of power and control. These are: psychological violence, physical violence and sexual violence.

The implementation of relevant studies on this issue is often hindered by differences and conflicts in the accepted definitions of domestic violence in various countries or culturally specific regions (Johnson & Ferraro, 2000). However, despite all the objective and subjective difficulties, the studies suggest that the majority of victims of domestic violence are women (between 80% and 90%, depending on the area in which the survey was conducted). Also a large percentage of direct or indirect victims are children (European Forum for Child Welfare, 1998; Dodd, 2009). Studies of domestic violence specifically point out that children are always the victims when violence occurs in their families. The victims of domestic violence are men in approximately 10% of reported cases in the world (Johnson, 2006; Tilbrook et al., 2010; Holtzworth-Munroe & Stuart, 1994; O'Leary, 2000). A number of academic papers in the field of criminology and victimology also indicated the existence of violence against men in Serbian families.

Considerations of this relationship gain special weight from the fact that, unlike other security problems in the local community whose prevention and combating are within police legally defined duties and powers (disturbance of public order and peace, alcohol and drug abuse, school violence, hooliganism, criminogenic situations, the presence of dangerous persons-recidivists, etc.), domestic violence is a specific phenomenon, enclosed in the framework of family relations, based on the traditional patriarchal matrix and the understanding that family relations are an internal matter of each family.

The problem of domestic violence in the community is seen through the community member needs for security, personal security and security of the family, because domestic violence, as a form of interpersonal violence, is a way to threaten and violate the physical, mental, health, economic, and social integrity of an individual. Therefore, the prevention and elimination of this issue in the community necessitates utilization of all its resources, including the parts of the utility infrastructure and social capital whose programs, interventions and activities may influence the spread and intensity of domestic violence.

POLICE INVOLVEMENTIN THE MULTISECTORAL APPROACH – LOCAL SECURITY NETWORKS

To initiate synchronized activities of certain parts of the utility infrastructure and involvement of the community resources, the main prerequisite is community readiness to recognize and identify the problem of domestic violence, initiate programs and activities and adopt preventive response models.

Multiagency (multisectoral, intersectoral) approach to solving problems in the local community represents the operationalization of the philosophical and strategic dimension of the concept of policing, which assumes that the police, as an executive authority responsible for activities in the field of preventing and combating crime, are not able to solve the security problems in the community that go beyond their jurisdiction. At the same time, this approach is complementary to the activities undertaken in the area of problem-oriented policing and preventive actions (as a partnership) and involves linking (networking) different

subjects in the local community and regional police organizations with the aim of finding and applying the most efficient strategies for identifying, analysing, and responding to specific security problems.

Depending on the nature of the problem, the police would orient its operating resources to the solution through a series of measures and activities directed toward a specific issue, event, community, individual, but always in cooperation with agencies, institutions, entities that are in a certain way responsible or competent to assist or take responsibility for the certain activities. This way, the formal local security networks are developed (Virta, 2002). The network of different interest groups provides a holistic approach to social and other problems in the local community (Crawford, 1997: 25).

Although networking challenges the conventional status of the police in society, it generates complexity in responding to problems and creates conditions for the development of local security action plans, the adoption of local security policies and strategies and their implementation, updating (continuity) and development, i.e., the joint responsibility of all institutions for the local security situation. The establishment of local security networks and partnerships - a multisectoral approach for security co-production - in most cases involves the police initiative, mainly because it has the security expertise for the initial phase of this process (McLeay, 1998). Partnerships (networks) vary in terms of size and type. Local coalitions may include representatives of government agencies, municipalities, private businesses, voluntary organizations, church, etc. The main goal of networking is a multidisciplinary approach to solving problems in the community, through setting specific targets, the adoption of local (or regional) security plans (security strategies) for the prevention of crime or other problems in the community (Virta, 2002: 191). The purpose of the planning process and networking is to build a lasting and stable system of local security management, to share responsibility for security and crime prevention in the community and to take full advantage of these synergistic actions on specific issues (Peters, 1998). Local security networks management is a major challenge for the police, which needs to find the most efficient way of applying multiagency approach knowing that each community has its unique problems.

Nevertheless, police involvement in the cases of domestic violence has to be in accordance with the so-called *concept of victims' rights*, based on the state commitment under international documents governing the attitude of the state bodies and officials towards the victims of domestic violence (Ignjatović, 2009a). The concept of victims' rights (and obligations of the state) is based on several widely accepted assumptions. (1) Understanding that partner violence and domestic violence represent a social (public) issue, and not a private or family matter, which implies an obligation to the police and prosecution to respond in criminal proceedings, as well as obligation to the other systems to respond in civil proceedings. (2) Partner violence (also in the family) is not an isolated incident, but rather systematic behaviour towards the female partner or other family members, which is likely to be repeated in the future, and it is necessary to implement appropriate and proportionate measures to effectively stop current acts of violence and prevent future ones. (3) Violence against a family member is not "a conflict" (of the interests and values), but a criminal offense for which the offender is liable, and the primary intervention is the protection of victims, implemented by limiting, preventing and sanctioning violent behaviour (Dearing, 2002). Foreign police practice, which is being constantly improved by the argumentative criticism, point to the importance of two tasks: development of appropriate police action protocols in these situations, and education of police officers which would ensure that: they were informed about the etiological and phenomenological characteristics and dynamics of domestic violence, they were able to overcome stereotypes and prejudices, and they acquired the necessary communication skills. The lack of "local solutions" in not being binding for all services and for all professionals in the same community, and the legal system that does not guarantee the equal rights at the whole territory of the state, should also be taken into account (Ignjatović, 2009b).

In the previous decade of the development of the concept of community policing and its response to the problem of domestic violence, scholars, researchers and practitioners have been paying more attention to the development of partnerships within the community, or partnerships directed to the coordinated activities of a number of community stakeholders, based on the responsibility for decision-making, established organizational structure, education and training on domestic violence, clearly defined roles and mechanisms for the efficient exchange of information (Giacomazzi& Smithey, 2001). The literature identified three such partnership models for the police and other stakeholders in the community: coalitions, coordinated response and responsible partnership. Partnership activities aimed at preventive, proactive and repressive response to the issue of domestic violence include the development of new arresting policies, prosecuting offenders, the development of victims support systems, systematic monitoring activities and the strengthening of civil rights (Shepard et al., 2002).

A multisectoral approach to solving the problem of violence is recommended in many international documents. However, lack of cooperation is an important problem in the protection of victims of violence in Serbia, which the Ombudsman pointed to in its 2009 Annual Report, noting serious gaps in the exchange of domestic violence information between relevant authorities and services, especially between the social services, police and health services. It should be noted that 29 of a total of 30 gender equality proceedings launched on the Ombudsman initiative involved domestic violence. These are the serious cases, in which

violence resulted in the killing or serious injuries of a female partner, while the offenders committed or attempted to commit suicide (*National Strategy for Prevention and Elimination of Violence against Women within the Family and in Intimate Partner Relationships*, pp. 29, 30). Scales of the (non)cooperation between relevant authorities and institutions can be seen in the forms of cooperation and in the scope of individual and coordinated interventions that are not clearly defined, despite the established jurisdictions. There is a wide practice of attributing jurisdiction to other services. According to the research findings, there are no mechanisms for harmonization of the attitudes of prosecution and courts in respect of certain elements of the crime of domestic violence, nor uniformity within the judicial authorities. The assumption of the lack of standardized and formalized forms of multisectoral coordination of police and other utility infrastructure resources in response to the problem of domestic violence is based on the facts confirmed in research studies of domestic violence in Serbia, namely: Victimology Society, 2001; Women's Health Program of the Autonomous Women's Center, 2003, in the city of Belgrade; Victimology Society of Serbia, 2009, on a sample of adult women in Vojvodina, as well as the SeConS Development Initiative Group, 2010, in the Ministry of Labour, Employment and Social Policy "Combating Sexual and Gender Based Violence" project. Therefore, on the basis of the National Strategy for Prevention and Elimination of Violence against Women within the Family and in Intimate Partner Relationships, the General Protocol for Action and Cooperation of Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationships is defined. *It was adopted at the Government of Serbia session on 24 November 2011 and represents the first activity of the Government in the implementation of the overall goal of "Improving multisectoral cooperation and institutional capacity building" within the third strategic area of the National Strategy. The purpose of the General Protocol is to fully ensure that each institution can act in accordance with its statutory powers and duties effectively and comprehensively, in order to achieve the long-term protection of the victim of domestic violence, create the conditions for the appropriate sanctions to offenders, and provide other measures to help offenders to adopt socially acceptable behaviour, by changing their value judgments. According to both the Strategy and the General Protocol, the relevant ministries should adopt specific protocols which will regulate their obligations and cooperation with other resources in responding to domestic violence*.

More than a year after the General Protocol for Action and Cooperationof Institutions, Bodies and Organisations in the Situations of Violence against Women within the Family and in Intimate Partner Relationships was adopted, the remaining specific protocols are also brought into force. The Ministry of Labour, Employment and Social Affairs, the Ministry of Internal Affairs and the Ministry of Education, Science and Technological Development drafted and adopted specific protocols, which provided guidelines for the behaviour of professionals of both sexes in the system for protecting women from domestic violence within the family and in intimate partner relationships. The adoption of the protocols marked the beginning of achieving the goals of the National Strategy for Prevention and Elimination of Violence against Women within the Family and in Intimate Partner Relationships, concerning the improvement of multisectoral cooperation and capacity building of institutions and specialized agencies. Therefore, on the basis of relevant records and police reports, it is possible to check the existence of internal local forms of formalized and standardized multisectoral collaboration, coordination and partnerships in responding to domestic violence in the surveyed communities.

MUTLISECTORAL COORDINATION AND PARTNERSHIPS IN THE LOCAL COMMUNITY

Evaluation results

Studies of domestic violence carried out in countries with decades-long tradition of social response to this problem pointed to the importance of a coordinated, coherent, complex, multisectoral response and institutional cooperation in preventing and combating this phenomenon. In these countries there are local coalitions and local security networks which, among other things, deal with partnership, inter-agency response to domestic violence. Based on the analysis of foreign experience (Spasic and Radeljić, 2010), relevant state authorities in Serbia ordered the adoption of the strategy and the general protocol on cooperation between institutions in combating domestic violence. Also, it should be noted that any investigation of domestic violence in the Republic of Serbia necessarily introduces the analysis and consideration of the existence and application of internal protocols on cooperation and coordination of the activities of the relevant government institutions and their regional organizational units in response to domestic violence. That is why in this research the establishment of the aforementioned facts is provided. It was assumed that, at the time of this research, there were not signed internal protocols, nor standardized and formalized forms of multisectoral coordination of police and other utility infrastructure resources responding to the problem of domestic violence in the local communities. In the secondary analysis of available relevant institutional

reports and police records in the local communities, as well as in the individual standardized and previously approved interviews with the commanders of the Zrenjanin Police Department and Zvezdara Police Station, the following was determined:

Kragujevac. The Town of Kragujevac signed the *Protocol on cross-sectoral cooperation in the protection of victims of domestic violence in the town of Kragujevac* on 14 October 2008. The protocol was signed by the Town of Kragujevac, the Kragujevac Police Department, the Kragujevac Clinical Centre, the Kragujevac Health Centre, the Kragujevac Emergency Medical Services, the Kragujevac School Administration, the humanitarian non-governmental organization "Oasis of Safety" and the Kragujevac Centre for Social Services "Solidarity". The reasons stated for the adoption of the protocol were the following: insufficient knowledge of the roles, responsibilities, modes of operation, capacities and limitations of some systems in the local community who are dealing with issues of violence in the context of justice and security structures, local authorities, social welfare, health, education and civil society; exchange of relevant information; non-formalized common procedures for actions; developing the practice of joint evaluation of the implemented actions and measures; creation of a central database with information relevant to combating domestic violence.

Zvezdara. The Municipality of Zvezdara signed the *Protocol on Zvezdara institutional response to the cases of domestic violence* on 1 December 2009. The protocol was signed by the president of the city municipality Zvezdara, the presidents of Zvezdara's boards of principals of primary and secondary schools, the Zvezdara Preschool Association, the Zvezdara Health Centre, the Zvezdara Centre for Social Services, police, the Third Municipal Court, the Third Municipal Public Prosecutor's Office, the Belgrade City Misdemeanours Council and the Autonomous Women Centre. The protocol should improve the protection of persons who suffer domestic violence, increase the number of identified cases of domestic violence, increase the number of court processed and legally sanctioned cases of domestic violence, establish a central database on domestic violence, raise the security level and lower the level of stress of professionals and volunteers engaged in the protection of victims.

Novi Bečej. In this local community, an internal protocol was signed in late 2009. The signatories included the Municipality of Novi Bečej, institutions and governmental bodies (Centre for Social Services, Police Station, Magistrates Court, Bečej Health Centre), educational institutions of Bečej (school principals, psychologists and educationalists, etc.) and media representatives. Support was provided by the OSCE Mission to Serbia, Civic Initiatives, Belgrade and the NGO, "Bečej Youth Union". All partner organizations, the signatories of the Protocol, respect the common principles of operation: victim safety is a priority in all interventions; the abuser is solely responsible for violent behaviour; primary task is to stop the violence and provide health care for victims. There are also included respecting the needs, rights, emotions and decisions of victims, urgent response and the selection of the appropriate procedures, identification and confronting prejudices in the treatment of victims and abusers (particularly in relation to gender, ethnic and religious differences, different sexual orientation, mental and physical characteristics, etc.), taking responsibility for the actions of partner organizations within their roles, responsibilities and missions, and raising the professional competence through planned education and promotion of good practice.

Požega. In 2006, with the support of the Swiss police, this community established a model of institutional cooperation between the institutions authorized to act in cases of domestic violence. A connection is established between the institutions of the municipal public prosecutor's office, police, Centre for Social Services, magistrates and the Health Centre. SOS phone was working for two years in the afternoon every day except weekend and "Safe House" was opened in the town of Užice. The police, the Health Centre and the Center for Social Services were informed about the SOS calls. At the time of this research, the general protocol was in force.

Vrnjačka Banja. This local community has not signed an internal protocol on cooperation of institutions. It was the only investigated local community in which each department (the Police, the Centre for Social Services, the Medical Centre) applies its own procedures when responding to domestic violence. They collaborate with other institutions, but these forms of cooperation are not standardized, nor formalized. It means that all above mentioned communities, except Vrnjačka Banja, signed the protocols on cooperation of institutions before the adoption of the General Protocol and specific protocols. In the local community in which it was not the case, there is the obligation to respect the internal protocols of specific ministries.

In order to evaluate the operational aspects of the functioning of local security networks and coalitions, or partner response of institutions to the problem of domestic violence, interviews were conducted with senior managers of the local police organizations. They answered 22 questions (previously approved by the Police Directorate) on the specifics of the local partnerships and the conditions for their efficient functioning. Interviews with the commanders of the Zrenjanin Police Department and Zvezdara Police Station have enabled a benchmark analysis of the concept of policing in the local communities and qualitative assessment of local **multisectoral coordination and partnerships**.

The questions in the interview referred to the current status of the implementation of the concept in the studied local community, coordinated action on preventing and combating domestic violence and the applicability of the concept in other local communities in Serbia. According to the commander of the organizational units of the MUP of Serbia, in Novi Becej, for example, the Council for Safety and General Security was established in 2003. In 2004, the Council was extended by five *committees for the prevention*, whose task has been to implement prevention programs in certain areas and build stronger partnerships in solving security problems. In the jurisdiction of the Zvezdara Police Station, the Security Council was established in 2008, and it signed a *Protocol on Zvezdara institutional response to the cases of domestic violence* in 2009. Depending on the security issues or types of crime, the local joint bodies are supported in their work by the police, and also by the representatives of the Center for Social Services, the Health Centre, teachers and educational institutions, the prosecution, courts, shelters, NGOs, professional associations, etc. In this way, they meet the formal and institutional conditions for the local coalitions and multiagency partnerships.

The interviewed commanders observed that it is not possible to conclude that in the studied communities there has been annually increasing number of calls because of domestic violence. Both commanders noted that the number of calls was far greater in 2010 than in several previous or next years, but they could not explain the reasons for it. Also, it can be seen that organizational units have no systematized jobs or projected staffing solutions for the problem of domestic violence. In the field of preventive work, regular police and patrol activities in Novi Bečej include door-to-door visits to the citizen. Two police officers are responsible for the prevention, and the police station jurisdiction is divided in 15 smaller units (quarts). In the jurisdiction of the Zvezdara Police Station preventive work involves regular police and patrol activities, without defining specific activities. Both police organizational units maintain regular communication with local media. Talking about the applicability of these models of community policing in other communities in Serbia, the commander of the Zrenjanin Police Department stated that this method of policing is more effective than traditional one. According to the commander of the Zvezdara Police Station, in the existing conditions in Serbia it is better to keep some of the features of the traditional concept of policing, because decentralization of police in Serbia is not a good approach and does not guarantee that the police work would be effectively implemented. Both commanders noted that the successful application of this concept requires: continuous funding, combating corruption in the police and in all other institutions at all levels of the local community, professionalization and de-politicization of the police, continuous education of police officers, and also the adoption of the Strategy of community policing. Information about multisectoral cooperation and coordinated response of the institutions of the local communities on the problem of domestic violence, gathered in the interviews with the commanders of the Zrenjanin Police Department and Zvezdara Police Station, confirmed the findings from the first evaluation of this concept in 2004. About this aspect of the local security networks and coalitions, they pointed to a willingness of the considered local communities to define, implement and deploy more complex local prevention programs (Popović-Ćitić, 2008), and also to the existence of cooperation mechanisms that have been identified in studies of Ryan in 2005, 2008 (Ryan, 2005; 2008). In the next phase of the qualitative analysis of the local security networks the municipality of Novi Bečej is chosen as a subject of analysis, due to the fact that the same local community was the subject of observation during the research process (Spasic et al., 2013).

CONCLUSIONS

In the cases of domestic violence, the police are *a priori* expected to arrest the abuser - it is considered a guarantee that violence will not be repeated. So, all burden of responsibility lie with the police officers who take an intervention or the police as a service in charge for the protection of victims. However, some studies have indicated that arresting the perpetrator does not guarantee mitigation of the consequences of domestic violence, nor does it guarantee that violence will not be repeated (Maxwell et al., 2001; Miller, 2003). Other studies have indicated the importance of the partnerships of community institutions in providing support to female victims of domestic violence and their children. The coordinated efforts of the police, prosecution, centres for social services, judiciary and shelters for victims (shelters), provide more efficient protection and support for a longer period (Wathen & MacMillan, 2003; Harris et al., 2007). These multiagency activities give victims the perception of support and social security, creating the conditions for the adequate response to the cases of repeated violence (Bybee & Sullivan, 2002). The facts and models are lacking when it comes to response to domestic violence in the local communities in Serbia (Ignjatović, 2009a; 2009b; Nikolić-Ristanović and Dokmanović, 2008; Spasić, 2009).

In the context of this discussion, positive experiences and "best practices" with local security networks and coalitions in response to domestic violence should be mentioned. In addition to the *Austrian model of intervention in the cases of domestic violence* (Logar, 2005), or the Duluth project in Minnesota in 1981, which was the first multidisciplinary program designed to address the issue of domestic violence including the coordinated action of different agencies in response to domestic violence in the community, police and

social services in the U.S. cities implement preventive assistance programs and interventions in families that have experience with domestic violence (*Domestic Violence Intervention Home Visit - DVHVI*) (Berkman et al., 2006). Although surveys of victims do not confirm the direct impact of the program on the recurrence of violence, it was found that victims feel safer and have more confidence in the police because they feel that the police and social services are always available and willing to help (Stover et al., 2010). This finding corresponds with positive experiences and examples of "good practice" in countries that have developed an efficient system response to domestic violence at the local level. Examples are: Chicago, Duluth, Marin County and London, as well as Kentucky rural communities. These local communities are involved in *The Battered Women's Justice Project*, which was launched by the U.S. Department of Justice in 2000, and has been based on the coordinated efforts of the various community resources in the protection of victims and problem-oriented community response (problem solving) (Sadusky, 2003). According to the Sadusky findings (Sadusky, 2003), Chicago, for example, has 211 seats in the shelter for victims of domestic violence and 25 police stations have 70 police detectives specialized to respond in the domestic violence cases.

In the Serbia case, the existing preventive and local models of the protection of victims of domestic violence are not synchronized and complementary to each other, or they are not fully staffed and organisationally and financially established (Spasić, 2009; Ignjatović, 2009b; Nikolić-Ristanović and Dokmanović, 2008). It is the reason why the public hold the police responsible for combating domestic violence.

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SPECIFIC FEATURES OF REVEALING CORRUPTION IN POLICE – AN EXPERIENCE AND A CRITICAL REVIEW

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Abstract: Corruption presents one of the biggest security threats. It can be seen not only in all parts of social life, but also in police. According to the specific role, place, function and influence that police have in a society and a country, proving and preventing criminal acts and other offences which are related to the corruption in police, are more difficult and specific than in other manifested forms of corruption. Past experience shows the existence of a "dark number" of cases of corruption in police, and only a few cases of corruption have been solved and adequate measures have been taken. A small number of reported and solved corruptive offenses in police are caused by inefficient institutional range, responsibilities of different state organs which are intertwined, a phenomenon of mutual benefits, police sub-culture, fear of the damaged party and witnesses, of retaliation and further repression, inefficient mechanisms and tools for securing evidence and etc. Therefore, it is necessary to constantly monitor and analyze individual cases as well as the general situation connected to this negative social phenomenon, and take measures to remove the identified weaknesses and find new sources, methods and mechanisms (ex. special investigative measures and actions, plea agreements, granting immunity, a network of associates, adjusting and adapting regulations, etc.) to enhance the efficiency of the body which indirectly works on revealing, proving and preventing corruption from happening in police and in general.

Keywords: corruption, police, prevention, proving, criminal acts, offences, inefficiency, analysis, new methods and means.

INTRODUCTION

Corruption, as a negative social phenomenon, can be found in every country in the world. In some countries criminal acts and offences are more or less present than in the other countries. Corruption is present in all spheres of social system, in private and public sector. So, even the police as a state organ is not immune to corruption, and corruption in the police is a particularly damaging threat to the society. Police corruption presents a very negative role of the police in the society, if that role is understood as law enforcement, the fight against crime and the protection of the interest of citizens and the state (Simovic D., Zekavica, R. 2012:147). Corruption is differently defined and monitored in different social systems. When we speak about defining a corruption, we have to mention that, nowadays, there is no universal and only one definition of corruption. Also, we must bear in mind that corruption is defined as a harmful social phenomenon. Another problem is the definition of criminal acts and other offenses that represent corruptive behavior or making corpus or catalog of those crimes and offences. Misconduct and other illegal activities are meant under the offences. It should be pointed out that corruption can be defined as a harmful social phenomenon, and quite another is defining a conduct, an activity or omission of an action as a corruptive criminal offence or an offence that must be investigated and solved in a qualitative and appropriate way. As I previously said, we do not have only one definition of corruption as a negative phenomenon. Different authors in the different scientific circles define corruption in a different way while making official documents and records. Some definitions of corruption imply illegal and unprofessional behavior of state officials and public employees, and other definitions imply only illegal acts in connection with giving and receiving presents or services. Criminal laws define certain criminal acts which are classified as the so-called corruptive criminal acts, and they are mostly criminal acts defined as criminal offences against official duty, but as a criminal offence through which corruption can appear, beside corruption, other criminal acts can occur. The rules of behavior and misconduct are issued in the Law on police officers, police, as well as in the Code of disciplinary responsibility. Furthermore, laws on criminal procedure and some other laws define procedures and authorization of investigating police officers who take part in the processing of criminal acts, which can, at the same time, be corruptive criminal acts. The laws oblige investigating officers to act strictly in accordance with established rules and given authorization. That is why it is necessary to monitor state, manifested forms of doing criminal acts and other offences that can be corruptive conduct and advancing and adjusting legal acts and finding more quali-

tative mechanism in struggle against corruption. Certainly the best way of struggling against corruption is prevention. It means to remove challenges and causes that can lead to corruption, but when prevention fails, it is necessary to move capacities in order to reveal criminal acts and offences. Those criminal acts and offences are really hard to prove and documentation of those acts is specific and difficult, especially in the police station. In this work I will present my experiences dealing with proceeding and argumentation on corruption in police. I will critically outline certain spotted shortage in normative legal regulation of this domain. All positions, conclusions and opinions are based on official and statistical facts of reported and processed cases dealing with illegal and unprofessional conduct of police officers.

MANIFESTATION OF CORRUPTION CASES IN POLICE

Corruption in police appears in different aspects and forms, from the so-called petty corruption to systematic, large-scale corruption. In this part we have to mention that police can appear not only as an active performer of corruptive criminal cases and offences, when they act illegally and unprofessionally in the domain of their duties and competence, but also as instigators of these crimes and offences when instigating and leading others to commit corruptive criminal acts and offences. Speaking of corruption in police, petty corruption is the most common. It is reflected in giving presents or services or giving promises to police officers in order to avoid responsibility for a committed act. Furthermore, but in close relationship with the abovementioned, we have a possible manifestation of the acceptance of gifts or services by a police officer. More severe forms of corruption involve requesting or demanding a gift or service by a policeman who will allow the violator to avoid liability for the committed act. A possible example of this type of corruption is when a driver gives money to a policeman in order to "forget" a committed act or when policemen receive and demand money. This is the most common type of corruption in Bosnia and Herzegovina, Serbia and in the countries in the region. From past experience, numerous models of committing corruptive acts and offences are noticed. Some of them are: after realizing that a driver has committed an offence, a policeman receives a gift or money from the driver in order not to punish him or prosecute with the district court; a policeman does not wait for a driver to give him money, he asks for it first in order to forget the offence; a policeman tells a driver that he has committed an offence which he has not in order to receive money but, if the driver does not offer money, the policeman demands it in order to "forget" the offence that the driver actually has not committed; changing and falsely presenting the facts in the official records about conducting an investigation of transport accidents that affect the decision on responsibility for causing an accident; a policeman falsely presents to a perpetrator enormously high punishment for the offence committed leading an offender to give money in order to avoid payment of such penalty and if a man does not offer money to the policeman, he will demand a certain amount of money to avoid imposing such a high fine, etc. Similar manifestations of corruption are noticed in other cases such as evading responsibility for committed offences in different fields (public order and peace, maintaining and carrying weapons, sale of explosives and flammable substances, sport contests etc.) Further aspects of corruption in police are seen through avoiding or decreasing responsibility for committed offences where the perpetrators or other people in favor of perpetrators offer and give police officers gifts or services in order not to take all necessary measures and actions within their jurisdiction for the purpose of reporting the offence or the offender. Possible examples: promising or giving presents or services to the police officer not to report that somebody has committed a criminal act or to show falsely factual state (change notes, witness statements, hide found trails and proofs, plant evidence) and report an innocent person. According to the author, that is the worst form of corruption of police officers; a police officer demands gifts and provides services to do previously mentioned; a police officer gives or promises to give gifts or provides services or takes other forbidden measures and activities in order to avoid the responsibility for criminal act that he did, overtly and covertly influences other organs of criminal proceedings such as the prosecution, the court etc. In this part, we have to mention possible forms of corruption which are related to avoiding responsibilities for committed misconduct by a police officer, who tries personally, with the help from leaders or other persons, political or other influences, to avoid the responsibility for misconduct. Possible examples: a police officer personally or with leaders or other persons tries to influence the internal control investigators not to conduct an internal investigation or not to initiate the establishment of disciplinary responsibility for the mentioned committed misconduct; a police officer commits another corruptive criminal act or offence by offering, giving or promising gifts or favor to investigators, internal control, disciplinary prosecutors or judges in order to avoid the responsibility for previously committed misconduct etc. Beside the previously mentioned forms of corruption, we have to mention the forms of so-called petty corruption in the domain of issuing and replacement of personal documents, giving approvals which are in the responsibility of the Ministry of Internal Affairs, etc. Possible examples: accepting and demanding gifts or services by a police officer who issues documents or gives permission for issuing that he must not do, or does not give permission for issuing a document to a third person that he must issue, demanding a gift by a police officer to expedite issuing of some documents, etc. Also, there are other

possible forms of corruptive criminal acts which are related to giving or refusing certain privileges, depriving somebody of all rights, the abuses in the area of public acquisition, employment, education, servicing the regular functioning of police as a service, etc. All possible corruptive criminal cases in police that are mentioned must be seen as a threat, so it is necessary to take preventive measures and activities to remove provocations and risks that may lead to the forbidden activities. Such a demeanor must be defined as a criminal act and offence in laws and bylaws and the authorization should be given to the investigators to document and prosecute those criminal acts. One of the first steps in that direction is to meet the high standards in issuing and defining the criminal act, through the overall monitoring of the state and adjusting legal acts to the real social and time circumstances.

CORRUPTIVE CRIMINAL ACTS AND MISCONDUCT

After talking about the most frequent corruptive forms in police, in this part, criminal acts and offences as well as misconduct will be mentioned. These are regulated by the Criminal Law of the Republic of Srpska as well as the Law on Police Officers and the Code of Disciplinary Regulations. Cases of criminal acts and misconduct are similarly defined in the countries in the region. Two criminal acts defined by the Criminal Law of the Republic of Srpska represent purely corruptive criminal acts, and at the same time, they are criminal acts where corruptive behavior is the most significant. Those are the criminal acts of giving bribe and receiving bribe. They are regulated according to the articles 351 and 352 of the Criminal Law of the Republic of Srpska. They can be defined not only by giving, offering or promising gifts or services, but also by demanding gifts and services in order to do something that is not acceptable. In that way somebody can obtain proprietary or non-proprietary benefits of a donator/recipient of bribe. If one of those two criminal acts has happened, it means that the second act automatically happens. In other words, if somebody gives bribe, another person receives it as well. When those two criminal acts are executed, the phenomenon of mutual benefit appears. When it comes to the police, judging from the past experience, police officers are seen in the role of the perpetrators of the crime of accepting bribe. On the one hand, a series of misconduct are issued in the Law on Police Officers and in the Code of Disciplinary Regulations, but, on the other hand, there are no provisions regarding misconduct that will include elements of the criminal acts of giving and receiving bribes. Those cases are usually prosecuted as misconduct, a behavior which ruins the reputation of the Ministry of Internal Affairs. Another criminal act that belongs to the group of corruptive criminal acts is abusing official position which as stipulated in the Criminal Law of the Republic of Srpska in article 347. This criminal act is manifested through the abuse of official position, exceeding of official powers and does not prosecute the duties in order to gain proprietary or non-proprietary advantage for themselves or for someone else. Beside previously mentioned criminal acts, the criminal act of trading, which is issued in the article 353 must be mentioned. This criminal act consists of demanding and receiving a price or other advantage for themselves or other persons while using official or social position or influences. In this way, those people can mediate in making a decision if an official activity will be done or not. Dereliction of duty is defined in article 354, and it is a criminal act that must be mentioned. It consists of clearly deliberate misconduct or malpractice by an official who should be aware of his acts and that his acts may lead to the cause of material damage. Beside previously mentioned criminal acts, we have to mention the criminal acts that are done under certain circumstances, along with other criminal acts done by an official or a person in charge. Some of those acts are: revealing of an official secret, illegal release of a prisoner, not reporting an offence or the offender, proof prevention, giving a false statement, a violation of confidentiality of the proceedings, disclosure of the identity of a protected witness, document falsification, the insurance fraud, the abuse in the procurement, etc. In the mentioned criminal acts, police officers and officials who work in the Ministry of Internal Affairs can be responsible for those acts. I wanted to point out in which way and how certain criminal acts show corruptive behavior. Apart from proving corruptive behavior through the behavior of processed criminal act, the police are subject to constant control of behavior, legality and regularity in acting of police officers and other employed. If some irregularities are noticed, officials will press charges against those who commit some criminal and corruptive acts. Laws, bylaws and regulations provide for the competence and authorization of police, code of conduct, misconduct and procedures for determining misconduct are mentioned. Although the criminal proceedings and disciplinary proceedings are separated and independent procedures, it is impossible to completely separate them, especially in cases where the same police officer commits a criminal act and a breach of duty.

CHARACTERISTICS OF PROOFS OF CORRUPTION CRIMINAL ACTS AND OTHER POLICE OFFENSES

A summary of all previous research and studies, as well as practice, shows us that there is a large "dark figure" of corruption criminal acts and other offences related to corruption in all the spheres of social and economic life, including the police. There are only a few suspected corruption offences reported, much fewer prosecuted and completely solved ones. And even among the prosecuted cases, very few have resulted in a final conviction, i.e. those that have been fully elucidated. A large number of unreported corruption cases are affected by a number of factors such as purpose achieved with corruptive offense, mutual benefit, lack of physical evidence and eyewitnesses, lack of confidence in the system and investigative authorities, fear of retaliation and reprisal, a generally accepted notion that such behavior is normal. Apart from the mentioned, the small number of completely solved and prosecuted acts of corruption result from some impact of police subculture, where the highest levels of collegiality are especially pronounced, then from rigid, inconsistent and vague legal regulations, shortcomings of the existing mechanisms for the prevention and detection of corruption criminal acts, et al. All types of offenses, i.e. misconduct committed representing police corruption, also contain elements of some kinds of criminal offenses mentioned in the previous section. First and foremost, corruption criminal acts that have been committed by police are mostly done because of material property, in most cases for the police officer or somebody else. Those types of crimes are mostly done in secret, or without witnesses and material evidence. Also, those types of crimes are done in the presence of a police officer on duty and a police officer that cannot be observed by higher control of organizations. For example, during the commission of a criminal offense where taking bribe is the main act, a participant gives money or another gift to a police officer in order to avoid the traffic ticket. Such a crime is usually done in secret, without witnesses. During this traffic crime, a police officer automatically commits the new crime of taking bribe and the participant avoids the traffic ticket. In this form of corruption there is no other witness except the perpetrator of this crime and possibly another police officer who, if aware of the crime, immediately becomes an accomplice. Today's practice and collected information point that in the cases like this, police officers tend to share spoils among themselves, and work like companions. For example, mutual benefit is always present, so that crime would not be reported to the competent authority. For this reason neither of those two sides has interest to report crime or to speak about it. Even in cases involving reports on the perpetration of such criminal offenses, or otherwise learning about execution of the same, such reports and information mainly come after some time and there is a problem of obtaining evidence, considering that it is almost impossible to provide physical evidence. Furthermore, it is very hard to provide confession and testimony of the person who gave the bribe, considering that the person giving money has become the perpetrator of the crime, and criminally responsible. The Criminal Code of the Republic of Srpska entered the amendments regarding determining the offence of active bribery, which says that the perpetrator of this crime who reports committing this offense before he finds out it has been revealed, may be released from the punishment for the offence (Article 352, Paragraph (49) of the Criminal Code of the Republic of Srpska). In this way, there is the possibility of eventual avoidance of sanctioning the person who bribed, but that does not mean it will not be prosecuted, considering that the penalty is imposed by a competent court, which means that, in any case, such a person must be registered as the perpetrator of the crime. In practice, people who report cases of corruption in the police, in the process of determining criminal and discipline liability, frequently refuse to testify or change their testimony during the proceedings. It is very likely that they fear the retaliation by the reported police officers, and that they will be exposed to persecution, harassment and sanctions. There is also a high probability that these persons may refuse to give testimony and keep changing testimonies because of threats and influence of applicants and other police officers. Police subculture has a great influence on the weighting of evidence and prosecution of corruption, i.e. corruption offenses and offenses in the police. Specific relations and strong bonds of solidarity and collegiality govern the police subculture. Police officers are often willing to assist and protect the colleagues who are reported as perpetrators of corruption offenses and usually identify with them. In current practice, there have been a very small, almost insignificant, number of police officers willing to report cases of corruption in their own or other organizational units of the police or to testify against their colleagues. Most of them fear that they will be labeled as "traitors" and therefore excluded from the organizational units or have difficulties in the regular functioning and performance of official duties and tasks. Also, in certain cases there is information and knowledge that a number of police officers within the individual organizational units, have planned, organized and premeditated the perpetration of the certain criminal acts of corruption, which also aggravates information gathering and providing evidence of the commission of these offenses. As there is a possibility of corruption among police officers, so there is the possibility of corruption in other investigative bodies and the courts, which need to investigate and prosecute corruption detected offenses committed by police officers. Police officers and other persons, who are registered with and against whom proceedings for committing corruption offenses are instituted, are willing to do anything to avoid convictions as they are aware of the consequences that the convictions will bring about,

such as imprisonment, termination of employment and the impossibility of re-employment in state bodies, etc. For these reasons, they are likely to make new corruption offenses, in order to avoid the criminal prosecution and conviction. In addition, in current practice, it was observed that frequent changes of legal regulations which regulate the disclosure, and prevent deviant behavior of police officers, such as regulations on disciplinary accountability of police officers, favor the avoidance of responsibility for the shortcomings in the work, but also for corruption vulnerabilities. Changing the provisions of the regulations prescribing offenses, deadlines, and obsolescence leads to the phenomenon that the actions end up suspended or not implemented due to the occurrence of limitations for initiation or completion of the procedure. Specifically, in relation to the Ministry of Internal Affairs of the Republic of Srpska, there have been repeated amendments over the past ten years to the Law on Internal Affairs, Law on Police Officers and the Ordinance on disciplinary responsibility. These changes in the regulations in different ways were certain misconduct, internal rules and disciplinary proceedings and the statute of limitations for initiating and conducting disciplinary proceedings. Every time some of these regulations changed, some time was needed to adjust to the new legal framework and start its full implementation; deadlines of obsolescence were modified and the regulations were applied more leniently on the suspect or the accused. There is also the problem of non-compliance of legal regulations governing the same subject matter. For example, the Ministry of Internal Affairs of Republic of Srpska Law on Police Officers and the Regulations on disciplinary responsibility is regulated by the disciplinary responsibility and internal rules and disciplinary procedures. In doing so, these regulations are specific and misconduct involving the corrupt behavior, and internal and disciplinary action for those violations carried out independently from one to another. Violation of official duties should be distinguished from other deviant behavior and actions of police officers also have the characteristics of the criminal works. Since the flow and deadlines obsolescence in criminal proceedings is different and much longer compared to a prescribed course and deadlines obsolescence in domestic and disciplinary proceedings for non-compliance of the provisions of the abovementioned laws and imprecise definition of treatment were happening to the situation in the criminal proceedings police officer is final convicted of criminal offenses of corruption, and in the meantime the statute of limitations for initiation or completion of disciplinary proceedings. In these cases, a particular problem is if the conviction was less than six months, which is the basis for the automatic termination of employment of a police officer, since in this case the same avoids any responsibility in the police organization. Duration of conducting criminal proceedings is subject to limitation periods for certain offenses, and which deadlines are determined in relation to the maximum sentence, or obstructed with a maximum length of prison sentence, and the prosecutor's office when conducting investigations lead these terms and in accordance with those taking certain measures and actions and achieve a certain dynamic work. Consequently, very often the investigation of criminal offenses last from a few months to a few years. What is the length of time since the execution of the bigger, harder quality for documentation of criminal offense and provide high-quality evidence. In practice, the MI of the Republic of Srpska disciplinary procedures regarding corrupt misconduct are generally conducted separately and independently of criminal investigations for the same events, which should not be the case, considering that in this way may compromise the integrity of the criminal proceedings and allow offenders to influence witnesses and conceal the traces and evidence of enforcement of criminal offenses. Unlike the Republic of Srpska in the Republic of Serbia, Internal Control Sector conducts investigations against police officers and other persons under suspicion of having committed a criminal offense and in cooperation with the competent prosecutors and courts directly involved in the prosecution of such cases. In any case, in order to improve the prevention and detection of corruption offenses, it would be better that these crimes are investigated and documented by specific organizational units such as the organizational unit specialized in internal control or affairs of a separate organizational unit of the criminal police, which would implement the so-called controller integrated investigation, i.e. investigations which both collect evidence and facts on the criminal offense and impose misconduct or disciplinary responsibility. Sure, the quality and efficiency of the organizational units of the police in detecting and preventing corruption offenses and violations, is influenced by the number and capacity of these organizational units. As suggested above, the corruptive offenses such as giving and receiving bribes are made largely without witnesses and without leaving any physical traces, and very often without prior planning. Because of this, to successfully prevent, detect and prove the criminal offenses what is required is a planned application of technical means which would be used to openly record actions and activities of police officers in order to prevent the occurrence of corrupt activities, and planned covert and targeted application of technical means to prove corruption offenses committed by police officers, especially those who have been previously identified as persons prone to performing these acts. It is also necessary to gather and analyze the information obtained through the reports and complaints of citizens or in other ways identify so as to identify the individuals within the police organization prone to corrupt activities. Given all the specifics and perceived difficulties in detecting and proving corruption offenses it is necessary to continuously improve the work of investigative bodies and organizational units specialized for these jobs.

EFFECTIVE PROOF MECHANISMS AND RESOURCES FOR POLICE CORRUPTION

In order to improve the work of police as an organization, it is vital to continuously make attempts at detection and prevention of criminal acts of corruption in the police ranks, primarily by continuously monitoring the situation, analyzing police work and previously observed forms, based on which additional planning and new activities can be implemented for the purpose of making improvements. However, the best mechanism of fighting police corruption is good prevention, i.e. timely removal and elimination of challenges and causes which may lead to corruptive behavior, like improving the working conditions, transparent manner of police treatment, clearer and more precise defining of jurisdiction of police officers, etc. In order to achieve improvements at detecting and proving committed corruptive crime it is necessary to form and improve the existing specialized and organizational units whose job is to prevent, reveal and prove corruption criminal acts. Harmonization and refinement of the regulations which pertain to this area is certainly a basic prerequisite for successful and effective fight against police corruption through detection and evidencing committed corruption criminal acts. Clearly defining corruption crimes based on their observed forms will allow better-quality work of investigative authorities. Additionally, harmonization of criminal procedural provisions with the observed manifestations, modes of perpetration and concealment of criminal acts, is the basis for improving the work of investigative bodies. Clearly and precisely defining these criminal acts and quality mechanisms for their detection will deter possible perpetrators of these criminal acts. In connection with the previous, one of mechanisms for better struggle against police corruption, generally, is stricter criminal policy, prescribing and sentencing to more severe punishment, possibly introduction and pronouncement of new additional punishment and protective measures like prohibition from police work or the work in state organs for a specific period. As already mentioned, integrated investigations, which are simultaneously aimed at documenting criminal liability and disciplinary responsibility of police officers, give better results, and - in that sense – attempts should be made at improving the relevant regulations at enhancing mutual cooperation of investigative bodies. To detect and prove corruptive criminal acts, it is necessary to have precise and quality information and it is only possible to obtain it from those who have access to this sort of information and those who could have possibly heard the information. As for the detecting and evidencing of these and other criminal acts, it is necessary to provide a good informant and develop good collaborative networks, both of citizens and of police officers. This is certainly unpopular activity among police officers and that kind of activity is more difficult to conduct within police organization. It is necessary to invest a lot of effort in order to gain confidence of police officers so that they give information about these and other illegal criminal acts of their colleagues, which they are reluctant to do mostly because of their fear of revenge by other police officers. Because of this it is necessary to find good mechanisms for the purpose of identity protection of associates and witnesses and to protect police officers who are willing to cooperate with investigators of criminal acts committed among police officers. It is necessary to have better security of structural investigations and internal procedures which are related to criminal acts. Confidentiality of the investigation is of crucial importance for effective investigation: if the perpetrators notice that investigations have been launched against them, they will not refrain from hiding and clue destruction, as well as interfering with witnesses. With regard to their place and role within the state organization, the police have much more possibilities than others to influence the witnesses and they also have possibilities of interfering with evidence. One of the measures that can improve work on proving criminal acts is the use and exploitation of special investigative means and actions, like technical monitoring and recording, secret audio and video recording, undercover investigators, simulated purchase, etc. Finally, a comprehensive analysis of each event is necessary in order to track down and sanction offenders and responsible persons, as well as to avoid errors and omissions in investigations.

CONCLUSION

It is not questionable that police are not immune to corruption and that there are individuals in the police organization who have committed criminal acts of corruption. Corruption criminal acts committed by police officers represent a special public danger, considering that they are committed by those who have to stop that kind of criminal acts and protect the citizens, their rights and property and the system which provides this kind of protection. Criminal acts of corruption are difficult to reveal and prove because of lack of witnesses and material evidence, and they are even more difficult to prove when committed by police officers. Further, very small numbers of these criminal acts are reported because of the lack of citizens' confidence in the system, mutual benefit and expressed "collegiality" among police officers. Detection and proving of corruption criminal acts committed by police officers depends on a wide range of specific conditions and it is more complicated compared to detection and proving of other criminal acts or corruption acts committed in other areas of social life. This kind of specificity derives from the police function, the po-

lice organization and the place and role that the police have in a society. The police who perform their basic function - protection of the order, rights and personal safety of citizens - are vested with certain powers that imply, among other things, sanctioning offenders and the use of force. It is exactly this kind of authority of police and their discretionary power to adopt certain decisions that may represent possible challenges and risks for perpetrating criminal acts of corruption. The same police authority contributes to more difficult detection and proving of corruptive criminal acts, since police officers can abuse their authority to influence witnesses and hide clues of criminal acts execution. A specific organizational arrangement and specific police officer terms stem from the mentioned police functions. Police collegiality is expressed in the willingness to "justify a colleague" even if the colleague has done his work improperly or perpetrated criminal acts of corruption. Police as an organization and members of that organization, should represent a measure and example of moral values and legal rights, and the citizens should see the police in this way, or the public faith in the police and the system which protects they may be hampered because of bad experience and the fact that police officers are involved in corruptive practice. Because of all the above mentioned, the prevention, detection and proving corruption among police officers is harder than in other cases. Work on prevention and detection of these criminal acts requires a lot of effort and perseverance, and it has to be planned and systematic. It is necessary to monitor the situation all the time, analyzing single cases and conditions, and to take steps towards elimination of weaknesses and finding new resources, methods and mechanisms (like, for example, special investigative measures and actions, agreement on admission of guilt, granting immunity, associates network, harmonization and adaptation of regulations, etc.) for improving the work and efficiency of those who work directly on the detection, proving and prevention of criminal acts among police personnel.

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LATEST TRENDS AND RESULTS ANALYSIS OF LOCAL POLICING REFORM IN CHINA

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Abstract: In order to improve the scientific level of social management and constantly promote the social harmony and stability, certain local police departments in China have explored the diversification of policing reform. To some certain extent, this has promoted the optimization of the structure and system of the police department and provided opportunities for policeman to work within neighborhood with high work efficiency. However, certain problems still exist in the process of reform. These problems need to be further optimized. The paper introduces and analyzes the general situation and results of the police organization and management system in China.

Keywords: local police department; policing reform; results analysis.

GENERAL SITUATION OF THE POLICE ORGANIZATION AND MANAGEMENT SYSTEM IN CHINA

i. Status quo of the Police Organization and Management System in China

The police organization in China is like most countries in the world. The pyramid hierarchy model is adopted within the police organization in China. There are four management levels, which are respective national level, provincial level, city level and county level. Grass-root police stations are directly controlled by county level. The police organization in China could be divided as follow in details.

The Ministry of Police is the central police authority, which is under the leadership of the State Council. It is in charge of the policing work nationwide. The Ministry of Police is the leading and commanding department of the policing work in China.

Local police department can be divided into:

1) Police Department on Provincial Level. It includes police department of every province, autonomous region and municipality directly under the central government. It is one of the important functional departments within the people's government at the provincial level. It is in charge of directing the policing work within the province (autonomous region or municipality directly under the central government).
2) Police Department on Provincially Administered Municipality and City Level. The city and autonomous prefecture police department is the functional department of the local people's government. Respectively, they are in charge of the policing work within their own region.
3) Police Department on County Level. It includes police department set by the county government or municipal district (Police Sub bureaus). The city police department based on the police resources configuration sets police department on county level. It is not completely corresponding with the government on the district level.
4) Grass-roots Police Station. As the resident agencies of police department on the county level, grass-roots police stations are set on the street of big-size city and in the town of county. It is in charge of solving the local policing issues.

ii. Existing Problems within the Current Management System

With the development of economy and the increase of floating population, the original police management system and work mechanism gradually becomes a bottleneck to restrain the development of police work and cannot meet the current social and economic development and people's demand and expectation towards police work. In the new historical period with the social and economic transformation, problems

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such as unclear responsibility, separation of responsibility and obligation, unfree command and low efficiency are gradually exposed within the original system.

To better adapt to the socialist market economic system and the increasingly complex and changeable situation of social security situation, police departments must push forward the policing reform.

STATUS QUO OF THE POLICING REFORM WITHIN POLICE DEPARTMENTS IN CHINA

i. Reason of Local Policing Reform in China

1. The promulgation of "Decision of the Central Committee of the Communist Party of China on Further Strengthening and Improving Police Work" and the 12th Police Work Conference are the symbols of policing reform. To further strengthen and improve police work, maintain a long-term harmonious and stable social environment and guarantee the smooth progress of building a well-to-do society, Chinese government issued "Decision of the Central Committee of the Communist Party of China on Further Strengthening and Improving Police Work" on November 18, 2003. This document requires that "Police departments on every level should firmly establish the concept of strengthening the grass-roots policing. Human and material resources, financial resources, and the attention of leading cadres should be facing at the grass-roots level, in this way, police force and focus of work could be transferred to the grass-roots level. Police departments at every level should streamline government departments and rationally allocate the police force. As a result, the police force will face towards practical departments. Grass-roots police stations should be truly built into comprehensive combat departments." The 12th Police Work Conference which is held on November 20, 2003 further solved the barriers which restricts the system and mechanism development of police work in the long run, clearly pointed out the issue to "further improve the police management system, reform and improve the mechanism of the police work, strengthen the police grass-roots work, effectively integrate the police resources, and launch the pilot project of reducing agencies in the medium-sized cities." It certificates that the promulgation of "Decision of the Central Committee of the Communist Party of China on Further Strengthening and Improving Police Work" and the general idea of the 12th Police Work Conference provides theoretical basis for local policing reform and points out the basic direction of reform.

2. Local policing reform is an active response to the innovation of social management. The concept of strengthening social construction and management and promoting the innovation of social management system were raised in 17th National Congress of the Community Party of China. During the National Political and Legal Work Video and Telephone Conference in 2009, three essential issues, which are the solution of social contradictions, incorruptible law enforcement, and innovation of social management, were deployed. In order to further promote the innovation of social management within police departments, National Symposium on Innovation of Social Management within Police Departments was held in June 2010. The former minister of Ministry of Public Security, Mr. Meng Jianzhu, pointed out that police departments should view the innovation of social management as an important grasp to comprehensively promote the ability of police departments to maintain the safety and stability of the country and the society. It should be placed at a prominent position. In order to further implement the general ideology of "streamlining government departments and rationally allocating the police force", local police departments in China are exploring the way of policing reform. The exploration is also a positive response to the innovation of social management, which is put forward by the Communist Party Central Committee.

ii. The two models of Local Policing Reform

Based on the guidance of "innovating the mechanism, improving the efficiency, integrating the institutions, optimizing the grass-roots, strengthening the foundation, adjusting measures according to local conditions and classifying guidance," local police departments focus on goals of reducing commanding levels, implementing the police flattening command, breaking through the police classification, strengthening the basic foundation and implementing community policing. At present, the models of policing reform are mainly institution revocation and police classification combination.

1. Liaoyuan in Jilin Province, Daqing in Heilongjiang Province and Xinxiang in Henan Province are the representatives of the model of institution revocation.

In order to implement the reform ideology of "streamlining institutions, strengthening the grass-roots and reducing hierarchy", three cities, which are Liaoyuan in Jilin Province, Daqing in Heilongjiang Province and Xinxiang in Henan Province, gradually found out the main reforming ways of policing institutions revocation.

Liaoyuan in Jilin Province took the first step to reform. Police sub bureaus and grass-roots police stations were revoked in 2003. Instead of these institutions, eight police departments were set up. New insti-

tutions, such as criminal investigation team, public security team, census register team and commanding team, were set up under these police departments. In this way, the original three-level management system was changed into two-level system, which is "City Police Bureau-Police Department".

Daqing in Heilongjiang Province implemented the reforming of revocation of grass-roots police station in 2005. Seventy grass-roots police stations and ten police sub bureaus were merged, and twenty new police sub bureaus were set up. The new police sub bureau contains "three teams and one office", which are community policing team, public security guard team, criminal investigation team and law office. In this way, the original three-level management system ("City Police Bureau- Police Sub bureaus-Grass-roots Police Station") was changed into two-level system ("City Police Bureau- Police Sub bureaus").

Xinxiang in Henan Province implemented policing reform in 2010. Six police sub bureaus and the affiliated twenty-three grass-roots police stations were merged. Twelve new grass-roots police stations were formed. In this way, the original three-level management system ("City Police Bureau- Police Sub bureaus-Grass-roots Police Station") was changed into two-level system ("City Police Bureau- Grass-roots Police Station"). Police force was transferred to the grass-roots police stations as a result.

2. Shanghai, Chongqing, Fujian Province and Shenzhen in Guangzhou Province are the representatives of the model of police classification combination.

(1) The exploration of the model of combining "the traffic police and the patrol police"

The traffic police and the patrol police play important roles in managing the traffic and maintaining the social security. However, certain problems were exposed in the process of actual operation. These problems include the following issues. Firstly, these two kinds of police have work overlap. Both of them are in charge of the road dynamic control. However, they have their respective system. This would cause the waste of police resources. Secondly, it is hard for citizens to distinguish them when they both process the law enforcement on the road. Thirdly, setting these two kinds of police causes a bloated government, and there will be less police force on the grass-roots level. Based on these reasons and issues, the eleven districts in Chongqing positively explore the way to reform towards the work of the traffic police and the patrol police. Good results have been achieved. The other police departments followed the example of Chongqing since then.

(2) The exploration of the model of combining "three kinds of police"

Local police departments constantly expand the extension of comprehensive law enforcement. Based on the model of combining "the traffic police and the patrol police", a new model of combining "three kinds of police" was explored. In April 2003, Putuo police sub bureau of Shanghai launched the exploration of combining "three kinds of police", which merged the area police, public security police and patrol police into community police. This model treats the dynamic patrol service as basis, views the core content of information work as the overall design and merges police work on population, public security, traffic management, information collection, street patrol, criminal investigation and comprehensive prevention together. The community police carry multiple responsibilities, functions and uses. Community police is responsible for public security control, management and service within the community. Longyan in Fujian Province started to launch the model of combining "three kinds of police" (traffic police, patrol police and grass-roots police) on October 28, 2010. Through the integration of police resources and optimization of the police service mode, the flexible and rapid-response modern policing system based on the road grid patrol mechanism was built up. It realized the "win-win" effect of combating crime, public security protection and traffic management. It is a good solution to solve the problem such as the responsibility overlapped within the traffic police, patrol police and grass-roots police. In 2012, Longyan reform model was expanded within the Fujian Province.

(3) The exploration of the model of combining "four kinds of police"

Draw lessons from the model of combining "four kinds of police" implemented from Hong Kong, Shenzhen in Guangzhou Province integrated the public security police, criminal investigation police, patrol police and community police and implemented the model of combining "four kinds of police". After the reform, the police classification boundary was cancelled. The original "four teams and one office" (public security team, criminal investigation team, patrol team, community protection team and general office) set-up within the grass-roots police department was cancelled. The community patrol team was set up. The new service model was comprehensively implemented within the 115 grass-roots police station in Shenzhen. The policemen work in the grass-roots police station patrol with guns and are in charge of all the police work except criminal investigation. At the same time, Police Resources Comprehensive Information Management System was set up. This system will collect district police deployment information in a dynamic way. After the police received cases, the system will locate the crime scenes and provide optimal disposal plans, in order to improve the rapid-response ability.

The implemented reform models could be roughly divided into the following two classifications. One model is based on the goal of changing the current police system. "Three-level" system is merged into "two-level" system. This model has broken the "three-level" system, which exists within the police depart-

ments in a long run. Therefore, it could be called "institution revocation model". Another model is based on the goal of keeping the current police system. It only changes one single police mechanism. As this reform model mostly break down the police classification and integrate the police work, this could be named as "police classification combination model". Please see the following table as it specific contract the two models.

RESULT ANALYSIS OF THE LOCAL POLICING REFORM IN CHINA

In the local policing reform mentioned above, we could see that the reform models are constantly improving from place to place. The provinces and cities that take the lead in reform make even newer changes. For instance, in Liaoyuan of Jilin Province, due to the lack of supporting system, the police departments are cancelled and the original "three level" system (City Police Bureau-Police Sub bureau-Grass-roots Police Station) is recovered. Daqing implemented a secondary reform on the basis of the former reform. Regardless of whether reform appears repeatedly or continues to move forward, it is an attempt to explore and has meaningful promoting function to the reform towards the existing system.

i. Extend the police work to the grass-roots level and promote the relation construction between the citizen and police

The way of reducing hierarchy within the local policing reform in China extends the police force to the grass-roots police station and the communities at the maximum limit. This could raise the rate for citizens to meet policemen, the rate for policemen to get close to the citizen and increase the citizens' sense of security and degree of satisfaction. Firstly, extending the police force to the grass-roots level could make the focus of police work transferred to the communities. Secondly, after the police work is extended to the grass-roots, prevention would be regarded as priority. The focus of police work will be placed on the reduction and prevention of crimes. Thirdly, on the basis of improving the relation between citizen and police, positive interactions could be implemented within police and community.

They could combat crimes together. Fourthly, the purpose of emphasizing the police work is to govern increasingly serious social security problems. Through constructing mechanism on controlling crime, analyzing and solving the various hidden dangers and environment for crimes, "passive reactive" case handling mode could be changed into "positive reactive" mode.

ii. Combine the police classification and improve the ability of comprehensive law enforcement of public security patrol dynamic control

Firstly, combining the police classification improves the policing efficiency. There used to be several kinds of police in charge of the city road public security dynamic control within the police departments. This could make the police on the street decentralized. It is a waste of the police force. At the same time, these police could not solve the comprehensive problems they encounter in their practical law enforcement process. After the combination, repeated police force problem could be solved. Police resources could be better optimized. Police could solve the case at the scene, even with the comprehensive cases. It is helpful to improve the efficiency of policing. Secondly, the command is more convenient. When the various police classifications exist, it is difficult for "110" command center to dispatch the command. This may cause problems such as delayed or scattered police forces and will directly affect the policing efficiency. Mostly, the public security and traffic problems are gusty and dynamic. A set of quick reaction mechanism with coordinating operation, quick response and unified command should be set up to deal with these problems. In addition, combining the police classification promotes the comprehensive quality of police. According to the requirements of "one kind of police with multi-use", the police classification was combined. The traffic police need to study knowledge on public security management. Meanwhile, public security police and patrol police need to study knowledge on traffic management. From a general perspective, it is helpful to improve the comprehensive quality of police force.

iii. Integrate resources and improve the police effectiveness

At present, the local policing reform in China could be generated as "one minus and one plus". "One minus" means reduce the police classification and institution. Combining the police classification is to compress the institution set at the maximum limit. "One plus" means to increase the police function and to implement "one kind of police with multi-use". In this way, problems such as more personnel than work available and overlapping functions could be solved. For instance, these problems above exist before within different teams of police departments. After the reform, this shortcoming has been better solved and the police effectiveness has been improved.

Model	Sub model	Specific Approach	Representative
"Institution Revocation Model ("Three-level" system is merged into "two-level" system.)	Revocation of police sub bureau and grass-roots police station	Police sub bureaus and grass-roots police station were revoked. Eight police departments were set up. New institutions, such as criminal investigation team, public security team, census register team and commanding team, were set up under these police departments.	Liaoyuan in Jilin Province Implemented in 2003
	Revocation of grass-roots police station	Grass-roots police stations were revoked. Grass-roots police stations and police sub bureaus were merged, and new police sub bureaus were set up.	Daqing in Heilongjiang Province Implemented in 2005
	Revocation of police sub bureau	Police sub bureaus were revoked. The original police sub bureaus and grass-roots police stations were merged. There are "four team and one office"(criminal investigation team, public security management team, community police team, traffic team and police office) within the new grass-roots police station.	Xinxiang in Henan Province Implemented in 2010
"Police Classification Combination model"	Model of combining "two kinds of police"	Combining "the traffic police and the patrol police"	Chongqing Implemented in 2012
	Model of combining "three kinds of police"	Combining "the area police, public security police and patrol police" into community police.	Putuo in Shanghai Implemented in 2003
		Combining "traffic police, patrol police and grass-roots police"	Longyan in Fujian Province Implemented in 2010
	Model of combining "four kinds of police"	Combining "public security police, criminal investigation police, patrol police and community police"	Shenzhen in Guangzhou Province Implemented in 2006

CERTAIN THINKING ON THE LOCAL POLICING REFORM IN THE FUTURE

i. Police reform should be carried out within the legal system

Due to the lack of legal support and break-through the framework of national organizations, most reforms were eventually abandoned. Article 6 of "Regulations on the Administration of Police Departments" rules the following issue. "City police bureau should set police sub bureaus based on the work need. City police bureaus, county police bureaus should set grass-roots police stations based on the work need. The establishment and cancellation of the police sub bureaus and grass-roots police stations should follow the authority procedures." Police sub bureau and grass-roots police station are unified and standardized legal names for resident agencies of public security organs. As the resident agencies, grass-roots police stations only have limited law enforcement authorities. Liaoyuan in Jilin Province replaced police sub bureau and grass-roots police station with police departments, while in Henan Province grass-roots police stations on county level were endowed the law enforcement authorities. These actions both break the relative regulation of "Regulations on the Administration of Police Departments". Since they have violated the basic principle of the rule of law, it is hard for the actions to move forward.

Police reform in our country, therefore, must be implemented under the legal framework and follow the principle of the rule of law. Its contents must fit completely the requirements of the current law. Its activities should follow fully the reform program requirements. On the basis of the pilot experience, through the perfection of the relevant law, the general contents and direction of the reform should be confirmed legally. In this way, policing reform with the correct value orientation will be operated towards a legal direction.

ii. Policing reform should use the top-level design. Integrated planning from top to bottom should be made.

Local policing reform focuses on resources integration within the system. Top-level design for the policing reform was not used. When one generally analyzes the local policing reform in China, one could find that there are more departmental and partial reforms. Reform related to the general system is seldom. Policy continuity and overall design are missing in the reform plan. At the same time, the "Criminal Procedural Law" in China rules that "police, procuratorate and court should separate their work in the process of the criminal proceedings and restrict and cooperate to each other to complete the work together." Objectively, the work among the police, procuratorate and court should require the principles of main body adaptability and correspondence. That is to say, the body of police, procuratorate and court should be equal and the quantity of the subject is the same. The current reform of police system is more unilateral. Procuratorate and court, even the government, do not implement the relevant reform. New agencies will be aborted due to the unknown nature and the subsequent high coordination processing cost. For instance, the "police department" in Shanghai eventually changed back to grass-roots police stations or police sub bureaus due to these various reasons.

Therefore, the local policing reform should use the top-level design and formulate scientific and feasible plans. In the policing reform of the Ministry of Public Security and provincial police departments, the Ministry of Public Security is responsible for the overall planning and unified promotion of policing reform. This will form a top-down model of reform. Under the national police reform overall planning framework, provincial police departments should combine with the local situation, develop the regional policing reform plan, and define the regional objectives, principles, reform measures and working mechanism of the policing reform.

iii. Strengthen the police training and improve the law enforcement ability of police

With the attempt and exploration of policing reform, the requirements towards the police comprehensive quality are improving constantly. An excellent police officer should not only have his/her own professional advantages, but also needs to master other skills and knowledge. After the local policing reform, higher requirements are made towards each individual police officer. After the combination of the police classification, in order to ensure that the overall efficiency and comprehensive law enforcement quality are truly integrated and coordinated, police training should be emphasized. This action could make them be specialized at their specialty and make them be familiar with and master relevant working skills. In this way, the policemen could cope with the complex work situation and task. Finally, this will truly achieve the purpose and requirements of comprehensive law enforcement.

CONCLUSION

Policing reform is a process for introducing, debugging and promoting new policing concept. The cognition, acceptation and practice degree of grass-roots police officers towards new policing concept determines the results of the reform. Therefore, we should implement policing reform and strengthen the enlightenment of new policing concept. By organizing certain training and improving training evaluation mechanism, policemen at grass-roots level could actively have the learning consciousness. This will transfer the modern policing philosophy into individual consciousness and provide the inner drive for policing reform.

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DIVERSION AND STRUCTURAL EFFICIENCY IN CRIMINAL INVESTIGATION

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Abstract: The social expectation of efficiency against criminal investigation is formulated more and more vigorously. The efficiency of investigations can be apprehended through exploring the statistically measurable criteria of success and also through applying the rules of criminal procedure law legally and expertly. The police fulfil all these with strictly obeying the legal and professional regulations enforced by the prosecution. However, the result-centric requirement system makes the whole criminal jurisdiction system counter-productive if the directing conditions and activity competences of the structure and the function of the subsystems (the prosecution, the police) are not settled clearly along a uniform efficiency aim philosophy. Their own internal functional management adjusted to the general function of the police can easily conflict with the criminal investigation activity directed by the prosecution. For this reason, only creating the legal institution of cooperation between the subsystems can make way for improving the whole jurisdiction.

Keywords: efficiency, case selection, diversions, simplifying investigation.

INTRODUCTION

In Hungary, investigation is done by the police under the judicial supervision and effective professional direction of the prosecution, which has little independence in initiating diversion procedure methods. Legally, thus it is hardly appreciated that first investigation authorities get into contact in time and space with events happening in the outworld and having relevance from a criminal law point of view. May attention get lost over the condition that the investigation authority operates a kind of selection mechanism in the form of hidden diversions[1] under the pressure of efficiency expectations and necessity, and also in the lack of simple diversions[2]? Surely, yes. American lawyers studying the European procedure systems has also pointed at: 'the principle of compulsory procedure requires the impossible: enforcement of the law, meanwhile delinquency and violent struggle for obtaining goods are increasing. There is an imperative necessity for changes with leaving principles in force, and where formal law or ideology do not make it possible, informal procedures must be worked out.'[3] Today it is a banal establishment that jurisdiction authorities doing criminal investigation are able to deal with only a particular proportion of the cases, since all the crimes cannot be revenged, and neither structural changes nor staff increase mean a solution.[4]

1 Simple diversion means giving up criminal procedure without consequences either in the investigation phase but before the verdict. These are actions with minor danger to the society so using any punitive sanction is not reasonable. The burdens of justice are mainly reduced by cases which do not reach trial.

2 In those legal systems where the principle of legality succeeds, police cannot use diversion if they get to know about a crime from any source, they have to initate the procedure ex officio. However, hidden diversion creates such a scope for action which police can use when they talk the complainer out of bagatelle actions which seem to be unsuccessful , they do not make the report, they do not take measures in case of reporting. It also has the result that there will be no cases and procedures in case of minor actions. in Blau: Diversion und Strafrecht. Jura.1987.S.29.

3 Goldstein, Abraham S. and Marcus, Martin(1998): The Myth of Judicial Supervision inThree „Inquisitirial" Systems: France Italy and Germany. The Yale Law Journal. Vol. 87: 240, 1977. p. 280. in: Kertész Imre: A legalitás eróziója, az opportunitás inváziója, Magyar Jog, April 1998. p.152.

4 Sléder Judit (2010): A büntetőeljárás megindítása. (PhD. manuscript), Pécs.p.140.

THE EFFICIENCY AWKWARDNESS OF THE SUBSYSTEM HIERARCHY

The inevitable dimension of the efficiency of criminal procedure closely related to the diversions of the efficiency of criminal procedure is the institutional hierarchy of the two penal jurisdiction subsystems. Its straight and logical consequence is that the subordination of the elements depending on each other in their forms of activities – for lack of assuring scope for action based on mutuality and confidence – can inevitably cause the injury of the efficiency of the whole system. *'Directing operation and directing activities are in interaction with each other. The latter depends on the former. Directing operation assures the budgetary contribution for the organization, establishes the organization, its structure, personnel decisions are settled there, and it has an effect on the employees' qualification. High-standard, legal activity and its direction* **theoretically suppose** *the perfect direction of operation. Otherwise functional disorders can happen in the field of law enforcement, the efficiency of directing activity will be smaller. Directing activity is exposed to directing operation, at the same time law settles responsibility for directing investigation on the prosecutor who directs the activity.'*[5]

The drawback of criminal procedure going on beside the investigation-principled and hierarchic functional direction – because of the multi-levelled character of the inquisitoric system – is the compulsion of repetition coming from the claim to 'supervision', which for the lack of appreciation of levels built on each other and not next to each other, with repeating the former activity again it causes the slowing down of the whole procedure and because of its retrospective principle it causes the decrease of its recognition opportunity. In the mixed system the literature of the inquisitoric[6] model, which especially cares for obeying procedure guarantees, reduces the information distortion of the multi-level procedure caused by the loss of efficiency, which is practically suppressed by the court dominance of the accusatoric[7] elements of modern rules of law. It can mostly be taken for granted that it would cause the damage of the success of verification if we would not allow the verification results of the investigation phase cited by procedural law solutions one by one.[8] In this way, the mixed system can be called upon to account for the efficiency loss caused by repeating the results of the investigation phase at the trial, which have logically led to the headway of the role of verification guarantees in the investigation phase, and with it to the widening of legality counter success dimension. On the other hand, with the phenomenon of maximizing success it suffers the other 'disadvantage' coming from the dependence of the investigation authority on the prosecution, which is assessed as an executive compulsion of redundant investigation and verification actions by the investigation authority.

The question is worth placing into a system aspect and seeing the tangible fact that in case of such open systems[9] as jurisdiction there is an interdependence between the subsystems. Meanwhile they have a relative autonomy when performing their duties, but they endeavour to preserve their independence which can come into conflict with the endeavour of the whole system, i.e. its overall aims. This statement is also true for the relation of the certain elements, as *Connidis* indicates, conflicts between subsystems can also derive from that the certain subsystems attempt to keep different degrees of functional autonomy. *'It is most likely that while an organization attempts to maximize its own functional autonomy and endeavours to minimize others' subsystem, it can originate tension and conflict between them.'*[10]

Connecting the relation of the prosecution and the investigation authority mutually, confidentially but not dependently, or though dependently but connecting their activities and operation directions, is significantly related to the loss of efficiency of the whole jurisdictional system. Since if diversion before the trial – prosecutor and police - dominates, criminal procedure also accelerates, in this way the input capacity of the system can increase, consequently the capacity of the investigation authority will be bigger as well. For all this, though, broadening the formal 'diversionary' initiative opportunities of the investigation authority, perhaps making the written work of the investigation phase more simple, furthermore differentiating the order of procedures according to their weight are needed. Consequently, the improving ability of dealing with cases will be realized in the larger number of registrated crimes, in the increase of social prestige appreciating more effective criminal investigation behaviour, and in the orientation of decreasing punitive policy.

5 Nyíri Sándor (2003): Az ügyészség és a nyomozóhatóság kapcsolata. Belügyi Szemle. Issue 7-8.p. 64.
6 The procedure is written and secret. It has a fixed verification system, its result is the file, defence is within narrow bounds, the procedure and legal remedy system have several levels. etc.
7 The principle of verbality, publicity and directness predominates. The principle of free verification system and sharing functions dominates which is realized in relation to characteristic defender's rights.
8 A büntetőeljárásról szóló XIX. törvényt (Be. tv.) amendment of 2010. évi CLXXXIII., among others 291§,296§,299§, 301§.
9 Farkas Ákos (2002): A falra akasztott nádpálca avagy a büntető igazságszolgáltatás hatékonyságának korlátai. Osiris kiadó. pp.28-29.
10 Connidis, Ingrid Arnet (1982): Rethinking of CriminalJustice Research. A systemperspective. Holt, Rinehart and Winston of Canada Limited. p.32.

SUCCESS DIMENSION AS AN EFFICIENCY OBSTACLE IN THE RELATION OF THE PROSECUTION AND INVESTIGATION AUTHORITY SUBSYSTEMS

Apprehending the notion it seems to be expedient to examine the summary opinion of the penal board of the „Kúria"[11] which analyses legal practice. When examining the legality of the accusation, the Analyser Team came to the conclusion that the existence of the **indicium** and increasing it towards verification during criminal procedures – on the basis of rationality and legality – is enough guarantee to eliminate hidden diversions, also terminating illegal procedures determined by 'success view'. *' There is no reason to assume that a criminal procedure starts with a 'blind investigation', 'goes on track' and cannot be stopped – sticking to the example it stays on track -, 'its success' produces a perpetrator who becomes a convict, in comparison with it, high accusation success is the negative figure of criminal procedures, the self-justification of the office.'*[12] The serious deficiency of this argumentation is that it neglects the uncontrollable human and structural 'elements'. The investigation authority gets to know and finds out past actions immediately and directly, and assesses them immediately.[13] Its efficiency can be assured with practicing it which, however, bumps into resistance with the hierarchic and normative expectation system of the prosecution which directs activities. That is the seemingly thorough regulation exactly which locks the investigation authority into the stocks of 'success endeavour' and, blocking criminal investigation, makes it the playground of the discretionary scope for action of law enforcement. *'On the other hand, the pejorative, negative meaning of accusation success based on the 'weakness' and compliance of the court, is not relevant as well. It , that is, neglects that the risk of accusation is lower and its possible success is higher in a system where investigation is regulated.(…) In case of a not regulated investigation the risk of accusation – obviously – is higher and, consequently, the rate of its success is lower.The standpoint which 'accuses' the high rate of accusation success, neglects that there are not fewer but more criminal procedures because investigations are regulated.'*[14] Being regulated cannot increase the rate of accusation success because the success of investigation dissolves in the success of accusation only in theory, otherwise, it has its own success objectives and performance measuring system. The success of accusation can be seen clearly only in the mirror of the success of investigation and reconnaissance, deducing from it, it is not difficult to understand that in case of limited sources, the compulsion of selecting cases appears in all phases of the investigation. It increases the number of selecting cases and of illegal procedures as well, by increasing regulations and by the stress of over-proving. In this way, efficiency will not be assessed in the correspondence of the mutual result factors of the two systems, but much rather in the performance evaluation principles which qualify the work structure of the independent subsystems.

It is also well demonstrated by the considerably different objective figures: namely the rate of investigation success and accusation success. Accusation success[15] is mainly the proof whether the 'cases of accusation'[16] are suitable for verification, and not the proof of investigation success.[17] The prosecutor helps cases being suitable for accusation by the right of giving orders to do real verifications. *'Accusation success is primarily the consequence of the success of the investigation – and only in accordance with this, the representation of accusation. That is, accusation success cannot be regarded a negative category by itself.'*[18] To tell the truth, accusation success can only be regarded a negative category when comparing it to low investigation success, if the investigation authority select cases or the diversionary toolbar is out of their reach.

The investigation authority may only reach vital efficiency improvement in case of promoting informal and confidence-based relation with the prosecution which directs the investigation. In other countries the high rate of accusation success is not inevitably the result of the regulation of investigation, as the differentiated judgment of cases may have an important role there, and as a result of it, cases reaching trial are bound to suffer smaller informal selection mechanism before the inquiry phase[19] of investigation. It demonstrates quite well that in Anglo-Saxon countries cases ending in a confession do not reach trial, relieving courts with it.

11 The highest judiciary authority of Hungary, its former name was the Supreme Court.
12 A vád törvényességének vizsgálata. 2013.Összefoglaló Vélemény. Kúria, Büntető Kollégium, Joggyakorlat elemző Csoport. 2013. EI.II.E.1/4. April 2014. p.12.
13 The investigation authority is the first who get into touch with the case and decide on primary measures. The proper penal classification of the action will be a decisive aspect when determining the mode and degree of reaction, and the chance of predictable, successful, effective clearing up in a certain case have a significant impact on it.
14 A vád törvényességének vizsgálata (2014) i.m. p.12.
15 In Hungary the success of accusation is 96-97% .
16 Cases sent to the prosecution from the investigation authority with a proposal of accusation.
17 The success of investigation is the invert of successful and unsuccessful cases which practically depends on the result of cases which have come to the knowledge of the investigation authority, and in which investigation have been ordered. On nation wide level it currently shows a decreasing tendency of 30-40% depending on the certain investigation authority levels.
18 A vád törvényességének vizsgálata (2014). i.m. p.12.
19 See later the application conditions of the Austrian criminal procedure law diversions used by the prosecutor.

The determinant of the relation system is practically the different success mission and partial interdependence, furthermore dependence on each other. The prosecution expect cases of proper quality, which are revealed and investigated, and suitable for accusation, on the other hand, the investigation authority expect fewer other verification tasks and other restrictions, respectively measures deriving from legality worries. Today both subsystems struggle with significant overload, in this way the own diversion action plan of the prosecution – which definitely finds shape in expedited or consensus procedures - does not inevitably work properly because of the overload of the investigation authority, for lack of co-ordinating the operation direction of the two work-organizations.

THE REMEDIES OF EFFICIENCY CRISIS: DIVERSION AND DIFFERENTIATION

The increase of significant burden of cases and the lack of resources urged penal jurisdiction systems to operate filters in the different levels of criminal procedure which let only some parts of cases go further, in this way they release the further elements of the system.[20] The first jurisdiction participant filling the part of such a formal[21] filter is the prosecutor. The Recommendations of the Council of Europe urge that the discretionary authority of the prosecutor must be extended so that cases with less importance should not get to the court, but get stuck at the prosecutor.[22] It is not essential, on the contrary in many cases it is not expedient, that a case gets to the court phase. The range of the authority of considering cases is largely determined by the principles of the criminal procedures of the certain states. whether they are based on the principle of legality[23] or on the principle of opportunity.[24]

Even before the R (87) 18. Recommendation, the dilemmas of jurisdiction were outlined by 1970, which demanded urgent solutions. Kerezsi named three main sources of 'crisis':

1) experimental crisis: caused by those research results which questioned the efficiency of rehabilitative treatment;

2) resource crisis: caused by the increasing number of convicts in penitentiary institutions;

3) theoretical crisis: caused by the authorization of using discretion by treatment institutions.'[25]

The well-known management attitude of enterprises offered a solution to the challenges of efficiency, which made its way into the organizational reform of criminal jurisdiction.

The development of management attitude had an effect on four fields of jurisdiction:

1) organization development;

2) the tasks and functions of institutions;

3) appearing efficiency and success viewpoints in the assessment;

4) reforming the personnel of criminal jurisdiction organizations.'[26]

In consequence of the new attitude, more and more diversion forms appeared in the criminal procedures of the different legal systems, since these may obviously and significantly reduce the costs of criminal procedures.

Similarly, the double gauge penal politics meant a breakthrough – under the aegis of efficiency – by the 80ies and 90ies, which is the separation of the perpetrators of slight crimes from the perpetrators of serious crimes (significant crimes, qualified cases, **halmazat**, multiple violent recidivous criminals). Both were treated differently, different procedures were added to the two categories. Different alternative punishments can be used in larger numbers against perpetrators of slighter crimes, emphasizing diversion which could reduce not only the work-load of courts, moreover, it was cost efficient, and also had reparation solutions against the participants of the procedure. As *Korinek* said in 2003: *'Against bagatelle criminality it is more expedient to spread the conflict solving practice of alternative sanctions which have more and more civil law elements.'*[27]

20 Miskolci László (2001): Egy konferencia tanulságai, avagy a magyar büntetőeljárás továbbfejlesztésének az ügyész-e a kulcsszereplője. Ügyeszek Lapja Vo.1. p. 20.
21 The investigation authority filter and select with the suspicion and the classification, but it is not a formal or simple diversion.
22 R (87) 18. számú Ajánlás, a büntetőeljárás egyszerűsítéséről, furthermore R (2000) 19. számú Ajánlás
23 In systems based on the principle of legality, the prosecution is obliged to urge that all perpetrators of all crimes will be called to account. In: Bócz Endre (1994): Legalitás, opportunitás és az ügyész diszkrecionális jogköre, Rendészeti Szemle, pp.12-18.
24 On the other hand, in systems based on opportunity, authorities have a wide range of discretionary authority, and decides on practical consideration which cases to investigate.
25 Kerezsi, Klára (2006): Kontroll vagy támogatás: az alternatív szankciók dilemmája. Budapest, CompLex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft. p.208.
26 Kerezsi: (2006) i.m. p. 209.
27 Korinek, László (2003): Tendenciák. Belügyi Szemle. Vo.1. p.63.

In order to achieve a more efficient activity, it is a requirement that the criminal procedure law assures enough possibility for the crime investigation authority to synchronize its resources. The contradiction deriving from the differences of the activities and operation direction of the investigation authority, is treated completely differently by those European countries which have bigger past of law or more pragmatic attitude. The question, independently from the type of the legal system, shows a connection with the theoretical concern of some main procedural criteria or principles, such as legality, opportunity or the application scope of diversions.

R (95) 12 EUROPEAN COUNCIL RECOMMENDATION ABOUT THE MANAGEMENT OF CRIMINAL JURISDICTION

This significant European Council recommendation deals with the management system of the criminal jurisdiction system from the side of efficiency. The aim of the recommendation is to promote the efficient and successful criminal jurisdiction. With respect to it, the recommendation drafts the managing principles, strategies and procedures of jurisdiction.

The recommendation outlines four models to achieve efficiency and success:

– the latosensu 'procedure law' model, which reduces the number of cases, on new criminalpolitical considerations;

– the strictosensu 'procedure law' model, which aims to simplify cases;

– the 'management' model which wishes to realize the most optimal utilization of resources and to increase the performance of the system;

– the 'financial' model, which wishes to achieve the above mentioned aims with assuring financial resources.[28]

The rationalization aspect of the structural management of the recommendation lies on the appreciation of the significance of the principles as follows:

– Dividing workload inside the organization.

– Managing infrastructure whic mainly means geographical and material allocation.

– Managing human resources – efficient management of human resources, training and career system, and optimising the amount of work compared to the personnel.

– Information and communication – outer and inner information management and the methods of keeping contact with citizens.[29]

The principles of the recommendation mainly have suggestions in connection with management structures in terms of efficiency, in contradiction to the R (87) 18 recommendation which arranges strictosensu procedure[30] law questions, and which mainly gives opportunity and diversion patterns in order to simplify criminal procedure. Another much earlier European Council Recommendation also declares the fundamental demand of acceleration: ' everything must be done in order to shorten the time needed for decisions in a case.'[31] This principle corresponds to the European Treaty of Human Rights paragraph 6, point 1, hereinafter Treaty, and in accordance with it, the delay of court equals with refusing jurisdiction.[32] Therefore there is a need for revising old legal institutions, and for assuring the adequate number of personnel and equipment.

'WASTED' CHANCE: THE CONCEPT OF THE CURRENTLY EFFECTIVE XIX. CRIMINAL PROCEDURE LAW OF 1998

Nearly 20 years ago, in 1994 the Government made the concept of the new criminal procedure law public, in the form of government regulation.[33] In it the government drafted that the main task of investigation is to inform the department of the prosecutor, thus investigation must fundamentally aim to

28 R (95) 12. számú Ajánlás a büntető igazságszolgáltatás irányításáról

29 Nagy, Anita (2007): Eljárást gyorsító rendelkezések a büntetőeljárás bírósági szakaszában (PhD thesis). Miskolc.p.164. (downloaded: 11 June 2014.)

30 Reccomendation No. (87)18 of the Committee of Ministers to Member States Concerning the simplification of criminal justice (Adopted by theCommittee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies)

31 R (81) 7 számú Ajánlás B/6. pont

32 R (81) 7 számú Ajánlás C/8. elv

33 2002/1994.(I.17.) Korm. határozat a büntetőeljárásjog koncepciójáról

clear up the current evidentiary methods**,** not to put down the proving facts. Except the unrepeatable verification actions, knowledges acquired during evidentiary methods do not have to be written down.

The codification conception wanted to develop such a system of calling to account, in which responsibility is decided at the trial, in respect of the principle of immediacy, and in which the principle of contradiction is more dominated, within it the right of disposal of the parties. The conception determined the aspects of developing the new law in eight points, and one of the points was the enforcement of the principle of function division, clearly defining the tasks of the police, the prosecutor and the judge. Furthermore, besides the dominance of the basic procedure, creating simplified procedures in order to differently judge cases. During investigation, detailed written work may be omitted in case of parts of the cases, because it has no guarantee significance. Judging certain crimes – especially economic crimes – makes it essential to prepare the cases properly for the trial. In those procedures, of course, documentary evidence is dominated and it requires the judge to bring them to the trial with an up to date method.[34]

The question arises with reason in the process of legislation that how the reform of organizational order relates to the reform of procedure law, which has bigger density. organizational reform was put to the second place, so it is always exposed to the current financial situation, so procedure law is forced to wait for coming into effect.

It was regarded as an evidence that within the order of procedure, in connection with clearing up, establishing, considering and assessing the facts, inquisition and accusation elements must be in balance. *'Another evidence, can be generalized, is that a procedure has two equal phases, and it would not be appropriate if they built on each other or fell behind each other. They would lead to repeated mechanism or needless repetition and both harm criminal jurisdiction. Either because, though the decision will be non-appealable but it will not be satisfying, or because timeliness deteriorates. Therefore the regulation is correct if the basis of the procedure is the facts established during the investigation and accused, but there is no need to give the case back for a supplementary investigation if completion of verification is needed.'*[35]

The third evidence was connected to the performance of the authority. According to international experience, the procedure form standing on the ground of legality could not be hold for more. Its slight correction was the suspension of the investigation against the accused who cooperated. Though, connected to several other forms of judicial proceedings, opportunity was put into the act, which left the 'broker' position to the prosecutor, so the prosecutor could decide using more simple forms of procedure. At the same time, - deteriorating the main rule – the act assured the opportunity of independent investigation for investigation authorites as well, and gave them the authority of making decisions without the contribution of the prosecutor, without an injury on the principle of legality. On the other hand, such elements were not introduced which would have mixed the elements of the Anglo-Saxon trial with continental law. Instead of the radical reform of the legal institution, the scheduled 'reorganization' of jurisdiction seemed to be the passable road, which was mainly reasoned with the inflexibility of law enforcement.[36] Thus seemingly, in spite of a considerable re-regulation, the organization did not follow the notion of the act in all detail. The relation between the criminal investigation departments of the police and the prosecution was not set to the reform, and their organization structure was not reorganized according to the changes of procedure order, which was thanked to the 'fulfilment' of urgent political will. *'If the social-political and professional conditions of organizational reform are not given, such modification of the procedure law is needed which restores harmony between law and its enforcer.'*[37]

Beyond the fail of organizational changes, it was a vain hope to expect much from formal reliefs. '*I think that the new Criminal Procedure Law rehabilitates criminalistics with the codification of other data obtaining activities of the investigation authority and with the authorization of reports which substitute police records (168.§). It gives a wide-ranging opportunity for the investigation authority to find out – under less formal and bureaucratic circumstances - where, how and what further knowledge can be obtained, and in what respect they help to reconstruct past actions. Nevertheless, in my opinion, the main aim of investigation – especially in case of personal evidences - must be not creating evidences and records of evidence being used directly in court. Wider space must be given for the investigation authority to inform the prosecuting about verification opportunities.'*[38]

So the endeavour has failed, procedure order has got back to what it was like the act of 1973.I. in many respects.[39] During professional debates, however, many experts objected that if concessions were

34 Ügyészségi értesítő. Volume XXX. 1994. Issue 1. p.7.
35 Márki Zoltán (2003): Az új büntetőeljárási törvény és újdonságai. Belügyi Szemle. Issue 7/8. p. 11.
36 Nagy Zsolt- Kovács Judit: A társadalmi szabályok hatása a büntetőeljárási szabályokra a rendszerváltozás után. http://jesz.ajk.elte.hu/kovacs6.html (downloaded: 10 June 2014.)
37 Korinek, László (2007): A bűnügyi tudományok helyzete. Magyar Tudomány. Volume 12.http:/ /www.matud.iif.hu/07dec/10.html (downloaded: 2 June 2014.)
38 Bócz, Endre (2003): Az eljárásjogi törvény és a kriminalisztika. Belügyi Szemle. Issue 7-8. p. 43.
39 Kadlót, Erzsébet (2004): A jogbizonytalanság múzeuma, avagy barangolások az új büntetőeljárási törvény útvesztőiben. Magyar Jog. Issue 1. p. 8.

made in written work – for example, testimonies, evidentiary facts were not written down -, guarantees would suffer damage. Courts has also indicated that in those cases trials will not be well prepared and they cannot prepare for questioning the accused and witnesses. They managed to reach that investigation means not only collecting verification methods but fixing evidentiary facts 'surronded by guarantees' as well. Unrestricted time frame means that the legislator is definitely generous with the prosecution when prolonging investigation deadlines, and therefore today in almost every non-patterned cases investigation lasts for several months and quite often for years. During that, witnesses are interrogated and confronted several times, several hundred or thousand pages of investigation document are made, making the preparations of the court 'easier'. Such an investigation inevitably orients the court – which conscientiously studies the documents of the investigation - towards accusation. Has it become a more constitutional state with the investigation verification? Recognition during investigation is one-way, approach is determined and subjective, investigation has become full circle and more time-consuming. Recording investigation and verification testimonies is extremely shifted. The judge's interest is to uphold all the testimonies, otherwise the case cannot be easily and simply judged. The primacy of judiciary verification must be increased, and most evidences would happen there. It would have the advantage of shortening the time of procedures and timeliness in procedures would improve.[40]

Bánáti clearly considers the exaggerated subordination to the prosecutor as the weakening of the constitutional state, and the deceleration of procedures is thanked to overvaluing the role of investigation, and he finds the only proper solution if the border of the judiciary main phase is shifted and relocated. It basically leads to the same initial dilemma, which has been sharpened during the debates before the codification and in connection with the conception, and as a result of enforcing interests, it resulted in the supremacy of courts, in the undervaluation of the formal role of investigation, in practice – agreeing with Bánáti – in the spreading the dominance of criminal work.

The Achilles heel of the question is rather hidden in increasing the scope for action of the investigation authority, in differentiating procedures on the basis of summary, and in initiating and conducting diversions by the investigation authority. It is also verified that the regulation reducing the scope for action of the former Criminal Procedure Law has been broken through by the practical claim caused by overload, which has brough several former legal institutions back under the pressure of compulsion.[41] However, the differentiated easing solution of miner offence procedure has totally got out from the act, so the investigation authority has been left without summary procedure differentiation based on criminal law.[42] Because of its efficiency mission and work organization overload, simple and easily investigated cases have bacome primary, its 'hidden' diversionary selection activity has become even stronger.

Seeking the solution, it can be easily found out that the contradiction might be resolved from two directions: on the one hand, widening diversionary opportunities and introducing procedural differentiation based on criminal law. On the other hand, in case of fundamental procedures besides summary procedures, by resolving the contradiction of success of the subsystem, the operation management of the examination work organization should be placed under the prosecution.

INSTEAD OF SUMMARY

Besides the previously explained structural efficiency obstacles, other questions arise in managing the efficiency crisis of criminal investigation as well. Such question, among others, is the 'pyramid'-like model[43] which regulates the authority of the investigation authority, and it gives disproportionately a lot of cases to the local investigation authority, overloading its capacity – with a rigid and unjustified allocation – with it. Besides, it also holds the possibility of transfering cases from superior organizations, and the local investigation authority has no chance to protest against it, though, because of its current overload it is not able to investigate at a high standard. On the other hand, the Criminal Procedure Law does not distinguish simple and fundamental procedures, so in case of offence investigations of minor importance, investigation is done with the same compulsion of „over-assurance' and guarantee. Simple investigations might expressly be differentiated within the scope of cogent independent procedures and with strict enumeration in the Penal Code. Its main reason is that it is complicated and time consuming to investigate crimes and these features can be imagined neither in the duality of offence and crime, nor in the level of the sanction. The basis of the enumeration is made by cases of simple factual and legal judgement falling within the competence of local

40 Bánáti, János (2011): Gyorsítás versus garanciák. A magyar büntetőjogi társaság jubileumi tanulmánykötete. Budapest-Debrecen-Pécs, pp. 209-219.
41 example: 172/A. § Feljelentés kiegészítése
42 Investigation in minor offence procedures on the basis of the Act 1973. évi I. tv.
43 The structure of the criminal investigation authority of the police is pyramid-schemed, rigid and hierarchic on the base of 25/2013. (VI.24.) BM rendelet.

authorities, and which appear in large numbers. There is a social and legal-political demand on fast and efficient investigations, which requires the fast and successful solution of such cases. The simplifying method of investigations causes the capacity increase of criminal investigation authorities, which will be realized in improving quality and in activating crime prevention.

The diversionary output of cases is similarly weakened that initiating consensual procedure (mediatory procedure) belongs to the authority of the prosecution. The standpoint can be hardly defended, that if there is the intention of consensus from both sides, the suspect has admitted the action, and able to and willing to compensate the damage, finishing the criminal procedure in such a way will depend on the decision of the law enforcer.[44] Considering the perpetrator, recidivous perpetrators would be given the chance of such a finish not more than once, but in case of multiple or special recidivous perpetrators it would be clearly excluded. The nature of the crime would also be considered by the cogent regulation in form of enumering concrete chapters. Crimes which appear in relatively large numbers cannot be excluded from this circle, such as rowdyism or crimes related to documents. In those cases, after recompensing the damage for the offended, the prosecutor would order doing social, useful work in the form of diversion if the perpetrator accepts it. If the perpetrator does not perform it within the given deadline because of his own fault, the investigation and the criminal procedure may be done within the scope of plenary suit.

The empirical examination of the researcher who examines the efficiency of investigation has also supported that the procedural forms of differentiated calling to account – thus the simplified procedures – are in positive connection with the efficiency of procedures. Evidentiary rules used during judging cases of simple factual and legal judgement and the confession of the accused contribute to that in 90% of the examined sample, the case would be end with establishing criminal responsibility.[45]

As an epilogue, nothing would be more expressive than quoting professor *Farkas* Ákos as an authentic answer to the initial question of 'why is it important to improve the efficiency of criminal jurisdiction?': ' *The bigger the tension is between the expectations against criminal jurisdiction, the sense of security of the society and the performance of the jurisdiction system, the bigger the chance is of emerging a repressive-autoriter criminalpolitics.*[46]

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44 Be.**221/A. §**(3) The prosecutor may suspend the case for maximum six months and relegates it to mediation ex officio or if the suspect, the defence or the offended party have a motion, in case if

d) judicial proceedinds may be ommitted with respect to the nature of the crime, to the method of perpetration and to the character of the suspect, or it may be well presumed that the court will appreciate active regret when punishing.

45 Szabóné Nagy, Teréz (1985): A büntető igazságszolgáltatás hatékonysága. KJK. Budapest. p.307.

46 Farkas, Ákos (2002): A falra akasztott nádpálca, avagy a büntető igazságszolgáltatás hatékonyságának korlátai. Osiris Kiadó. p.51.

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UDC: 005.5:351.74/.75(510)

AN ANALYSIS ON THE FRAMEWORK OF THE IMPLEMENTATION OF THE STRATEGIC MANAGEMENT OF THE POLICE BASED ON BALANCED SCORE CARD

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Abstract: The paper focuses on Balanced Score Card, which has been widely discussed and is one of the applications of modern management. Its emergence, development and its application in the western public sector performance and the strategic management to the police provide a lot of inspiration to the police strategy management. Combining with the characteristics of Balanced Score Card and the experience of our police strategy management obstacles, the paper explores the applicability, process and correction, as well as the endurance of the smooth implementation of the introduction of Balanced Score Card to the strategic management of the police strategic management of our country.

Keywords: Balanced Score Card; police; strategic management; performance management.

The concept entitled "Strategic management" was put forward for the first time in 1972 by an American management scientist Igor Ansoff (H. Igor Ansoff). He believed that strategic management is the process of facing the future, from the decision-making to achieving complete dynamic, continuously. Strategic management is systematic thinking that involves getting to know problems, analysis questions, solve problems in the long-term and overall perspective, rather than fragmentary thinking of taking the matter on its merits, such as "headache medication will cure the head, a painful foot is cured with foot medicine". As the armed forces of public security administrative organs and criminal judicial organs, the Police shoulder multiple tasks including combating crime, protecting the people, serving the masses, safeguarding the national and social stability, the strategic management should not be restricted to the detection rate, the amount of cracking down on crimes, it should also consider the satisfaction of a full sense of security, security of the masses, the fight against crime and the public order prevention cost, speed and cycle of detection, and a multiply management objectives such as the learning ability, innovation ability etc.. The extension of strategy management to the police field refers to the planning and decision making on the overall, long-term problems concerning to the target, direction, scope and the allocation of resources, and the realization of dynamic process of these planning and decision making.[1]The police work has been divorced from the simple "manual work" under the growing complex internal and external environment, whether the strategic management can be implemented effectively or not is no longer of little account, it is directly related to the long-term operation of police organization.

Because of its own characteristics of the long-term and overall perspective, strategic management is prone to be "easy to formulate but difficult to realize". Members of the organization tend to misunderstand the strategy so that inconsistent behavior will occur during the implementation process, hindering the realization of strategic target. Referring to the strategic management of enterprises, in most cases, about 70 percent of the problem is not the strategy itself is not good, but the implementation of it is not good enough.[2] Unfortunately, for a long term, the scholars mainly work more on how to make the strategy but less on the implementation. BSC, Balanced Scorecard is proposed as a new management concept and system management method focusing on the effectiveness of the organization strategy development, makes up for this defect. It was known as the "the world's most important management tool over the 75 years" in "Harvard Business Review" due to once widely used in areas such as the business management, public management, non-governmental organizations etc.

At the beginning of 1980s, the western countries generally carried out the "new public management movement" which affects Chinese public management field. "The new public management movement" advocates the government to adopt new management methods and new management tools like entrepreneurs, to promote the 4E of the government----which means the improvement of economic, efficiency, effectiveness and equity. At the same time, implementation research based on interdisciplinary and the

1 Zhaorui Zhang (2009). Modern Police Management [M]:People's Public Security University of China, Beijing press.
2 R.Charan,G.. Colvin (1999). Why CEOs Fail[J]. Fortune,(6.21):69

obvious trend of mutual penetration between disciplines, have also led to a comprehensive study of the multi ways. Hu De (Hood) absorbed elements from the theory and method of modern economics and private management, put forward the government management should be based on the market or customers orientation, introduce performance-related management, improve the quality and the effectiveness of service and management of the government, and the definition of government performance goals, measurement and evaluation of government performance.[3]These propositions provide an important reference and theoretical basis for the police organization on the introduction of Balanced Score Card to assist strategy management.

ESSENTIALS OF BALANCED SCORE CARD

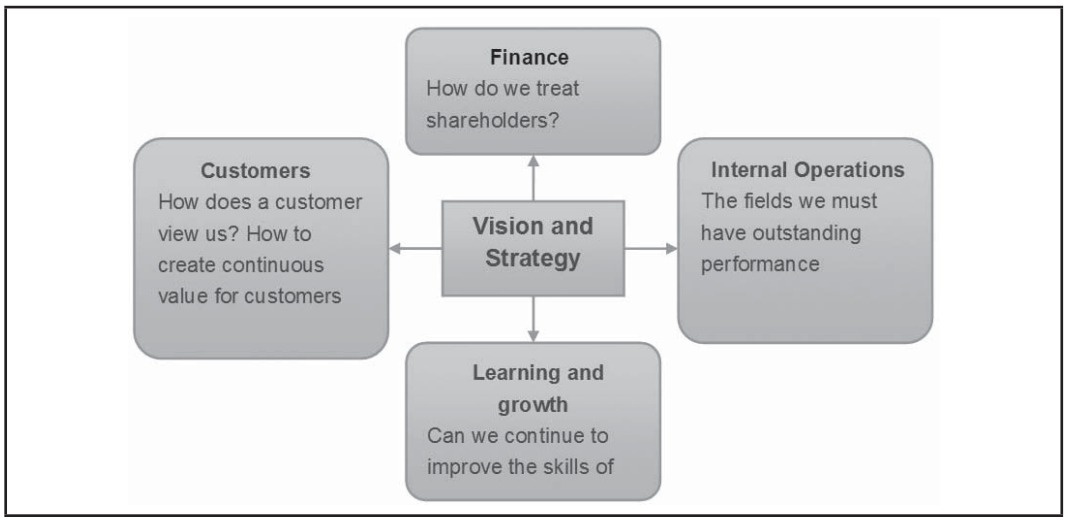
What is Balanced Score Card? Balanced Score Card originated from the research project in 1990 which is called "The future organization performance measurement method" by professor Robert S. Kaplan from the Harvard Business School, and David P. Norton from the Nolan Norton Institute, aiming to find a performance evaluation mode beyond the traditional mode based on financial data, so as to change the organization's strategy into behavior.

A. Basic contents of Balanced Score Card

BSC is firstly applied to enterprise management. It is an overall, systematic evaluation on the performance of the business and competition status of the enterprise by establishing a comprehensive system of financial and non-financial indicators, changing the vision and strategy into specific objectives, index, target values and action.

Balanced Score Card transfers enterprise vision and strategy into four different levels: the financial level, customer level, the internal operational level and learning growth level. The level of customer defines business units to participate in the competition of customer base and market; the internal operational level description provides the value of required internal process for customers and owners; the learning and growth level defines the essential ability of an organization aiming to get long-term development and improvement, which is connected to ability of employees, the capability of information system and the organizational ability and so on; the financial level describes the economic consequences of taking actions on the other three aspects.

Balanced Score Card framework as shown in the next figure



BSC framework[4]

We can see from the chart, the vision and strategy are at the core of BSC.

B. Characteristics of Balanced Score Card

BSC breaks the traditional method of measuring performance only by financial indicator but makes the balance of many aspects. Balanced Score Card balances the four indexes: financial, customer, internal op-

3 Qingkui Xie, Yanji Rong, Chenggen Zhao (1995). Chinese government system analysis [M]. China Radio and Television Publishing. total order .4

4 http://www.bjsmzx.com/page/jixiao/48.php

erations and employees' learning and growth, It supports each other and combines the process controlling the results of the assessment. It focuses on short-term interests and more emphasis on the long-term competitiveness of enterprises at the same time.

The four indexes of Balanced Scorecard has a causal relationship: achieving the employee's learning and growth can help enhance internal operations while improving internal operations can help growing customer satisfaction, and besides, improving internal operations and customer satisfaction can help achieving financial indexes.

The advantage of Balanced Score Card: It decomposes the overall strategy from the company to department and staff layer through financial, customer, internal operations and employees' learning and growth. It not only emphasizes the uniform of vertical, but also highlights the transverse cross-sectorial coordination. Balanced Score Card contains financial measure indexes, which shows the results of the actions that have been taken. At the same time, it also supports financial measure by assessing non-financial indicators of customer satisfaction, internal operations and employee learning and growth. A non-financial indicator is the drive of future financial performance. That is to say, Balanced Score Card maintains BSC by financial indicators of short-term performance of the organization concerned; on the other hand, it improves customer satisfaction through employee learning, using information technology, innovative products and services, which can drive the organization's future financial results and show the development of the organization and stamina. Based on the key performance indicators of BSC, it takes the results and processes, internal and external, short and long term into account, and balances financial indicators and non-financial indicators.

C. Operational procedures outlined of Balanced Score Card

Making the organizational mission, vision, strategy and key performance areas clear – to set specific goals from the four aspects: 1) decomposing target and setting up the performance indicators specifically according to the target, 2) determining the working plan and tasks according to the performance indicators, 3) making tracking evaluation on the performance then correct and improve it, and 4) mobilizing all resources to ensure the completion of the strategy and mission. That is the basic of operating procedures of BSC.

D. Government management practices of Balanced Score Card

The last 10 years in the government sector management, "The concepts and methods of BSC gradually get more extensive adoption and use in the public sector and non-profit organizations in the world."[5] In the practical level, BSC is widely used in Charlotte, North Carolina, United States Department of Defense, the US Defense Logistics Department, the US Air Force, US Department of Transportation, the Federal Aviation Administration, and the US Navy and other agencies, and Charlotte municipal is the most successful. Not only America, the United Kingdom, Australia, Sweden, Canada and other countries also use BSC as a strategic and performance management tool. Brisbane, Australia (Brisbane),Vienna, Austria, the Ministry of Finance, the autonomous region of London (The London Borough of Barking and Dagenham), UK Ministry of Defense, the Norwegian Air Force are representative cases.[6]

Theoretically, as a summary to the application of BSC in government management since the late 90's, a large number of theoretical results have emerged. For example, Kaplan, in 1999, released "public sector organizations of BSC" on "BSC report" .In 2000; Cole (James B. Whittaker) published "using BSC in the federal government ". In 2003, American Balanced Scorecard research institute has also published "improving public department achievements with BSC" etc.

All of the above examples show that the concept, management methods and technology of BSC have become a practical and effective method taken by governmental and non-governmental organizations of many countries to measure the implementation of the strategic management and to evaluate the performance.

THE OBSTACLES OF POLICE STRATEGIC MANAGEMENT

Kaplan, a professor who, in 2006, won the "lifetime achievement award" for his contribution in the field of management in the United States management accountants association, in his acceptance speech, he used a vivid example. He said, on a plane, pilots and passengers can reach an agreement naturally that they all want to reach the destination safely and on time. It is also the desire of the airlines management and

5 Robert S. Kaplan & David P. Norton the BSC strategy to the effective implementation of core organizational business strategy, ARC far engine management consulting firm Strategy Performance Division, Taipei translation costs Corporation .2001: 206

6 Guoqing Zhang, Tangzhe Cao (2005). "Balance score card" and the effectiveness of public administrative execution. Journal of Hunan social science, 2:42-47.

shareholders.[7] The passengers and the pilot do not need to sign any contracts to reach those goals. Even though the target consistence is as high as that, the plane's cockpit is still filled with a variety of different devices. If the main purpose of information is to make a consistent motivation, why do we need this information in this condition? Obviously, flying a plane (such as a jumbo jet) through the crowded airspace is a complex task, and sometimes it takes place in bad weather. Even skilled pilots require a lot of equipment for navigation to make a safe flight. Compared with flying a plane, a successful implementation of the strategic management in the police organization in China will face more barriers and difficulties. The question is whether the traditional police strategic management will guarantee the effective implementation or not.

In China, police strategy management draw lessons from the army, "imperative task" and "passive cope with type" management style is used for a long time. Strategic decisions are hard Numbers, made by the superior leadership according to the current situation and public security police center work, junior police authority or the units and departments belong to receiving task, layers of dispatching according to Institutions or the number of people. It is a mere formality that many evaluation indexes fails to cover the key strategic areas, and not pegged to the incentive mechanism, cannot play the guiding role on the implementation of the strategy. Obstacles of police strategy management to implement can be divided into the following points:

A. Lack of effective communication

The strategy of police organization would not be the highest guiding principle without comprehension, participation and execution of all departments and policemen. On the one hand, police organization hierarchy is complex in China, flat inadequate; with the levels of organization hierarchy lower, strategic goals are to know less and less. If there are differences in the implementation of the advanced strategic thinking and decision making, the action will be not unified, then, the overall implementation of the strategic affected inevitably. On the other hand, at the most subordinate officers, tend to have known more about the masses and the security situation, the closed channels of communication will impede the information back, which is not conducive to decision-making and adjustment of the target.

B. Simple rigid appraisal system

At present, the simple rigid performance appraisal system is a difficult problem in the police strategic management. Police station receive task index from year to year, Issued in the form of administrative commands by Superior departments directly, soliciting few opinions from the department at a lower level, then the strategic goals will be broken into pieces of small individual indexes by the head of every department, and assigned to the police separately. The annual comprehensive performance evaluation method lack of a system, scientific and careful argument in terms of defining the indicators and weights lead to the weak correlation between assessment index and strategic goals, and some indicators lack of guidance.

With the impact of simple rigid appraisal system, police performance will often be as passive as they can; no one is willing to accept responsibility without relevant regulation. Some police station have issued driving mileage standard as assessment indexes in order to encourage traffic police patrolling. As a result, police cars running on the road all day long, but no one arrived on the traffic accident scene in time.

C. Ignorance of the outside effect, poor service awareness

In the past, on the concept of police management, too much attention was paid on the effect of political rule tool to the effect of management and service; Too much emphasis on the nonidentity between the police and social public to the guiding role to meet the public demand for the involvement of administrative activities and the guiding role played in administrative activities. Too much emphasis on the function of social governance ignored the restriction and supervision on police and its behavior from the social and the social public, ignored the construction and development of public accountability mechanisms in the police work. Subsequently, the conditionality of executive power, the limitation in the field of administrative activities, the accordance with the laws will be ignored. The characteristics of police power above the public and social indicated significantly.[8]

D. Weak association between learning and strategic, lack of long-term mechanism

The traditional police performance evaluation system can't support organization strategy and long-term development, due to the lack of strategic guidance. Traditional performance appraisal cannot assess the forward-looking investment, so many organizations seek quick success and instant benefits and less investment on the intangible assets, intellectual capital which conducive to the growth of organization, inhibiting an organization's ability to create the future value. Now, we should put attention on the future to improve the performance in the future, in the face of the rapid and changeable organization management.[9] In the current practice of police performance appraisal, some leaders only attaches importance to

7 Kaplan (2009). Management Accounting competitive advantage [J]. Friends of Accounting. 8

8 Lihui Cai(2003). Ideas and Inspiration of western government performance evaluation. Journal of Tsinghua University (Philosophy and Social Sciences Edition) 01:76-84.

9 Aoqiang (2005). the BSC with strong public sector performance evaluation study [D] Sichuan University Thesis, 22.

the completion of the work carries out, for oneself term, police, police departments and even the entire unit performance is very good. In the practice of current public security performance appraisal, some leaders are only concerned about the implementation and process of work within his term of office. In the short term, the performance of police officers, departments and even the entire unit are very good, but in the long-term development, strategic police Organization cannot be implemented effectively lack of development planning and motivation, the capacity of sustainable development will be limited.[10]

THE FRAMEWORK FOR THE IMPLEMENTATION OF THE STRATEGIC MANAGEMENT OF THE BSC HELPS POLICE

A. Applicability Analysis of the police introduced BSC strategic management

Speaking of organization theory, business and public organizations show unity. Peter Drucker said: "For all the organizations, 90% of the problems are common and only 10% different. Only 10% of these need to adapt to the specific mission of the organization, specific culture and specific language."[11] Police as one of the important public organization, which focuses on the strategic management of the police must be the future of modern management, effectiveness of modern management will facilitate the future development of the organization. BSC is a cross between the current and future development of an organizational management tool, it applies to police strategic management mainly due to the characteristics of its own body. Concretely, it can be attributed to the following:

BSC makes strategic at the center position. Its organizational strategic objectives in four areas in turn expand to local targets causality and further develop the corresponding evaluation. These evaluations pull all members of the organization to the overall vision and action necessary to achieve program objectives of the local and the compensation system is associated with. Departments and police pay most attention to the officers, which is able to influence about their welfare, when they were convinced that the results of the system on behalf of its true performance, would be motivated to promote the objectives of success. Strategies naturally become the focus of joint efforts of all members of the organization.

1. BSC enables organizations to communicate on strategy, target all departments and individuals linked. BSC requires departments and individuals develop their own scorecards, in this process, it necessarily require more exchanges and communications among the higher level and the lower level in the organization, to establish a local action plan to support the overall objectives of the target, to ensure that all levels of the organization can understand the long-term strategies and evaluation criteria, so departments and individual goals subject to strategic objectives.

2. Traditional performance evaluation system bottlenecks in the strategic management of the police. Under certain social background, traditional organizational performance evaluation system may have played a positive role. However, in the period of social and economic transformation and upgrading, this performance management in all aspects of exhibit hysteresis. BSC concept is based on the balance of strategic fit modern police management stressed that "balance", "overall" concept, it helps the police to balance short-term goals and long-term focus on strategy, competition and collaboration, equity and efficiency, between development and stability.

3. BSC will develop into a prominent position. BSC can be regarded as a process which converts the organization's strategic goals of performance evaluation, compares the actual results, links the organizational behavior and organizational goals and members, improves organizational performance, achieves goals. BSC for nonprofit institutions is more than a mere police performance management indicator system; it is a strategic management tool. Especially in learning and growing as an important indicator of BSC in the police organization should be able to play a greater role.

In addition to the above four points, BSC strategic planning path clear indicator system design is simple, yet well-defined four assessment dimensions have characteristics inherent unity and causal association also makes it easier for the majority of police officers are understood and implemented.

B. Procession and modification when BSC introduced into the police strategic management

Police organization is to provide public goods and public services functions, which has the characteristics of non-profit community organization. Police is charged with consolidating the ruling status of the Communist Party and safeguarding national long-term stability and safeguard its people, services, economic and social development of the major political and social responsibility. BSC needs to be amended in accordance with the nature and functions of the police authorities when applied to the implementation of the strategic management of the police in the past.

10 Junhao Chen, Yongpeng Wang (2011). The construction of performance management system of the public security organ under the strategic management thought. Journal of People's Public Security University of China (social science edition), 06:89-95.
11 [US] Peter Drucker Management: responsibility, task, practice [M] Beijing: China Social Sciences Press, 2001.

From a process perspective, I think the police building strategic management framework for implementation should be carried out according to the following steps:

1. Determine strategic priorities by the most senior leaders.

For the police organization, its mission is special and diverse; its strategic plan must have primary and secondary points. The police organization's mission and vision must be determined. First, based on the full understanding of police work, the most senior leaders conduct extensive collection of information, an in-depth investigation, selection of the strategic focus of BSC from the alternative strategic themes which senior staff can be filing according to the principle of rational, scientific, systematic.

2. The strategic focus into a four-level target of BSC

After a clear strategic focus, compared to the four dimensions of BSC, corresponded to the specific task of police work, identify key strategic objectives of BSC, and assessment indicators.

3. Down decomposition strategic objectives, developed theme scorecards and department scorecards, and make them contact each other and echo.

Theme scorecard does not belong to any one department, but with a number of departments. Theme scorecard provides a platform to promote various departments to discuss cross-functional barriers and achieve goals. Departments can also simultaneously focus on strategic themes under the guidance of the theme in the scorecard to focus on their areas of responsibility, influence and control. Then each department has a direct relationship to identify with their strategic objectives in the Balanced Scorecard as a designated department orientation, detailed analysis of the relationship between each of the objectives of the department functions and accordingly set the relevant performance indicators for each level of the target.

4. link strategic objectives to the daily work of each police officers

Based on the completion of a series of objectives and action, achieve strategic themes must be implemented in specific actors, that is, all members of the organization. Balanced Scorecard pointed it clearly that performance management is to make every employee organization everyday actions and strategies associated with the organization's mission. Each police department in accordance with the strategic planning of each unit, set goals and performance indicators incentive, and gradually break down the implementation plan for the individual performance of police officers to join Balanced Scorecard incentive plan to form a standard wage calculation, so police officers daily performance incentives to work hard to achieve the strategy under the theme of police organizations.

5. Making the strategic theme of becoming a sustainable development process

Balanced Scorecard strategic management of the police and incorporated into the annual strategic planning work plan, and develop a strategic management system, this system can be divided into 8-step process to go cycling; meeting at the beginning of the year(develop or update Balanced Scorecard)----communicate with various departments about the updating sections---department redefine its work with the updated portion---departments began the selection of incentives based on objective metrics set---departments report their achievements and the difficulties---feedback and make reports---planning and preparation for the next annual meeting. With an 8-step process, spiraling cycle of police management strategy is achieved.

From the contents, police work has four dimensions of the Balanced Scorecard, and its vision correction follows:

1. Public level

The serving object is not customers but the public; it's the most important difference between the police organization and the enterprise.

The revised level of customer level is tentatively called public. The level of public emphasizes interests, rights, needs and social values of the public. This index of the appropriate level should include public satisfactions, public security, the rate of incidence and the rate of reporting the incidence.

2. Financial level

Police are non-profit social organization, they do not directly create business profits, but during the organization, management and operation, which will still involve the management of the revenue and expenditure of financial funds, so the fiscal level corrects the financial level. Fiscal level takes improving the reasonable utilization of financial and capital gains rate as a target; it also takes budget as a core to improve the financial and accounting system and budget transparency. At the same time, we should introduce the cost-benefit analysis during the budget formulation, implementation and the use of funds, improve configuration of the financial resources, control public expenditure, reduce the risk of public finance and make public decision-making more scientific. Financial level can use social sponsorship, department budgets, costs, etc., as the evaluation index.[12]

12 Tongyun Zheng (2014). Promote the public sector performance management based on Balanced Scorecard. Journal of Managers, 09:291-292.

3. Internal process level

Internal process involves internal management, which plays an important role in improving the quality and efficiency of public services. According to the characteristics of police agencies, process level should focus on changing management, establishing the concept of social services, updating the internal management systems and methods, establishing a sound internal rules and regulations, which in order to achieve taking the efficiency, fairness, economy of police agencies as the basic value orientation. This level can use a clear extent of duty, the efficiency of services and processes as an evaluation index.[13]

4. Learning and growth levels

Learning and growing are the inherent power of the development for the organization; the core of learning and growth is us. In this level, the police office should establish building a learning organization's strategic development goals and attach importance to training the enthusiasm and initiative of departments' police, reducing restraint and prophecy of physical and psychological development of the police, creating conditions and opportunity for their learning and growth. This level can use degree of information building, training times and satisfaction extent of the employee as an evaluation index.

The four levels of BSC should be set according to the region, the scale of organization, hierarchy, social environment, organizational cultural and other factors, and will continue with the feedback correction to be adjusted to achieving the spiral rise of the strategic management.

The following table lists the BSC of the police department in Charlotte, North Carolina in America, for reference purposes only:

Form 1 *Balanced Score Card of Sherlock City Police Department*[14]

Level	Objective
Customer level	Reduce the rate of crime Rapid response to public alarm call Enhance safety of urban streets traffic and community
Fiscal Responsibility level	Raise funds from other sources except the government
Internal process level	Popularize the solution of the autonomy of community Develop the alliance relationship with the Citizens co-management relations agencies Reengineer the process of police patrol services Improved financial co-management services Develop human resource mode Strengthen community-oriented policy making Strengthen the process of handling the complaint of the improper behaviors of the police
Learning and growth levels	Easier access to information and communication technology Enhance the skills of public servants in the policy formulation of the community-oriented recreation and sports Develop an incentive environment to improve the extent of the response by the staff to goals of community safety

C. The implementation guarantee of the introduction of Balanced Score Card of police strategy management

BSC seems very simple but the connotation is profound, it will affect multiple levels from transformation of Management concept, choice of management techniques, police organization reengineering to the transformation of national and social relationship, this will definitely lead to a new revolution in the police organization. Meanwhile, the 4 levels and key targets of BSC are easy to be determined, but a variety of non-financial targets are difficult to be quantified, the performance evaluation standard and index weight is difficult to be mastered. In addition, the Balanced Score card introduced fiscal performance indicators to police organization performance evaluation mechanism, this is taken for granted in many developed countries, but it has a special significance for the Chinese police organization. Implementation of the Balanced Score card in the police in strategic management must focus on the following aspects and efforts:

13 Tongyun Zheng (2014). Promote the public sector performance management based on Balanced Scorecard. Journal of Managers, 09:291-292.
14 Dingan Zhang (2004). Balanced score card and public sector performance management. Journal of Chinese administrative management, 6:69-74.

1. To obtain the support from leaders. The construction and operation of BSC can't be completed in a short duration of time, it will encounter many voices of opposition and conflict in the process, and may also cannot receive significant achievements in the shorten time. As a kind of strategic management method, get top management leader's support and recognition is very important. Do not be greedy and give up in the process of propulsion, get ready to fight for a protracted war.

2. To build a professional team. The establishment and implementation of BSC is a huge information system engineering, it need to set up a specialized target design and evaluation institution in the police organization, and it needs to give a guide of assessment implementation, also, it needs to collect performance feedback and proceed strategy adjustment. Combined with the item one, it is best for the team if it can be managed by the leader, and participation of all relevant departments will provide a strong organizational guarantee for the successful implementation of the balanced score card.

3. To make sure the evaluation purpose. The purpose of balanced score card application is to play its strategic goal oriented role. Therefore, the evaluation must adhere to the principle of democracy, open assessment, key point emphasis, make all the polices to understand and take active participation in the execution of the overall development of organizational strategy through continuous and effective communication, reasonable incentive mechanism, integrate all the organization resources, struggle to achieve the strategic target.

4. Strengthen education and publicity. In order to promote the understanding and support of the balanced score card in the police internal member and social public, it is necessary to strengthen publicity and education training, increase awareness, make clear the responsibility. In the organization, it needs to strengthen the education of the sense of mission and spirit of service, so that police insist on the principle "public opinion oriented", cultivate the police's participation consciousness and participation ability, out of the organizations, pay attention to the improvement of citizen's participation enthusiasm and power consciousness, provide conceptual support and culture atmosphere for the effective implementation of the balanced score card.

5. Pay high attention to feedback mechanism. BSC is not only the performance evaluation mechanism but also a strategic management approach lies in its dynamic development process.

The core team should grasp, analysis, and response to various feedback information to let this police organization boat can float steady

6. Looking for technical support. BSC has a strong dependence on management information system. The police organizations need to strengthen the construction of management information system improve the quality of management information. We should make full use of the current public security organization's the police comprehensive platform, information platform, platform for law enforcement and business information system, strengthen information construction of performance evaluation of the balance score card, realize the daily, normal, open online evaluation, provide effective technical guarantee for BSC support to police strategic management.

SUMMARY

Although the application in the field of international public administration has made a number of successes, admittedly, the BSC is still in the improvement and development stage. Of particular note is that, as a foreign management control tools, the BSC never should be "used" and "rote" in China, especially in the implementation of the police strategic management. I believe, if combined with China's national conditions, regional development and police organizational culture, enhancing our police strategic management, BSC will accomplish more.

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RESEARCH ON THE PERFECTION OF POLICE ORGANIZATIONS IN CHINA

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Abstract: As a form of social organization, Chinese police organizations undertake the function of police implementation and police operation. The effect of organizations depends on such factors as external environment and their own combined factors. Under the new situation the police organization structure in China is unable to meet the needs of the development. It is vital to reconstruct a new structure system to improve the policing efficiency, solve various problems and provide a better social order and security. It is urgent for the administrative reform system to adjust the police organization structure and construct the service-oriented government. Only through the combined efforts of working principles and new police organization arrangements could the decentralized police organizations play their best role and improve their efficiency, and promote the construction of the police and the social security system. The paper analyses the situation of police organizations in China and the existing problems, and then puts forward the innovative methods of the new police organization structure. All these measures are conducive to enhance the enthusiasm and initiatives of the police force and thus improve the quality of the police officers. The research on the structure of police organizations will help detect the problems, adjust the police organization structure so as to improve the efficiency and effectiveness of police organizations.

Keywords: police organizations, existing problems, perfection, innovation.

INTRODUCTION

The transformation of government organization structure is the key to the process of government governance in the world. The flexibility of governments and streamlining of agencies have become the trend in the government reform. The tremendous changes in the quick development in economy, politics, culture and other aspects put forward higher requirements for the police law enforcement in the new era of China. The police force undertakes the escort tasks of economic development, public security management, and battle against crimes, and the exponentially increased investigation tasks make it harder for police law enforcement agencies. Based on the world policing development trend and the drawbacks existing in China, the paper aims at optimizing the structure of police organizations and police behaviours, so that the police organizations could obtain the efficiency to the greatest degree and adapt to the development of our society.

RELATED THEORIES ON POLICE ORGANIZATION STRUCTURE

The organizational structure is like the skeleton of the human body and the building structure. Whether an organization can normally operate mainly depends on the rational organization structure. Police organization is no exception. With reasonable structure police organizations could complete the established goals, achieve the organizational effectiveness to its maximum, and improve the performance of police organizations.

Organizational structure, or the form of interactions within the organization, is the organic element of contact, which covers the content management range of organizations, the level of division, the setup of institutions, management functions, management authority and responsibilities, and other problem such as communication modes between organizations of different levels, divisions and units.[2] It is a kind of stable role relationship and work relationship within the internal sections of the organization based on division and cooperation. It is the combination of organizational elements, and a kind of relationship between humans, between human and trifles, and between human and responsibilities.

Police organization, refers to the formal and complete division of job among more than two officers. It is a social organization formed to perform the function of police work. It is designed to achieve the mainte-

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nance of social order and work through formal and informal operation and communication. Police organizations are entitled to police powers and perform the function of police. They are set by the government and take on policing work on behalf of the state.

The police organ refers to the organizational system set by the state and it enjoys the police authority, engages in policing activities representing the state.[2] The police organs, as a form of social organization, undertake the police implementation and operation functions.

THE STATUS QUO OF CHINA'S POLICE ORGANIZATION STRUCTURE AND THE EXISTING PROBLEMS

1. The Structure System of Chinese Police Organizations

In *the People's Police Law of the People's Republic of China*, Article 24 stipulates that the State, according to the nature, tasks and characteristics of the work of the people's police, prescribes its organizational structure and post order.

Horizontal Structure

In *the People's Police Law of the People's Republic of China*, Article 2 stipulates that the people's police consist of policemen working in public security organs, state security organs, prisons and organs in charge of re-education through labour, as well as judicial policemen working in the People's Courts and the People's Procuratorates.

Accordingly, the police organizations of China consist of three main systems. The first system of national administrative organs is composed of the public security organs, the state security organs and the prison administration organs. The second system of judicial organs consists of the judicial police organizations from the procuratorates and the courts. The third system of military organs comprises the armed police force. Among the three systems, the police officers from the public security organs account for the largest percentage of the police organizations. The police organs implement both a uniformed and a relatively independent police system.[3] The central government has a unified leadership for the police organs. The police authorities are relatively independent from each other. They carry out police work based on their different responsibilities. The police organs are not subordinate to each other. Different police organs are regulated under *the People's Police Law Regulations* as well as the department law.

Vertical Structure

Like most other countries in the world, the police organizations in China take the hierarchical structure of a pyramid model. It has two levels, including the central police agencies and the local police departments. Since January 1, 2007, China has implemented *the Public Security Organizations Management Regulations*, which stipulate the structure setting of public security organs. The Ministry of Public Security is under the leadership of the State Council and it is also in charge of public security work.

The local police organs can be divided into:

(1) The provincial police organs. These organs include all the police bureaux of different provinces, autonomous regions or municipalities directly under the central government. They are one of the important functions of all the provincial governments. They are responsible for guiding the police work of the public security bureaux of the province, autonomous regions and municipalities directly under the central government.

(2) The municipal police organs which are under the control of the provincial cities, autonomous prefectures and municipalities directly under the central government. The provincial police security bureaux function under the the municipal government. Each of them is responsible for the policing work within the scope of its own area.

(3) The county police departments. That refers to the police branches of the county-level city, county, and autonomous county government. The police branches are set up by city level public security bureaux according to the need of police resources allocation, they are not necessarily completely corresponding with a district level government.

(4) The grass-roots police stations. As an institution at the county level public security organs, police stations are set up among the districts in large and medium-sized cities and the county villages and towns. They are in charge of the police affairs within the jurisdictions.

2 Sun Ping. Organizational Theory on Management [M]. Sichuan People's Press. 1996. pp. 19-20
3 Zhou Jielan. Theoretical Study on the Current Police Organizational Structure in China [J]. Journal of Beijing People's Police College. 2008(2). p. 78

In addition, there are a set of professional police organs under the vertical leadership of the Central Police Security. They mainly include the police organs of the railway, transportation, aviation, forestry, and customs.

In the internal police organs in China, there exists a unity of leadership between the central police authority and the local police agencies, and also between the superior and the subordinate police agencies. There is a control monitoring between the vertical police organs. The chief executive bears the responsibility under the leadership of the Communist Party committee. The characteristic of this kind of leadership system is the combination of the Party collective leadership and the individual responsibility of the chief.

As a government department, the police authorities have the implementation of dual leadership system, administrative management combined with leadership of upper and lower levels management. That is, the police authorities of all levels accept the guidance and control from a higher level of the chief police organ, and at the same time, they accept the leadership and management from the local government or business sector.

2. The existing problems

As for the police organization structure in China, there are still many aspects not as good as we expect, such as the setting of organizational structure, the responsibility allocation, and the power regulation. The efficiency is too low and the administrative cost is too high. These problems have not been solved thoroughly. The problems demonstrate in the following aspects:

The conflict between the police resources insufficiency and the increasingly complex security phenomena

At present China is in the period of economic transition. Various contradictions emerge endlessly, making China's security situation descend gradually, which will lead to social disorder and a variety of crimes. Because of the lack of national investment in the manpower, material and financial resources of police agencies, at the same time, the funds have not been reasonably allocated and utilized, leading to China's serious shortage of police resources, thus some sorts of public order and social problems could not be solved promptly.

Whether police configuration and application is scientific and reasonable is directly related to the functional role the police organs play. The strength ability of social security control also depends on the police configuration. Whether the police could punish the criminals, solve the social problems, and serve the public all depends on the police application. The severe problem the police organs face is the shortage of police resources, which has seriously affected the smooth operation of police work. Meanwhile, the emergence of intelligent crimes, hacker crimes, and high-tech crimes gives the police hard pressure to cope with.

With respect to the data on law enforcement personnel and the rational ratio of police officers to population, it is still under discussion. Methods differ across countries in terms of the approach used to count the size of the workforce (for example, in some countries actual persons are counted while in other countries it is the number of budget posts that is important) and to assess which institutions are included in the count.[4] The number of police officers in China was about 1,800,000 by the end of 2007. The ratio of police officers to 100,000 people was 138.[5] The absolute number of police officers in China is the largest, but the ratio of police officers to the population is relatively low.

Unfavourable collaboration between local police organizations, and poor exchange of information

As a sector of government organization, the police organs need to cooperate between various departments in order to achieve the policing goal. But the actual situation is that due to the competition between different police departments and the existence of performance appraisal, it makes the local police agencies attempt to fight for their own interests and pursue for the maximum benefits regardless of the policing work of other organizations, which affects the entire police work efficiency. Owing to such factors in institutional setup, legal system and capital investment and technology, some police organs are unwilling or unable to communicate well or share information between the police organizations. Because of the existence of local protectionism, and for the sake of the organization's own benefit, the collaboration between police organs is not satisfactory. The complex relationship of interests makes police relations become very delicate, which will cause negative influence on the normal cooperation between police organizations.

4 Hui Shengwu. Outline of Police Law [M]. Beijing: China University of Political Science and Law Press. 2002.
5 Li Zhongxin. Chinese Police System and Police Work [J]. Public Security Research. 1997. (5): 67

Human resources allocation is an inverted pyramid structure

China's police system is a mixture of criminal investigation, public security, fire fighting, border, supervision, traffic control and many other kinds of police work. Such problems as lack of backup, inefficiency, and low salary seriously affect the realization of police function. Police officers work hard on their routine policing jobs but their rights are infringed upon and cannot get protection, thus cause social discontent, dissatisfaction with the work of public security. With the development of economy, the various contradictions appear constantly in society. In order to solve all kinds of security problems and social problems, the police organs at all levels of power have been further developed, so as to solve the various problems appeared in the new era. But subsequent problems are that various police institutions are randomly set, policing procedures are in chaos, and there appears an authority tendency. The policing work for different police organs are overlapped, the division of work is not reasonable, and the work is too meticulous. The service qualities of the police officers are declining, causing the lack of communication and collaboration in the police work. This greatly reduces the efficiency of the police organizations and police resources cannot be reasonably utilized.

The current police management system, police mode and policing mechanism still remain in the era of the planned economy, with serious dislocation phenomenon. Especially in the grass-root police stations, there exists a serious shortage of police resources. On the other hand the number of leadership positions is serious overstaffing. The huge variety of organs, different kinds of policing work, meticulous division of labour, and all these things lead to a waste of police resources. Some police departments pursue the setting of counterparts with the superior authority agency, leading to the ever-increasing mechanism. At present the police human resources allocation in China is "inverted pyramid structure", more police allocation in the authorities' organs than in the basic level police stations. To make the current police resources allocation into normal pyramid, it is necessary for the majority of police officers to work in the grass-root level police stations. But it is not easy for every police officer to do so from the authorities to the grass-roots. One of the main reasons is that the grass-root officers work hard, have life risk, but their income level is relatively low. For the financial department, the expenditure should be spent on the work of the grass-root level policing work. Then it can guarantee the police force to work more effectively and form a police force which can adapt to the grass-root policing work.

Structural imbalance of police force allocation

The police configuration is slower than the speed of social development, and the quality of some police officers could not follow the requirements of the new times. The structure imbalance of police force is involved in a large scope and has reached an overall scale. On the one hand, police force must be increased based on the need of the new situation development. On the other hand, the institutional reform of streamlining should be launched to invigorate the existing police resources.

There are many levels of management and the efficiency is low. Police agencies are mechanically set according to the administrative divisions regardless of the size of the area, the population, and the security situation. In most cities, there are district police branches and street police stations. The geographical scope is small but there exists many layers of management. When policing problems occur, they must be reported to the superiors, level by level to get approval, resulting in low efficiency. The command is not quick enough and the reaction is not flexible. Police staffs in the upper administrative bureau level organs account for more than half of all the police, but the police officers in the police station occupy less than thirty percent. There is serious overstaffing in the authorities and a lack of officers in the grass-root police stations.

The police force allocation is top-heavy. Because the setting of the police agencies is not rational and the efficiency is generally low, the officers from the police stations take the main responsibility of police work, although the number of officers is extremely low. The situation of the police force formation is like "more commanders and less combatants" or "more referees and less athletes".

The funds are not effectively ensured, which influences the normal operation of police organs. It makes the arduous task difficult to accomplish under the new situation. The current funds guarantee system is under the condition of planned economy system. The income level of the local finance determines how much to afford the police force. In fact, because of the existence of great difference of economic development across the whole country, there is not a standard for funds guarantee, causing police funds show regional difference because of the effects of local economic development level.

The current Chinese police organization structure and the operation mechanism have a serious bureaucratic tendency. In the upper police organs, the complicated organization structure is bloated and the more personnel make less efficiency is available. On the contrary, there is a serious shortage of police officers in the grass-root police stations. Some superior organs give intervention to the organs at lower levels, which seriously restrict the grass-root police authorities and the enthusiasm and creativity of the officers.

PERFECTION AND INNOVATION OF THE POLICE ORGANIZATION STRUCTURE IN CHINA

The design of the police organization structure is a scientific management system process. It is done according to the overall goal of the police organization, in accordance with the principle of a certain way and the certain range of integration and deployment of all elements of organizational management. The most important thing for police organization structure design is to find the scientific theory and reasonable structure model. Along with the reform of policing, many places of the police agencies take on policing reform to different degrees. For the aim of making the police organization play a greater role in the daily life, the Ministry of Public Security has issued the relevant documents and urged all localities to carry out standardization construction in police team. One of the important tasks is to change our country's current police organization structure mechanism, make bold innovations on the police organization structure, and to construct a highly efficient team of police organization.

Legalization of police organization structure

In the new historical period, the police work and police force construction continue to take new steps and make new achievements. At the same time constraints due to historical and practical factors, some problems, which cannot adapt to the new situation and new policing tasks, restrict the police organ functions to a certain extent. These problems include such aspects as authorities' management system, institutional setup, staffing, funding, personnel management, and training. Through various measures, the police organization structure management should be legalized. Police organs subordinate relationship should be clarified and power should be defined. Therefore, each police organization could carry on their police work orderly and smoothly.

To accelerate the development and perfection of the legal system, the cooperation among departments should be realized in accordance with the laws. The information sharing and cooperation between police organizations could be put under legal framework. The police force is one of the most important national law enforcement organizations, so the police officers must strictly abide by the country's legal system.[6] We need to speed up the process of the rule of law, and constantly improve the police legal system to prevent the state police and local police organizations from pursuing their own interests to the maximum degree and meanwhile ignore the fundamental interests of the entire police organization. At the same time the relevant laws and regulations to improve police cooperation should be enacted, making the police organizations cooperate pursuant to law. As socially recognized regulation, the role of laws is to reconcile the interests of all parties concerned. Everyone has to comply with it, and the police are no exception. By reconciling the relationship between organizations with the legal laws, the whole police organization could maximize the performance and pursue the interests of the whole police organization.

Promotion of streamlining and change of the "inverted pyramid" structure

In the standardization of staff construction, the Ministry of Public Security in China clearly put forward the guideline and requirements of more streamlined organs, strengthening the grass-root police stations, and improving field operations. It requires that the grass-root front line police officers should account for more than 85% of the total police force. In accordance with the standard, the police organs actively conduct reform and innovation, guiding in the policy, system and mechanism, giving tilt in the treatment of salary, funds and equipments. So the local police officers have increased greatly and truly engaged in police work rather than do impractical trifles. In this way the inverted pyramid structure of police organizations has been improved.

By streamlining organs hierarchical structure and staffing, reducing the level of management, and fully engaging in the operational departments, the police organs have reasonable police force at different levels. As to the existing organization structure, from the longitudinal way, the measures have been taken to compress the levels, and from the horizontal way, the approaches have been made to merge the police branches. These measures have greatly cut down and merged the middle management agencies and personnel, and have shortened the communication path between the upper and lower layers of organizations as far as possible, so that information can be quickly and accurately transferred. Scientific disposition of police force, change in agency model, integrating the existing police resources, all help to optimize the organization of internal resource allocation.

6 Twelfth United Nations Congress on Crime Prevention and Criminal Justice. Salvador, Brazil, 12-19 April 2010

Establishment of diversified security maintenance system

The Ministry of Public Security has cleaned up the local custom police organizations and meanwhile it has strengthened the centralized management of compiling unified, quasi police staffing standards. The established system has been reported to the central office argumentation. Local police authorities have issued a set of standard police stations so as to make the organization adjustment more practical. Through the introduction of a series of measures to make our police officers have more standardized management, they are fully guaranteed so as to conduct their police work. Effective management helps improve the efficiency of the police organizations in China. With the rapid completion of the task, truly offering help to the public, making people benefit from it, so as to enhance the position in the hearts of the people, getting support from the people, carrying out policing work in a harmonious environment, the police organizations achieve the maximum efficiency.

To establish a diversified security maintenance system can solve the problem of "limited police and unlimited public" and avoid the problem of corruption. The police agency division refinement makes police force disperse. In practice it cannot result in the obvious effect, but gives a tight financial budget to the government and causes internal disorder of the police agency management. Diversified security maintenance system is advantageous to reduce the pressure of police organization.

Improvement of the police's treatment and innovation of the incentive mechanism

The police organs have begun to consider the preferential treatment for the police personnel, readjusting the various departments within the organization structure, re-establishing the system of police promotion and reward assessment mechanism, improving the police officers' rank level, so as to improve the working enthusiasm of police officers. Only with the most basic material guarantee will the police officers have the motive of policing revolution and fulfilment of policing work, so as to reduce the authority abuse.[7] The police force could then reach standardization and conformity and enforce the law in a legal, fair and efficient way.

The construction and innovation of the structure of police organization is a complicated system. It needs all police personnel to cooperate, and it also needs various departments' involvement to do a better job.

CONCLUSION

As the key of the police organization efficiency, the structure of police organizations has become one of the most important research issues in police administration. The current social contradictions intensify day by day with the constant emergence of various crimes and social security problems. How to make good use of the existing police force and how to construct efficient police organization structure suitable for the situation of our country play an important role in solving the series of problems. Reasonable police organization structure could ensure the efficiency of the police organization and the solution of security problems. By adjusting the police organization structure and by perfecting the organization authorization mechanism, it is useful for the positive and effective involvement of police force. By direct conversation between the superior public security organs and the grass-root police stations, it makes the public security organs transfer from the administrative authority centre to the public demand, which therefore improve the efficiency of public security administration. At the same time, we should work together to absorb the advanced experience, combine with the common construction of police organization structure, and build a relatively reasonable, healthy and orderly organization. These approaches can constantly improve the efficiency of our police organization.

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PRESENCE OF STRESS AMONG MEMBERS OF SPECIAL POLICE UNITS IN THE REPUBLIC OF MACEDONIA

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Abstract: Police work is a complex type of profession. It abounds in numerous situations which may lead to occurrence of stress. The concept of stress at work refers to those situations when police officers perceive the work environment as a threat and when the demands fall outside the scope of their personal capabilities, capacities and potentials. Psychological resistance to stress plays a significant role in overcoming, reducing or enduring both the internal and external demands which result from the stress situation.

In this paper, in order to determine the extent to which stress is present in police work, a survey was conducted among 160 members of special police forces in the Republic of Macedonia (Rapid Deployment Unit and Mobile Unit for Fight against Crime). In order to achieve this goal, the respondents from both units were tested with psychological instruments for stress assessment (Holmes and Rahe Stress Inventory and Impact of Event Scale). A specially designed questionnaire for stress assessment was also used for this purpose. The data were processed with the use of adequate descriptive and comparative statistical procedures. On the basis of the statistical analyses and the findings, a conclusion was drawn that most of the members of these units did not show any stress symptoms and only few of them felt these symptoms, which are incurred as a consequence of professional police work.

The findings are also supported by subjective statements and perceptions of the respondents regarding stress, which further contribute to obtaining information about their training and their ability to cope with this unpleasant psychological state.

Keywords: police profession, occupational stress, special police units.

INTRODUCTION

Special police units represent the specialized segment of the police that as a result of the specific training, the high level of professionalism, the specific equipment and techniques used to perform the police officer duty are different from the (normal) police composition. It is about highly specialized units with special tasks and responsibilities on the territory of the whole country. With its organization, material and technical equipment, high level of preparation, the special police units are always capable efficiently to respond to all types of security threats and dangers. Because of this, these units are considered to be the most prepared segment of every country's police.

In the Republic of Macedonia, special police units are part of the police organization. In accordance with the place and role these units have in the Ministry of Internal Affairs, their scope of activities is regulated in Article 5 of the Law on Police, as well as in the police organization. In addition to this law, the work of the special units is regulated with internal acts (regulations) that more precisely elaborate the narrower scope of their activities that include a wider spectrum of operative and tactical activities such as: search and imprisonment of dangerous criminals, deprivation of liberty of armed groups and individuals, imprisonment of dangerous individuals, saving hostages, handling civil disorders, helping people who suffered accidents, providing civil servants, etc. (Ристоска, 2010). Performing these activities is characterized by extreme conditions which the representatives of the special units should get used to. They are required high professional competence, because otherwise there can appear many physical and psychological inadequacies and problems, which would be results of lack of professional accommodation (Ivanovski, 2014).

In this work, despite of emphasizing the important factors that cause stress, we will show the research results which analyze stress exposure and stress reaction of the special unit representatives of the Republic of Macedonia.

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WHAT IS STRESS?

During the last two decades people have believed more and more that stress can cause health problems (Coxet al., 2000). Stress can influence people feelings, thoughts and behaviour and it can also cause physiological functions changes (Stansfeldet al., 1999).

Every situation or event that threatens life or health, or threatens with a loss of a close person or loss of something that is of crucial importance in our life, existence or integrity is considered stress. Stress can be caused by a temporary danger or a long-term deprivation. Moreover, an event is considered stressful if it represents a danger for the personal security, self-respect or if it threatens someone's system of values. The threat becomes stress if it is strong enough, long-termed or if it is recurrent.

The concept of stress is a phenomenon which is multidimensional and with more meanings, so there are more definitions about the stress. Different definitions that define stress as a reaction, a sensation, or a special type of correlation between human and the environment are accepted. To reduce the confusion connected to this term, Mason identifies three groups of stress definitions:

1) Certain event of the external environment;
2) Specific organism condition, and
3) Distinctive type of experience that arises from the relation between the individual and their environment (Mason, 1971).

According to Mason, the third definition of the stress is the most acceptable in common, and for our research of course, because stress is seen as a process, and not as a condition of the environment or the organisms. The most important components of stress are: certain event in the external environment, distinctive assessment of the event and changes in the psychological and physiological functioning.

When a stressful event occurs, there is balance disturbance between the individual and the environment that overcomes the predisposed mechanisms of facing reality. These events have traumatic effects and cause distinctive psychological and physiological alterations. Situations or events that subjectively are evaluated as dangerous are called stressful situations or stressors.

STRESS AMONG POLICE OFFICERS

During the performance of their duties, police officers are exposed to stress that can be ranked from cumulative (constant risk at work, police culture, public opinion) to incidents, such as the exposure to violence, shooting and stress during mass disasters. Stress reactions, if not treated, may cause negative physical and mental health consequences.

The police work dynamics creates opportunities for many psycho-social dangers. Moreover, the failures in identifying and solving health and security issues may have potentially dangerous consequences on the police officers and their families. Some of these consequences are: depression, divorce, suicide, illness, etc. "The image of a police officer in the media which tend to portray him as a bad, corrupt and brutal, instead of portraying him as a professional who justly performs his duty is additional problem" (Waters and Finn, 1995). On the other hand, the image of "Superman" makes police officers life more difficult than usual.

The excessive stress may cause serious problems: physical diseases, heart disorders, nutrition disorders, misuse of certain substances, exhaustion of the officials, problems in the family such as: family violence, giving orders to family members, hiding information regarding their work because they think they will not be understood by the family, etc. Shift change, as well as overtime work may hinder officers to perform important family functions. Physical, physiological and emotional stressors in the police profession are divided in three categories: extra organizational, intra organizational and individual. "Extra organizational are those factors that cause stress, but fall outside the scope of the police organization; intra organizational originate from the police organization, and individual stressors refer to the police officer's personality traits" (Golembiewskiet al., 1990).

Stress caused by work includes explosive, implosive and corrosive incidents or events (Waters and Ussery, 2007). Explosive events are certain criminal or terroristic situations and natural disasters which cause acute reactions among the officers, and sometimes, even a conflict between them. These reactions are often suppressed, although the police officer may continue to perform his duty as a citizens' guardian. Long term consequences may appear if there is lack of interventions that would reduce the reactions of the stressful event. Police officers in the Republic of Macedonia who took part in the conflict in 2001 exhibit high level of traumatism even eight years after the conflict due to the fact that they never received suitable psychological treatment (Batic and Ivanovski, 2011).

Some events have implosive influence which results from the police officers internal conflict of values. The inability to make difference between the family and the personal responsibility on the one side and the professional responsibility on the other side contributes to development of stress.

Frequent tensions have corrosive effects because they reduce the confidence, resistance and flexibility of the individual. The problem is in the fact that the corrosive events are being ignored by the individual, who does not try to protect himself from the highly risky lifestyle. Moreover, the work organization ignores the negative consequences of this profession. The belief that only the weak people suffer from the stress symptoms leads to the suppression of problems, which is considered to be brave by the police officers. In that manner, the police work, combined with its reality becomes a situation that increases the pressure among police officers.

Although research has not shown that there is unique psychological profile of a police officer, there is a consensus among psychologists that the police profession causes certain general features of behaviour: uncertainty, rigidity, cynicism, bossiness, distrust. The distrust originates from the fact that this profession "deals with criminals, hostile people, so this distrust is often transferred to the friends and family members" (Golembiewski and Byong, 1990). One of the greatest risks of this profession is that police officers are becoming narcissistic, self-oriented, and most of the time they are dedicated to work so they estrange from the family.

PROBLEM, GOAL AND HYPOTHESES OF THE RESEARCH

The problem of this research is the presence of stress among the special unit members. The goal of this research is to establish to which extent the police profession contributes to the stress symptoms among their members and to establish whether the members achieve to respond the demands of the working environment, which refer to their subjective or objective perception of stress. Despite the occupational stress, the stress of everyday life of the members is measured.

The hypotheses of the research are defined as follows:

1) The special unit representatives of the Republic of Macedonia who perform duties with high level of stress manifest stress symptoms.
2) Taking into consideration the different exposure level to stressful duties, there are differences between the stress levels manifested by the special police units.

METHOD

Sample

160 members of the special police units of the Republic of Macedonia are included in this research, 80 of them are the members of the Rapid Deployment Force (RDU), and 80 of them are the members of the Mobile Force against Crime (ALFI). In order to provide optimal homogeneity of the subsamples, a formal standardization according to the following criteria was carried out: age, education, working experience and work position.

Instruments

Impact of event scale (Horowitz, 1979) - The purpose of this scale is to measure the stress which is correlated to the traumatic events. Impact of event scale (IES) is used to measure the presence and frequency of two types of traumatic events: unintentional obstruction of sensations connected to trauma and avoiding everything that reminds of trauma. These two types of reactions are part of the diagnostic classification of DSM III (1980) as two types of symptoms. The other type of diagnosis symptom is: existence of insomnia symptoms which last at least one month. We can certainly say that this scale partially covers the PTSD manifestation. The scale with 15 questions assesses the experience of posttraumatic stress for a specific life event. IES is relatively direct measurement of the stress connected to traumatic event. The two subscales (intrusion and avoidance subscales), measure two categories of experiences as a response of traumatic events: intrusive experience, such as ideas, feelings or bad dreams; and avoidance, refusing certain ideas, feelings and situations. Due to its vulnerability of changes IES is suitable for observation of the client's improvement during the treatment.

Social Readjustment Rating Scale – SRRS (Holmes, Rahe 1967) is composed of a set of 30 questions that examine the relation between events that may occur, as well as the stress and disease subjection. From

the test points we can evaluate the stress level among the members. More points show increased stress level and also increased subjection of diseases or health problems among the members. This test shows data collection for potential stress caused by certain events, and knowing this stress is important for analyzing the relation between stress and health. This scale measures the stress caused by certain stressful events of the everyday life.

Structured questionnaire for stress subjective assessment of the police officers. The questionnaire-[3]contains group of questions which cover wider spectrum of stressful activities typical for the police profession, in other words, for the work of the special police units. To analyze the respondents personal perception of stress, there are questions about the common existence of the stress in the police work, for the symptoms of stress during the preparation and planning of the professional duties, for the stressful experiences during the performance of these duties, about the influence of previous stressful experiences, about the relationship between the colleagues at work, and about the collective manner of living the life within the units, as well as, about the influence of the work on the relations with the family and friends. In order to receive the wanted information of the respondents, close questions are used Likert type scale (Мојаноски, 2012). All the questions have more answers, out of which, the respondents should choose only one.

Variables

PTSD symptoms are reflection of the presence of symptoms of unintentional impressions imposition and avoidance of everything that reminds of trauma, which occurred during the performance of the respondents' duties typical for PTSD. These two variables are showed on the Impact of Event Scale scores (Horowitz, 1979).

Stress level and disease subjection are measured with the Holmes and Rahe stress inventory. This scale measures the stress caused by stressful events of the everyday life. The set of 30 questions analyzes the relationship between events that may happen, such as stress and disease subjection.

Exploratory techniques and method for data collection

In order to obtain profound knowledge and information about the subject of the research two different techniques for data collection are used: 1. objective method for analyzing the test results for stress assessment, and 2. subjective method for evaluation of personal attitudes regarding stress. With duplication of the methods, triangulation[4] (Игњатовиќ, 1994) is performed of the methodological procedure which leads to important knowledge and information of the subject of the research from more sources. This manner of analysis of the results obtained help repair or avoid all errors and deficits that are results from the use of only one methodological procedure.

Statistical methods of data elaboration

The results of the research are elaborated with descriptive and comparative statistical procedures in the statistic package Statistica 6.0. In the frames of descriptive statistics, the basic measures for central tendency and dispersion are calculated, and within the frames of comparative statistic, a test (T-test) of individual samples for testing differences in the average values among the groups and methods of grouping of the results in classes is used (frequency analysis).

DESCRIPTION AND ANALYSIS OF THE RESULTS FROM THE RESEARCH

Table 1 show the summarized results of the descriptive statistical analysis of the tests which evaluate the stress presence of all respondents, while tables 2 and 3 show the results only for the sub-examples RDU and ALFI. Following the descriptive indicators in these tables we can ascertain that the manifested stress symptoms are present among all groups of respondents, but are far away from the level that can cause danger during the everyday communication and work. From the detailed statistical insight of the tables it can be noticed that there is certain variability of the descriptive indicators, nevertheless, generally speaking, they are within the limits of normal (acceptable) deviation. According to the indicators of the arithmetic mean

3 This questionnaire is made for the use of the PhD dissertation: Ivanovski J., (2013). Formations for performing operative-tactical actions from the aspect of psychosomatic indicators of the uniformed police officers, Faculty of Security-Skopje, 2013.
4 The term "triangulation" (Latin.triangulus - triangle) means observation of the same object from different angles or combination of different approaches towards the same subject with the goal to analyze it from all points of view.

(X),the representatives of the special units, in the RAXE test manifest low stress level with a possibility of disease or health problems from 0% to 35%, while no stress symptoms which result from stressful work, neither on intrusive, nor on avoidance level are noticed in the IES and IES-IZ tests. This shows that they do not have PTSD symptoms. Moreover, the limit values of the RAXE test divide the stress level in: low stress level with no significant problems (from 0 to 149), mild stress level which may cause disease or health problems 35% (from 150 to 199), moderate stress level which may cause disease or heath problems 50% (from 200 to 299), and high stress level which may cause disease or health problems 80% (above 300). IES and IES-IZ tests limit values divide the stress level in two categories: category under the limit values that does not suggest stress presence and category above the limit values that suggests increased stress level.

Table 1 *Summarized descriptive parameters of the special units representatives*

Variable	N	X	Boundary **value**	**Min.**	**Max.**	**Std. Dev.**	**Kv%**	**Skew.**	**Kurt.**
RAXE	160	143.02	149.00	12	429	104.61	73.14	0.99	0.56
IES	160	10.92	21.02	7	22	3.79	34.70	0.97	0.21
IES-IZ	160	15.98	20.80	7	28	5.49	34.35	0.49	-0.42

Table 2 *Basic descriptive parameters for the RDU members*

Variable	N	X	Boundary **value**	**Min.**	**Max.**	**Std. Dev.**	**Kv%**	**Skew.**	**Kurt.**
RAXE	80	134.33	149.00	12	403	101.69	75.70	0.90	0.01
IES	80	9.82	21.02	7	21	3.47	35.33	1.46	1.64
IES-IZ	80	14.54	20.80	8	27	5.52	37.96	0.75	-0.51

Table 3 *Basic descriptive parameters for the ALFI members*

Variable	N	X	Boundary **value**	**Min.**	**Max.**	**Std. Dev.**	**Kv%**	**Skew.**	**Kurt.**
RAXE	80	151.71	149.00	13	429	107.38	71.06	1.09	0.99
IES	80	12.01	21.02	7	22	3.81	31.72	0.70	-0.17
IESIZ	80	17.41	20.80	7	28	5.10	29.29	0.45	0.16

Table 4-7 show the results of the comparative statistic analysis that determines the test differences between the two groups of respondents. After analyzing the results of Table 4, which presents the results of the applied T-test, we can notice that there are significant differences between the compared groups only in the tests that evaluate stress caused by the two types of traumatic events (unintentional imposition of impressions connected to trauma and avoiding everything that reminds of trauma) that occurred during their work, while the RAXE test does not support these findings of existing statistically important differences. These data clearly show that the special unit members despite the fact that they generally show low level of occupational stress, the stress symptoms which appear as a consequence of the work are felt differently, in other words, they are more notable among the ALFI members.

Table 4 *Results from T-test for RDU and ALFI members*

Variable	**X_1 RDU**	**X_2 ALFI**	**df**	**T-test**	**p-level**
RAXE	134.32	151.71	158	-1.05	0.29
IES	9.83	12.01	158	**-3.80**	**0.00***
IES -IZ	14.54	17.41	158	**-3.42**	**0.00***

In order to objectify the results from the T-test, in the further comparative statistic analysis (5, 6and 7), the method of grouping the results in classes (frequency analysis) is applied. With the application of this analysis, an attempt was made for the differences between the two groups of respondents to be determined more precisely and in more details. To achieve the goal for each test separately there is calculation of the common arithmetic mean (ΣX), and then depending on its location (class) collection of percentage frequencies was performed (Σf%), starting from the lower limit class to the class with the highest scores. In this way it is possible to obtain information about the essential differences regarding the stress presence in the groups. In Table 5, the results show that among the members of Alpha the sum of the percentage frequency is greater than that among the members of the RDU (Σf2= 62.50%> Σf1=53.75%) which means that their stress caused by everyday life in general is about 9% more prominent. And the other two tests also show differences between the two groups in the presence of stress caused by traumatic events that occurred during the execution of professional work (Tables 6 and 7). According to the sum of the percentage frequencies

(Σf2=57.50%>Σf1=35.00%) in the test IES, symptoms of stress associated with involuntary imposition of impressions (intrusive experience) are 22% more pronounced among the ALFI members, while in the test IES-IZ symptoms of stress associated with recognized avoidance are more pronounced and they are 30% (Σf2=70.00%> Σf1=30.00%).

Table 5 *Frequency of test results RAXE the members of RDU and ALFI*

RDU				ALFI			
Class	f	f%	Cum.%	Class	f	f%	Cum.%
0-49	18	22.50	22.50	**0-49**	11	13.75	13.75
50-99	19	23.75	46.25	**50-99**	19	23.75	37.50
100-149	17	21.25	67.50	**100-149**	18	22.50	60.00
150-199	5	6.25	73.75	**150-199**	11	13.75	73.75
200-249	8	10.00	83.75	**200-249**	8	10.00	83.75
250-259	7	8.75	92.50	**250-259**	3	3.75	87.50
300 +	6	7.50	100.00	**300 +**	10	12.50	100.00
ΣX=143.02 Σf1=53.75% Σf2=62.50%							

Table 6 *Frequency of test results IES the members of RDU and ALFI*

RDU				ALFI			
Class	**f**	**f%**	**Cum.%**	**Class**	**f**	**f%**	**Cum.%**
6-8	42	52.50	52.50	**6-8**	15	18.75	18.75
8-10	10	12.50	65.00	**8-10**	19	23.75	42.50
10-12	12	15.00	80.00	**10-12**	14	17.50	60.00
12-14	8	10.00	90.00	**12-14**	13	16.25	76.25
14-16	2	2.50	92.50	**14-16**	8	10.00	86.25
16-18	3	3.75	96.25	**16-18**	6	7.50	93.75
18-20	2	2.50	98.75	**18-20**	2	2.50	96.25
20-22	1	1.25	100.00	**20-22**	3	3.75	100.00
ΣX=10.92 Σf1=35.00% Σf2=57.50%							

Table 7 *Frequency of test results IES-IZ the members of RDU and ALFI*

RDU				ALFI			
Class	f	f%	**Cum.%**	**Class**	**F**	**f%**	**Cum.%**
6-8	11	13.75	13.75	**6-8**	4	5.00	5.00
8-10	11	13.75	27.50	**8-10**	1	1.25	6.25
10-12	13	16.25	43.75	**10-12**	8	10.00	16.25
12-14	13	16.25	60.00	**12-14**	8	10.00	26.25
14-16	9	11.25	71.25	**14-16**	13	16.25	42.50
16-18	4	5.00	76.25	**16-18**	17	21.25	63.75
18-20	4	5.00	81.25	**18-20**	12	15.00	78.75
20-22	6	7.50	88.75	**20-22**	5	6.25	85.00
22-24	1	1.25	90.00	**22-24**	4	5.00	90.00
24-26	7	8.75	98.75	**24-26**	1	1.25	91.25
26-28	1	1.25	100.00	**26-28**	7	8.75	100.00
ΣX=15.97 Σf1=40.00% Σf2=70.00%							

From the results of the comparative statistical analysis, it can be concluded that among the two groups of respondents the symptoms of stress that are caused by many life and professional events and activities are expressed differently. Thus, we believe that the differences that arise among the members are most closely associated with the professional conditions in which both units work. As an example of this statement, the professional scope and commitment of the members of Alpha in a calendar year is mentioned. According to official statistics of the Ministry of Interior of the Republic of Macedonia, this unit according to legal grounds established in 2013 committed the identification of 11,606 people, a review of 1,182 total passenger

vehicles and detained 3,582 people, which means that they are constantly in the field and are facing potentially stressful situations (www.mvr.gov.mk).

In addition, this research presents the results of the questionnaire which examined the personal views and estimates of respondents' stress that are closely related to the performance of the police profession. To analyze the respondents' subjective perception of stress, an analysis is performed separately from the questions in the questionnaire. With regard to the first question that refers to the degree of stress of the police profession, the general attitude of the respondents from the two units is that stress is present in their daily work, but that it is expressed differently. From the answers it is found that the police profession is stressful (35%-36%) and highly stressful (56%-62%) for most of the respondents, while for a small part of them (2%-9%), it is less stressful. Regarding the second question concerning the severity of the symptoms of stress in the immediate preparation and planning of professional activities, the attitude of the respondents is quite balanced (RDU77%) and (ALFI 79%), and that is that the symptoms of stress are more expressed in situations when you need to act immediately, rather than in situations that can allocate more time for the necessary preparation and planning. The next question gives the answer about the ability of participants to cope with stress that occurs during the execution of complex professional tasks. The attitude of the respondents on this issue is very positive, which is that 80%-88% of respondents achieve to remove the symptoms of stress, but only small number of them have difficulty to overcome this unpleasant psychological state. A positive attitude in this matter indicates how respondents with their intellectual (cognitive) facilities have the ability to cope with new security situations that present a high degree of risk. The next question of the questionnaire provides information about how previous stressful experiences contribute to successfully cope and overcome the current stressful events. The views of respondents to this question are that previous experiences have positive role of mediators in overcoming the current stressful situation, and that (45%-47%), and significantly (44%-48%) contribute to overcome the current stressful. The last group of questions from the questionnaire refer to the stress that is associated with interpersonal relationship in the workplace and the family. In the question of human relationship on the workplace we try to find out the ability and willingness of the participants to engage in the police team and establish interactions with other members of the unit. From the answers, it is found that 65%-80% of respondents fail to adjust and adapt to the conditions of life and work in the unit, while others find it difficult to fit into the work environment. In the question that refers to the family, the respondents were asked to assess how professional engagements affect the relationships with the loved ones in the family. The answers to this question show that 67%-72% of respondents fail to establish relations of mutual agreement and compliance with the closest family members, while 28%-33% have difficulties to establish this relationship, or fail to remove or neutralize work problems.

By analyzing the results of the questionnaire, it can be concluded that the members of the two units show great similarity in the subjective perception of events related to stress. According to the frequency of responses, the positive attitude (opinion) prevails among the respondents, which means that they feel able to cope and successfully master threatening situations and burdens caused by the police profession and life in general.

At the end of the analysis of the research results we can notice the high level of logical accordance between the two types of sources that explain (determinate) the stress presence among the special units representatives. It is a matter of accordance among the objective indicators obtained from the stress assessment test results and the subjective attitudes obtained from questionnaire's results.

CONCLUSION

Taking into consideration the hypotheses, the results can be analyzed in a manner that follows:

The first hypothesis, according to which both groups of special unit representatives manifest stress symptoms, is partially verified, because the test results showed that despite the fact that the members consider their job stressful, they do not manifest stress symptoms that are characteristic for PTSD. This means that they did not manifest symptoms typical for trauma during the performance of their duties. Regarding the estimation of life events which are considered stressful and can cause diseases, the members of both groups on the Holmes and Rahe tests show average results.

How to explain the relatively low stress level despite the obviously stressful profession?

The response most probably is in the stress facing skills, that according to the results, we can suppose that they are efficient. For this, we need further research that would focus on coping mechanisms or stress facing mechanisms. The majority of the respondents said that they agree with their colleagues which may be the source for successful handling of this situation. Being part of a group with similar work duties and problems, good relations between the colleagues and support between them is a powerful factor regarding the factors that cause stress, which is typical for this profession. If we also take into consideration the fact that we are talking about a selected group (the best respondents), our results will make sense.

In regard to the second hypothesis, which is partially verified, there is a difference in the stress level between the special units of RDU and ALFI. There are significant differences of the stress level caused by traumatic events which occurred during the professional duty, while regarding the assessment of the life events which are considered stressful and can cause diseases, the representatives of both groups showed average results on the Holmes and Rahe. In that sense, the ALFI members show higher level of stress that the RDU members, which statistically is very important. Although, both of the units face extremely high risk level in their work, the ALFI which is a mobile unit for fight against crime, is most often exposed to the activities that include fighting and tactics ("every day prevention of street crime") than RDU, which is an independent anti-terroristic unit that acts only when there is need for it.

Accepting the transactional stress model, according to which the stress is a process, not a condition and which supposes that the two stress components: the individual and environment are mutually dependent and correlated in the process of changing influenced by the temporary transaction, we assume that the environment (family, work post and society) plays important role in adjusting the individual to the stressful factors related to the profession.

Although, according to the results of our research, the members of the two units do not show increased stress level, the ALFI show more stress symptoms. This leads to the fact that the authorities should pay more attention to the stress issue, mostly because both groups consider their job as stressful. It is time to start thinking more seriously about the stress problem of these professions in the Republic of Macedonia. To prevent the stress consequences, different educational programs for stress symptoms recognition and for emotions control that appear during the stressful events are recommended. The chiefs of the special units must play an active role in order to provide working environment without stress.

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STUDY ON TENSION OF POLICE MEDIATION POWER

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Abstract: Police mediation power is a key competence of police power. The research of police mediation power in the power-tension theory is among the confrontations and combinations of institutional norms, institutional assumptions and institutional practices. The police mediation power is an important manifestation of the natural and balanced relationship between power and power. The tension of the police mediation power system stems from the tacit agreement between the private right and the public power. Tension in the power property of the police mediation power is the product of a national, social and public demand for order, at the same time, it is the product of a particular policy context. In the extensive policy context, the research of the tension changes in the police mediation power will turn into an effective view point to analysis the development tendency of police power.

Keyword: police power, mediation power, tension of power.

TENSION POWER: UNDERSTANDING THE FIELD OF POLICE MEDIATION POWER

Tension is a kind of traction emerges inside the object when the body is under tensional stress, and it drags and conflicts with the external pressure to achieve the inner balance. This physics term is used for illustrating the form of power, to prove that there's substantially a natural and balanced status between the power and the right, although they look opposite on the surface. In the traditional sense, the status between power and right, which is conflicting and contradictory, is just a hypothesis of the empiricism, and it always has a kind of tension in reality. That is, the expansion of the public power satisfies the demand of the private right, the substantiation of the power's boundary balance the arbitrariness of the private right, the expansion of the public power is the natural response of the expansion of the private right, and finally they will find a natural balance in the social organism. Probably because "police is the general dominion which explains the police power as a representative of sovereignty, the research of the police power is also following the path of empiricism, meanwhile "with my life and thy lives ,the police is so closely connected "[2]. Police power has extensive capabilities, and the contact between the police and the public has a direct nature. Thus, although the police power in the previous study path is stiff and negative, but it is flexible and proactive in practice. And this contradictory status which services in the pursuit of common values forms the tension of police power. With the development of practice and the changing policy context, the tension of police power also develops toward a more flexible positive direction. According to the perspective based on practical experience, the mediation power is a non-coercive power, by which the public power intervenes in the private dispute under the will of private right, and prompting private consensus to resolve disputes with its legal effect and credibility. As a useful orient experience,[3] the use of mediation in contemporary Chinese society has extensive policy background and profound practical basis. As a competence of police power, the mediation power provides a suitable study object for observing the police power in the power tensional field, and the analytic path of power tension also provides the theoretical tools for the reflection and development for existing police mediation power.

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2 Matsui Shige,Police Science Compendium, (Peking: China University of Political Science and Law Press, 2005) pp. 3,13.

3 Mediation is China legal system a bright spot in solving disputes. In recent years, along with the general sense includes non litigation dispute solution, many European and American countries, mediation regeneration movement, as Chinese native resource mediation more by the national attention. The United States Supreme Court Mediation Mechanism of the former chief judge Warren Barger to China to praise, initiative of western countries to learn from Chinese in this respect.

See: America justice in Shanghai, British Broadcasting corporation, Summary of World Broadcasts, Part3: The Far East I SWB/FEI, Sept, 10, 1981, at A1/1.

RUNNING TENSION OF THE POLICE MEDIATION SYSTEM

Institutional norms and operating conditions of the police mediation power

The competences of police power are concentrated in "People's Police Law" Chapter II, "Authority". There is also the legal basis for the explanation of police mediation power, [4]but the mediation power does not explicitly appear among the provisions of Chapter II. It is more clearly defined in the "Security Administration Punishment Law" and "Road Traffic Safety Law", such as the security mediation system in "Security Administration Punishment Law" Article 9,which is specified in "the implementation of <People's Republic of China on Public Security Administration Punishment Law> interpretation issues related to public security organs", "public security organs for administrative cases procedural requirements", "Public Order Mediation Work norms" and "public security organs for injury cases prescribed" and other regulations. And the accident compensation mediation system is specifically regulated in the "Road Traffic Safety Law" Article 74 and the "People's Republic of China on Road Traffic Safety Law Implementation Regulations". Such mediation power of police can be assigned to the category of the executive police power. Including the police mediation power, the 277,278,279 articles of the newly revised "Code of Criminal Procedure" stipulate the "proceedings when the parties reach a reconciliation in a public-prosecuting case", that is considered as an acceptance to the extensive criminal reconciliation in practice. And these police mediation powers can be assigned to the category of the criminal police power.

From the data, 6,153,699 security cases were investigated in 2006 all over the country, of which the police mediate and resolve 1.378 million cases, accounting for 22.4% of all. 8772299security cases were investigated in 2008, ended in November the police mediate and resolve2.398 million cases, accounting for 27.3% of all. 11053468security cases were investigated in 2009, of which the police mediate and resolve3.72 million cases, accounting for 33.7% of all[5]. In many of the grass-roots public security organs, mediated public security cases is usually accounted for more than 50% of all the accepted security cases[6]. From the above-listed date, it seems that the police mediation power is playing a more and more important role in the resolutions of security cases, so does in the compensations of the traffic accident damages. With the local political-legal organs making regulations based on relevant experience, practices about the police mediation power are increasing in the recent ten years, despite it was once highly controversial in the criminal reconciliation system[7]. And the "Criminal Procedure Law" also accepts the legal status of the police mediation power in the field of criminal reconciliation, after its evaluation turn positive under the changed policy context.

Power is not running in a vacuum, and specific policy context determines its development. In the study of the police mediation power, the real motive forces of its system practice are the changes of policy context in the recent ten years, instead of the traditional cultural values, like "harmonious is precious" and "anti-litigation"detesting lawsuit, which assuredly last more than ten years and regarded as proper cultural bases for the system operation. In building a socialist harmonious society grand theme, we still have to face the fact that conflicts soar and easily escalate. So when we emphasis on value pursuits such as "people-oriented", "scientific development", "democracy and rule by law ", " fairness and justice", a new idea is put forward to resolve these disputes. "Combine people's mediation, administrative mediation and judicial mediation, take more mediation method, comprehensive use of legal, policy, economic, administrative and other means and education, consultation, counseling and other measures to resolve the contradictions in the bud or at the grassroots level. "Building a big system of mediation to work and resolve social conflicts effectively."[8] It has become a major policy orientation of the power operations since 2010 to strengthen and innovate the social management, "Focus on prevention and give priority to mediation; perfect the mechanism for over-checking, the mechanism for multi-mediating and the mechanism for long-term public petition;

4 "Police law" provisions of article sixth of the people's police duties from the police school, police. The first item of crime prevention activities; the second, to maintain public order; the third, to maintain traffic order, by dealing with traffic accidents; other duties are stipulated by fourteenth laws and regulations. At the same time, the provisions of article twenty-first, the people's police to put forward to solve the dispute request to the citizen, should help. That can be the police mediation right in the "police law" basis in.

5 See "China Law Yearbook" 2006-2010 year's data.

6 The police mediation occupies a large number of police in many parts of the grass-roots public security organs, which can be learned from the research of many scholars in. See Gao Wenying, "research" system of police mediation, carrying the "Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION)" in 2008 fourth, pp. 127-134. Zhao Shilin: "new" public security mediation concept, carrying the "Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION)" in 2011 first, pp. 50-55.

7 Criminal reconciliation advocate and practitioner originally are procuring organs, public security organs as the investigation organ's duty is to ascertain the facts, criminal suspects arrested, should not have the final ruling, and the stage of investigation, the facts of the case is in the investigation stage, therefore, the investigation stage of reconciliation was once considered to be inappropriate, there is abuse of police power suspicion. See Li Yu Bei: "limited public security in the investigation stage light damage of criminal reconciliation" carrier ", China prosecutors" in 2006 fifth, pp. 11-13.Wang Zhixiang: "the public security and judicial organs can become a facilitator of criminal reconciliation? "Carrier", the CPPCC newspaper "June 25, 2012version B04.

8 See the "CPC Central Committee decision" on some major issues of building a socialist harmonious society by October 11, 2006, the Sixteenth CPC Central Committee sixth plenary session.

make it normalized and institutionalized to contact with the masses, and resolve conflicts; make efforts to prevent and resolve conflicts from the source."[9] The intensification and innovation of the social management has become an important political task of the public security organs, and we are going to build a harmonious society. Under such a background the police mediation powers is going to, and it will, present in front of the society and the public with more positive attitude

Conflict between institutional norms and the institutional practices

From 1986's "security regulations" to the newly revised 2012's "Code of Criminal Procedure," the scopes of the police mediation power keep expanding. But whether the mediation power in the executive police power, or in the criminal police power, its core objects are the less serious cases about violations of property and personal rights which are caused by civil disputes. But what is "civil disputes"? What is "less serious"? The vague provisions make the police mediation power abused. Therefore, it is important for all the studies about the police mediation power to further clarify the scope. The police mediation power can operate more standardized by clarifying the scope of mediation, but the emergence and development of mediation power depends on the practical needs of the people and the legitimate purpose of the order. The object of mediation is complicated and messy crushing grassroots social disputes, or even largely disputes without any legal liability. For example, one day in August 2012, in Guangzhou, a McDonald's restaurant, a customer called the police after negotiated with the restaurant because an over-hot hamburger. The customer finally left after the restaurant replacing the food under the mediation of police.[10] The media focus on the abuse of police in this incident, but a dispute like this is not uncommon for the grassroots police work. According to some scholars' research, a large number of disputes unrelated to legal liabilities have not been registered and counted which is occupying a large number of police to mediate. [11]In such an incident, the abuse of police represents the arbitrariness of the private right, but what's the economy and authority of the solution by the Consumer Association, the Administration for Industry, the Bureau of Health, the Bureau of Quality Supervision, or even the court. In an era that the policy background and the legal system not only promotes the police mediation power but also keep strengthening the habitual thought of "Any difficulty, call the police", it is hard to affirm the abuse of police in the above incident. At the same time, these complicated and messy disputes cannot be effectively summarized as legal liability disputes, or it is not possible to accurately define their legal nature for the shortage of time, possibility and necessity. So perhaps the police mediation power is the most appropriate choice in terms of the economy and authority when the timely intervention of public power is necessary. Otherwise, the police mediation power has to face a dilemma since the lack of more clearly scope and it will also be except from the system that a large number of disputes with unstable influence and cannot be legally responsible. Here, the existence of the police power and the arbitrariness of the private right suit and promote each other in some way.

Another major criticism to the operation of the police mediation power is its imperfect conciliation procedure with undefined legal consequences and the shortfall in procedural guarantee to the private right.[12] In the optional police mediation legal quality and operational capacity replaced by the experience and habits, and problems like untimely obtainment of evidence, over-long term and conciliation for punishment exist in a substantial scope. It makes a comparatively clearly definition about procedures and legal consequences of the police mediation power in the "public security organs for administrative cases procedural requirements" and the "Code of Criminal Procedure". From the perspective of the law and regulations, instead of ultimate solutions, the police mediation power provides a basis for the timely and cost-effective intervene of the public authority, a mechanism shunt for the adjudication procedures, and an authoritative legal protection for the private power. It aims at promoting the parties to reach reconciliation, or saving social costs by promoting reconciliation with "punitive deal"[13]. The non-adjudicatory mediation power promotes reconciliation for the parties on a voluntary and lawful basis, with "temper justice with mercy". It is necessary to enhance the protection of the private right by procedural design for the conflict between the private

9 See the 2009 June Meng Jianzhu, the public security organ in the social management innovation speech on the Symposium of "emancipating the mind, the courage to explore, to actively promote the innovation of social management of public security organs".
10 "Hamburg feel hot even alarm, citizens criticized a waste of police", "Guangzhou daily" load of article A14 of the August 21, 2012 edition.
11 See Gao Wenying, "research" system of police mediation, carrying the "Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION)" in 2008 fourth, pp. 127-134.
12 See Deng Liyan: "talk about public security mediation practice and legal malpractice", "Journal of Career Academy" carrying Guizhou police in 2012second, pp. 20-22. Sun Zhenlei: "the police administrative mediation of non-police power attribute and system perfection", load of Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION) "in 2009 second, pp. 96-101. Yuan Yong: "the existence of the police public security mediation problems in China", contained "Journal of Hubei University of Police2007 fifth period, pp. 33-37. Zhao Jiewei, Zhang Xiantao: "the problems and Countermeasures of" existing in the police administrative mediation system in our country, carrying the "Journal of Railway Police College 2009 third, pp. 80-83.
13 See Gao Wenying, "research" system of police mediation, carrying the "Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION)" in 2008 fourth, pp. 127-134.

right and the public power in the adjudicatory procedure. But in the police mediation program which is non-adjudicatory, the public power helps the private right to weight the advantages and disadvantages. It is not suitable on premise for regulating the police mediation power as the adjudicatory procedure. The police mediation power should not limited by procedures as investigation and trial, that is determined by its attributes and suitable objects. Otherwise its flexible and economic value will be damaged. It means denying the value and meaning of the police mediation power to break the tacit agreement between the expansion of the public power and the demand of the private right.

The abuse of police mediation power is a realistic and abhorrent phenomenon, it caused by its inherent tension which created by the policy and system, rather than the faultiness and indefiniteness of system. But the police mediation should consider its purpose of serving for the proper order and freedom. At the same time, the mediations of security cases and criminal cases must base on the fact, and the collection of evidence is always important. In other civil disputes, the mediation should focus of resolving the knot to prevent dangers or solve cases with a stable process of law. From the investigation in impact factors on the operation of the police mediation power, it can be a more effective solution to improve the police's political accomplishment, legal accomplishment and the level of enforcement.[14]

TENSION IN THE POWER PROPERTY OF THE POLICE MEDIATION POWER

There used to be conflicting views about that if the police mediation was a competence of police. Skeptics believe that the police do not have the force and execution of the police power's nature, and it is an executive neighboring right which is quasi-judicial and non-police, in spite of its positive effect on the administration. [15]While opponents argued that the police have the force and execution of the police power's nature.[16] Both of the conflicting views recognize its positive effect on the administration, and it proves that the police power is expanding into the field of private right. These two superficially opposite views are the same in essence, as the same path they recognize the power property of the police power. From the existing research level, there are two main propositions of police power, one is the power property of the police power which includes the debate of the executive power and the judicial power, and another is the power disposition of the police power which includes the conflict between the public power and the private right.

For the first proposition, the power property of the police power usually recognized by contrasting the police power with the respective characteristics of the power property of executive power and judicial power. But this logic made the mistake of putting the cart before the horse. First of all, the definition of the power property of executive power and judicial power comes from the theory of separation of power. But the separation of power has never been completely implemented even in its birthplaces as Britain and France. Especially in modern society, the executive power has a wide range of legislative and executive power in law, and the judicial power becomes more positive with emphasizing the execution as well. [17]Thus, the separation of power is an assumption for emphasizing the practical pursuit of the value goal of the power balance. We can just classify the various powers by theoretical analysis and empirical understanding no matter the power is really entirely separated into three. So it is obviously unreasonable to analysis the properties of power from an assumption instead of the practical operation of power. Second, the properties of power should be summarized from the status and result of the power's operation. And the operation and existence of power is determined by the demand of the state, society and people. The feature of right guarantee comes from the demand of fairness, and the feature of execution comes from the demand of efficiency. Therefore, we should find the properties and characteristics of power from demand, and the competence of power reflects the demand, that is, we should find the properties of power from the competence, rather than the kind of property decides the kind of competence.

14 The police policy and law quality of their own, the level of law enforcement ability is an important factor in determining the influence, even the police mediation rights practice operation. According to statistics, 16% of the police think of affray, gang fighting behavior can mediate; 15% of the police think to do not belong to the scope of the cases of public security mediation, the parties will only mediation, can mediate; 21% of the police believe that as long as the parties request mediation can mediation; 28% of the police think that caused by civil disputes of public security the case shall be mediation. This reflects the understanding to the police mediation of public order cases the scope of application of fuzzy. 60% the police think the mediation procedure is not important, there is no timely investigation and evidence collection issue; 27% the police believe that the mediation can be briefly investigation program.See Wang Dawei, "Europe and the United States police science principle", Chinese People's Public Security University press, 2006 edition, page 203rd.Wang Yong: "the police service theory", Chinese People's Public Security University press, 2001 edition, p126.

15 See Sun Zhenlei: "the police administrative mediation of non-police power attribute and to perfect the system of" carrier ", Journal of Chinese People's Public Security University (SOCIAL SCIENCE EDITION)" in 2009 second, pp. 96-101.

16 See Jia Jianping, "of" police power of public security administrative mediation right attribute, load the "Journal of Shanghai Police Academy 2009 Fourth, pp. 89-91.

17 See Wang Mingyang: "administrative law", China University of Political Science and Law press, 1987 edition, page 98-100.

Specific to the police power, we must first clarify the relationship between the police and policing. "The police refer to a specific social institution, and the police affair is a series of processes with specific social function. Police cannot always be found in every society, the police organization and police officers have a variety of different forms. However, policing in any society are needed which is made a number of different organizations and using different procedures to implement. "The basic concept of the police affair is attempting to ensure the safety by the monitoring and punishment to the danger." The police affair means to ensure the safety of a particular social order or the general social order through a series of police actions, and it includes two aspects." The police affair is a specific aspect of social control which exclude the punishment, for example, the primary police activity is to create a fully compliant environment (such as socialization, is to ensure the stability of the family and religion by motivation or other forms of intrinsic moral control.) ""The second feature of the process of police affair is that setting up a monitoring system for the discovery of the misconduct of the person, punishing for their threat immediately, or imparting some knowledge of the punitive program, or using both." [18]It is an intuitive commonplace that the police are an organization for kinds of routine tasks, from traffic control to control terrorism. People come to realize a common feature of policing that they are involved in something which should not happen but better to be so solved at once, rather than the social functions like crime control, social services, order maintenance and political oppression. In other words, the police affair usually occurs in emergency, such as the appearance of potential social conflicts. The police usually maintain peace by all means without demanding the force of law. For the police affair, it is better to defuse the crisis with skillful strategy rather than the force. Policing is a social control based on the interests, and the police are one of the tools of social control. The reasonable requirements of the police affair decide the legitimacy and capable property of the police power. So it ignores its decisive effect in practice to study the police power on a theoretical premise. Some scholars put forward the property of "dual aspect" [19]from the viewpoint of competence. The police mediation of power, which appears after defeating other police mechanisms, is among the national policy, the habits of public, the specific public service and the demand of authority guarantee. It is the requirement and service of order and freedom. Thus the police mediation power obtains the legitimacy and develops the capable property of the police power.

For the second proposition, the conflict between the power and freedom is the theoretical premise, and the separation and limit of power is the basic path to solve the problem. At the outset of "Restrictions and Separation of Power: Police Power in Criminal Justice", which is frequently quoted, Professor Chen Xingliang said: "The police function is necessary for any society as an important part of the state function." However, the practical operating state of police power symbolizes the development level of the social ruling-by-law culture of the society in a certain degree. Because the civil rights shrink with the expansion of the police power and it is eradicated by the abuse of the police power. For preventing the abuse of police power, we should separate the power, limit the power with procedure, and make some functions non-police. The state power is limited by the public rights in a society which the political state is separated with the civil society. Instead of the unilateral restriction, it becomes an interactive relationship between the state and citizens. Based on the above analysis, I think the police power is also going to be shrunk and limited.[20]

As in the discussion of the first proposition, we should analyze the relationship between power and freedom from the operation in practice. And the theoretical assumption is just an ideal model for pursuing the value target which should be modified through practice to enhance its suitability. According to the experience of the "Police State" and the bourgeois revolution in Europe, the police power is on the boundary of power and freedom. The freedom shrinks when the police power expands and expands when it shrinks. The police power in modern society, which was a typical and general state sovereignty, has evolved into a specialized social control mechanism for the purpose of management and service. Different from Europe, modernization and earlier modernization, industrialization and IT evolve together in China, so do the police power and the civil rights. "Serving the people" has always been the basic purpose of the police power even when it was a tool of the dictatorship. Under the background of the innovation of society management and the construction of harmonious society, police in the lawful and democratic modern society pay more attention to the construction of the police power around the people. The police power establishes the legitimacy and completes the goal of social management by satisfying people's demand. In the traditional logic of the "police state", the power confronts and goes against the freedom. But in the modern logic of the "welfare state", the power and the freedom intermingle with cooperation, and the order which is no longer a value at the expense of the freedom, becomes a demand within the liberty. The existence of the police power is the demand of the civil right. The police mediation power intervenes in the field of private right, echoing the demand of people with its flexibility, extensive, economic and authoritative features. Under on a voluntary and lawful basis, the expansion of the police power brings greater promotion than threat to the

18 See (English) Robert Reina: "police and politics", intellectual property press, 2008 edition, pp1, 4, 7.
19 See Liu Fangquan: "both sides" one: study the relation between public security administrative powers and the right of investigation, load "legal forum" in 2008fourth, pp. 82-89.
20 See Chen Xingliang, "limits the power and Decentralization: the police power" in criminal justice, load "legal science" in 2002 first, pp. 52-68.

civil liberties. Meanwhile, the evolved modern police power force on the serious violent crimes, organized crime, drug crimes and crimes which seriously damage the economic order and the personal and property safety of the people, and it emphasizes the priority of prevention and mediation in the boarder social disputes. [21]According to the researchers, the police mediation power is a typical performance of this evolution, as a soft power. [22]Different from the hard power which realize the value of goals by force and temptation, the soft power depends on the recognition and trust. And the intervention to the field of private right reflects the characteristics of soft power

Tension in the power property of the police mediation power manifests as recognition of the police power from the achievement of the value goals instead of the theoretical assumptions. And the recognition of the capable property of the police power evolved with the discussion of the tension in the power property of the police mediation power.

The police mediation power is a content-rich thesis filled with tension. On the one hand, it promotes the investigation and improvement of the system. On the other hand, it provides a practical path for the study of issues such as the properties of the police power and the disposition of the police power. In the broader policy context, it becomes a favorable perspective of the trend of police power by studying the transformation of the tension of police mediation power.

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