JOURNAL OF CRIMINALISTICS AND LAW

ŽURNAL ZA KRIMINALISTIKU I PRAVO

VOLUME 24 • 2019 • ISSN 2620-0406

NUMBER 2

UNIVERSITY OF CRIMINAL INVESTIGATION AND POLICE STUDIES

KRIMINALISTIČKO-POLICIJSKI UNIVERZITET

UDC 343.98

ISSN (Štampano izd.) 0354-8872
ISSN (Online) 2620-0406

UNIVERSITY OF CRIMINAL INVESTIGATION AND POLICE STUDIES, BELGRADE – THE REPUBLIC OF SERBIA
KRIMINALISTIČKO-POLICIJSKI UNIVERZITET, BEOGRAD – REPUBLIKA SRBIJA

NBP

JOURNAL OF CRIMINALISTICS AND LAW

ŽURNAL ZA KRIMINALISTIKU I PRAVO

Belgrade, 2019
Beograd, 2019

PUBLISHER
University of Criminal Investigation and Police Studies, Cara Dušana 196, 11080 Belgrade, Serbia

TABLE OF CONTENTS

7 **J. Jay Dawes, Robert G. Lockie, Filip Kukic, Aleksandar Cvorovic, Charles Kornhauser, Ryan Holmes, Robin M. Orr**
ACCURACY OF SELF-REPORTED HEIGHT, BODY MASS AND DERIVED BODY MASS INDEX IN A GROUP OF UNITED STATES LAW ENFORCEMENT OFFICERS

17 **Radomir G. Zekavica**
THE RULE OF LAW IN THE FUNCTION OF HUMAN DIGNITY

29 **Valentina Đ. Baić, Zvonimir M. Ivanović, Milan V. Oljača**
EXPLOITATION OF MINORS FOR PORNOGRAPHIC PURPOSES – THE SOCIODEMOGRAPHIC AND CRIMINAL PROFILE OF THE PERPETRATORS

45 **Saša M. Marković**
MEASURES FOR PREVENTION OF DOMESTIC VIOLENCE AND FOR PROTECTION OF VICTIMS IN SERBIA'S LEGAL SYSTEM WITH SPECIAL REFERENCE TO EMERGENCY MEASURES

65 **Nedeljko Cvetković, Danilo Vujović**
CAUSE AND EFFECT RELATION BETWEEN THE CURRENT MIGRATIONS AND TERRORISM IN WESTERN EUROPE.

79 **Žana S. Vrućinić**
THE DIFFERENCE IN CRIMINAL THINKING STYLES AND THE DEPTH OF INVOLVEMENT IN CRIMINAL LIFESTYLES WITH REGARD TO THE AGE, RECIDIVISM AND VIOLENCE OF A CRIMINAL OFFENC.

97 **Snežana Knežević, Aleksandra Mitrović, Dragan Cvetković**
THE ROLE OF AUDITING PROFESSION IN DETECTING FRAUDS IN FINANCIAL STATEMENTS

113 **Dušan Đ. Alimpić**
POLICE REORGANIZATION

IN MEMORIAM – ZORAN KESIĆ, PHD

Radomir G. Zekavica

University of Criminal Investigation and Police Studies, Belgrade

Zoran Kesić was born in Ključ (Bosnia and Herzegovina). He enrolled at the Police High School in Sremska Kamenica in 1993 and graduated from it in 1997 as the best student of XXVI class (with the average mark of 5.00). For the success he achieved he was awarded the "Vuk Karadžić Diploma". He enrolled at the Police Academy in Belgrade in 1997 and graduated from it on time as the second best student of the V class (with the average mark of 9.44). He continued his post graduate education at the master's programme of the Police Academy which he successfully completed in 2008 with the average mark of 9.88. After he passed all the exams, Zoran defended successfully his master's thesis titled The place and role of non-government sector in crime control – legal and criminological aspects, by which he was granted the academic title of Master in Criminal-Investigation and Security Sciences. He confirmed his scientific orientation and focus on the criminal-investigation scientific field by applying for doctoral dissertation at the Faculty of Law at the University of Belgrade under the title Criminological aspects of using excessive force and misuse of police powers. The said dissertations was defended with honours in 2016 in front of the following committee: Professor Zoran Stojanović, PhD (the President), Professor Djordje Ignjatović, PhD (the Supervisor), Professor Goražd Meško, Phd, Professor Milan Škulić, PhD and Professor Biljana Simeunović-Patić (the Members).

Zoran was building his professional career first of all at the Police Academy,

where he started to work as a Teaching Assistant in 2004/2005 for the course in Criminology. In 2008 by the decision of the Teaching-Scientific Council of the Academy of Criminalistic and Police Studies, he was elected a lecturer in Criminology and re-elected in 2013. After he successfully defended his doctoral dissertation, in 2017 the Teaching-Scientific Council of the Academy of Criminalistic and Police Studies elected Zoran an Assistant Professor of Criminology. He remained in this position until he died on August 27, 2019.

Zoran was the author of over 50 scientific and professional papers and four books – Private Sector in Crime Control (2009), Police Corruption – Criminological Perspective (2017), Police Violence – Criminological Perspective of Unlawful Use of Means of Coercion (2019) and Police Subculture (2019). In his 42 years of life, Zoran managed to create an impressive scientific body of work which usually requires a much longer life and work. This clearly speaks about his commitment to science, his work energy and desire for scientific work in the field of criminology as a science, particularly the criminological analysis of police profession. The immensity of dedication and energy is particularly supported by the fact that the last three years of Zoran's life were burdened with hard struggle with a serious disease. This struggle with the disease did not interrupt Zoran to be a productive writer and to leave behind the works which represent the highest scientific achievements in the field of criminological sciences. In his works Zoran integrated huge theoretical knowledge and comprehensive empirical research and thus offered to the public the works of considerable scientific importance and value. The significance and value of these works reflect also in the fact that for the first time in Serbia the criminological science was dealing with empirical research of sensitive police topics, such as police corruption and unlawful police conduct when using the means of coercion. In that way Zoran offered pioneering works in the field of criminological research of deviancy of police profession in Serbia, becoming thus a Serbian Maurice Punch. The pioneering character of Zoran's work reflects particularly in his last book – Police Subculture. The phenomenon of police subculture, which is rather well-known in international scientific public, has been almost completely unexplored in Serbia. The scientific and professional public therefore meet with this phenomenon for the first time in this monograph, and the book represents a "significant innovation in Serbian scientific and expert literature which deals with police organization, opening one of so far unjustly neglected and very significant fields of research in the field of security and organizational sciences" (Z. Kešetović, an excerpt from the review). Both Zoran's books and his scientific and professional articles reflect a devoted, committed and educated researcher and scientist, who dedicated his entire work to the promotion of quality of police profession in Serbia.

We shall not remember Zoran by his scientific works only. Zoran will be remembered primarily as a great man. As one of those rare people who manage to kindle the best in other people and do that so easily. He was the man of pure and big heart, vast life force and bright spirit. To all of us who were lucky to know him Zoran gave his example that life is the value to be fought for, but also the value to be enjoyed in. This, of course, is not easy under the circumstances when a man faces the disease that torments him, breaks him and plagues him for years.

Even in these circumstances Zoran kept his bright spirit, his faith in life and despite temptations he was always willing and prepared to look at the future with fervour and hope. Thanks to that he easily managed to give his maximum in all arenas of life – as a father, as a husband, as a son, as a brother, as a co-worker, as a friend. It was not easy for Zoran to give all of him in all these fields, without any effort and with pure heart.

Zoran's death is an immeasurable loss. First of all for his family and friends, but also for all the people who knew him. This is a huge loss for scientific thought as well, for the University of Criminal Investigation and Police Studies that lost a distinguished lecturer and researcher. This is also a huge loss for the Ministry of Interior, which in Zoran's research and scientific works had a benevolent and competent researcher of the police profession in Serbia. On the model of international science and practice, Zoran wished his work to give the top qualitative contribution to the improvement of the police profession in Serbia.

If there are any words of consolation for Zoran's death, then these are the words that he found his peace in another world where good and pure souls gather and where Zoran took his place equal to the angels. If there is something that offers comfort for the loss of Zoran, it is the belief that he is in a better place.

What is left to us is to keep him in our memories, to remain inspired by his spirit and energy, to remind us of that when we have hard times or worry about some mostly irrelevant things. They say that a man dies twice, one time when you stop breathing and then the second time in the memories of people, when people forget him. This will not happen to Zoran. Zoran has not stopped and will not stop living, because such people do not die.

ORIGINAL SCIENTIFIC PAPERS

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO

NBP 2019, 24(2): 7–15

Submitted: 2019-04-03
Published: 2019-07-29

UDK: 351.74:572.087 (73)
doi:10.5937/nabepo24-21191

ACCURACY OF SELF-REPORTED HEIGHT, BODY MASS AND DERIVED BODY MASS INDEX IN A GROUP OF UNITED STATES LAW ENFORCEMENT OFFICERS

J. Jay Dawes[1]

School of Kinesiology, Applied Health and Recreation, Oklahoma State University, Stillwater, OK, USA

Robert G. Lockie

Department of Kinesiology, California State University, Fullerton, Fullerton, CA, USA

Filip Kukic

Aleksandar Cvorovic

Police Sports Education Center, Abu Dhabi Police, United Arab Emirates

Charles Kornhauser

Ryan Holmes

Colorado State Patrol Department Headquarters, Golden, CO, USA

Robin M. Orr

Tactical Research Unit, Bond University, Robina, Qld, Australia

Abstract: Height and body mass data is often self-reported by study participants. However, the accuracy of self-reported height and body mass data compared to these same measures collected by researchers is unknown. The purpose of this study was to compare the accuracy of self-reported height and body mass data to measured values within the US law enforcement population, and the impact these estimations have on the accuracy of BMI classifications. METHODS: Self-reported and measured height and body mass data for thirty-three (n = 33) male law enforcement officers (age: 40.48 ± 6.66 yrs; measured height: 180.42 ± 6.87 cm; measured body mass: 100.82 ± 19.86 kg) were utilized for this analysis. RESULTS: Paired samples t-tests revealed no significant differences in estimated and measured height (p=.830), body mass (p = .527) or BMI (p = .623). CONCLUSION: Self-reported height and body mass was accurate for calculating BMI within this population sample.
Keywords: anthropometrics; health assessment; police; obesity.

1 jay.dawes@okstate.edu

INTRODUCTION

The duties of a police officer vary dramatically in terms of physical demands (Davis, Easter, Carlock, Weiss, Longo, Smith, Dawes, & Schilling, 2016; Dawes, Lindsay, Bero, Elder, Kornhauser, & Holmes, 2017; Stommel & Schoenborn, 2009). As part of their normal job duties an officer may be expected to transition from relatively sedentary behavior, such as sitting in a vehicle or talking to civilians, to sudden bouts of maximal effort activity with little warning (Dawes, et al., 2017; Orr, Dawes, Pope, & Terry, 2017). For those officers that are overweight or obese this can create a significant strain on their musculoskeletal and cardiovascular system, thereby, increasing their risk of experiencing an injury, task failure or encountering a life-threating (i.e. cardiovascular incident) situation (Dawes, Kornhauser, Crespo, Elder, Lindsay, & Holmes, 2018; Dawes, Orr, Elder, & Rockwell, 2014; Després, 2012; Gu, Burchfiel, Fekedulegn, Sarkisian, Andrew, Ma, & Violanti, 2012; Holliday, Williams, Maciewicz, Muir, Zhang, & Doherty, 2011). For these reasons, assessing an officer's health risk should be one of the primary concerns for police agencies.

Body Mass Index (BMI) is a frequent method of assessing individual health status and for predicting morbidity and mortality risk (Pasco, Holloway, Dobbins, Kotowicz, Williams, & Brennan, 2014). BMI can be calculated by dividing body mass in kilograms (kg) by height in meters squared (m^2) (Stommel, & Schoenborn, 2009). Based on their BMI score an individual may be classified into one of six major categories: underweight (BMI < 18.5 kg/m^2), normal weight (18.5 < 25 kg/m^2), overweight (25 < 30 kg/m^2), low obesity (30 < 35 kg/m^2), medium obesity (35 < 40 kg/m^2), and extreme obesity (≥ 40 kg/m^2) (National Institutes of Health, 1998). Individuals with a BMI over 25 kg/m^2 are considered at greater risk for disease and certain medical complications, such as heart disease, hypertension, type 2 diabetes, gallstones, breathing problems, and some types of cancers (National Institutes of Health 1998). Although BMI has been criticized as being inaccurate for individuals with larger body frames and greater muscle mass (Charles, Burchfiel, Violanti, Fekedulegn, Slaven, Browne, Hartley, & Andrew, 2008; Stommel & Schoenborn, 2009), it does provide an easy and cost effective health risk assessment that can be used to broadly determine if more invasive measures of body composition are warranted (Stommel & Schoenborn, 2009).

Previous investigations have explored the validity of self-reported height, body mass, and BMI (Martin, Grier, Canham-Chervak, Anderson, Bushman, Degroot, & Jones, 2016; Nyholm, Gullberg, Merlo, Lundqvist-Persson, Råstam, & Lindblad, 2007; Wen, & Kowaleski-Jones, 2012). For instance, Nyholm et al. (2017) investigated self-reported height, body mass, and corresponding BMI compared to measured data for 1703 participants between the ages of 30-75 years from a community of individuals living in Sweden. Both sexes self-reported greater average height measurements (~0.3 cm among males; ~0.4 cm among females) when compared to measured values. Additionally, Nyholm et al. (2017) discovered that self-reported body mass differed on average by 1.6 kg less than the measured values among males, and 1.8 kg less than the measured values amongst females. Wen and Kowaleski-Jones (2012) also found that adult

subjects tended to over-report height and under-report body mass. These authors reported that factors such as sex, overweight and obesity classifications, age, and level of education might influence reporting accuracy. Similarly, Martin et al. (2016) investigated the accuracy of self-reported BMI among 1047 male and female soldiers. These researchers discovered that both sexes tended to overestimate height, which resulted in the underestimation of BMI. These data have implications in populations that utilize the self-reporting of height and body mass, and also have serious health considerations. One example of this is in law enforcement officers (LEOs).

Several research studies have used self-reported height and/or body mass data among law enforcement officers (LEOs) (Dawes et al., 2017; Lockie, Dawes, Kornhauser, & Holmes, 2019). This often occurs in law enforcement agencies (LEAs) due to a lack of time and/or equipment. An example of a situation where this would occur is during the hiring process, where certain agencies hold accelerated hiring opportunities, where individuals can complete several of the steps required in the hiring process. This allows for large numbers of individuals to be processed within a short time frame; however, the accurate measurement of height and body mass may be deprioritized. This could be problematic, as some positions in a LEA can have height and body mass as part of their hiring requirements, without any subsequent fitness testing (e.g. custody assistants) (Lockie et al., 2018; Los Angeles County Sheriffs, 2017). However, there is no current information regarding the accuracy of self-reported height, BM and corresponding BMI calculations in a LEO population.

Thus, the purpose of this study was to compare the accuracy of self-reported height and body mass data to measured values within a law enforcement population, as well as to compare BMI classification between these two conditions. The researchers hypothesized that the measurements obtained via self-reported methods in this population would be statistically different from those measured using a standard scale and stadiometer. In-line with previous research, it was hypothesized that height would be over-estimated and body mass underestimated. Further, it was hypothesized that significant differences in BMI classifications would be discovered within this population based on self-report compared to measured data.

METHODS

Experimental approach to the problem

Self-reported height and body mass data were collected from LEOs belonging to a US LEA prior to mandatory marksmanship training. Immediately after self-report data were collected, LEOs were informed of the study being conducted and were asked to sign an informed consent allowing the investigators to utilize their previously reported height and body mass data, as well as allowing the members of the training staff to measure their actual height and body mass using a stadiometer and electronic scale. This data were then provided to the primary investigator for analysis.

Subjects

Self-reported and measured height and body mass data for thirty-three (n = 33) male LEOs (age: 40.48 ± 6.66 yrs; BH: 180.42 ± 6.87 cm; BM: 100.82 ± 19.86 kg) were collected and utilized for this analysis. After providing self-reported data, officers were provided with an informed consent requesting to utilize this data along with measured height and body mass data to calculate the officers' corresponding BMI under each condition (i.e., self-report vs. measured height and body mass). The LEOs were not aware that this information may be used for analysis at the time they self-reported. None of the LEOs involved in the training declined the invitation to participate in this research study. Prior to collection of this data, approval to analyze this information was obtained from the University of Colorado, Colorado Springs Institutional Review Board (IRB 16-041) for human subjects.

Procedures

All self-reported and measured height and body mass measurements were collected indoors at the LEA's training facility. The protocols for collection of these measurements is detailed hereafter.

Self–reported age, body height and body mass: Age (years), height (in) and body mass (lbs) measurements for LEOs were self-reported on a standard data sheet provided to each of them by the training staff prior to training. All imperial measures such as inch (in) and pounds (lbs) were converted to metric values for analysis.

Measured height and body mass: Body height (BH) (cm) and body mass (BM) (kg) were measured shoeless, using a portable stadiometer (Seca®, California, USA) and a digital electronic scale (Health-O-Meter®, McCook, IL, USA).

BMI calculation and classification: BMI was calculated during analysis after converting the measurements of height and body mass into the appropriate units. BMI was derived using the equation BMI = body mass (kg) / [height (m)]^2 (Dawes et al, 2018; Nyholm et al., 2007). Once calculated, BMI was then used to group officers based on risk stratification (National Institute of Health, 1998) (Table I).

Table I: *Classification according to the National Institutes of Health, 1998*

Nutritional status	**BMI values**
Underweight	< 18.5 kg/m^2
Normal	18.5 – 24.9 kg/m^2
Overweight	25.0 – 29.9 kg/m^2
Obesity I	30.0 – 34.9 kg/m^2
Obesity II	35.0 – 39.9 kg/m^2
Obesity III – Extreme obesity	> 40.0 kg/m^2

STATISTICAL ANALYSIS

Collected data were entered into a computer file suitable for statistical analysis using the Statistics Package for Social Sciences (SPSS) (Version 25.0; IBM Corporation, New York, USA). A descriptive statistical analysis was conducted to determine the mean values and standard deviations for the total sample and on all collected data. Comparisons between self-reported and measured values for each of the variables were conducted using a series of paired samples t-tests with alpha levels set at 0.05 a priori.

RESULTS

The descriptive data and comparisons between estimated and measured anthropometrics for this sample are presented in Table II. The results of the paired samples t-tests revealed no significant differences in estimated and measured height, estimated and measured body mass or in BMI based on the estimated or measured values (Table III). Although statistically insignificant, differences did exist in some of the self-reported data. However, none of these errors resulted in any BMI category misclassifications. Further, when separately evaluating BMI data, it was found that 9% (3/33) of the officers in this study were at "Normal" body mass, 49% (16/33) were classified as "Overweight", 18% (6/33) were classified as "Obesity Class I ", 21% (7/33) were classified as "Obesity Class II", 3% (1/33) would be in the "Obesity Class III" category.

Table II: *Descriptive Data and Comparisons*

Variable	Self-Reported Mean ± SD (range)	Measured Mean ± SD (range)	Differences Mean ± SD (range)
Ht (cm)	180.49 ± 6.62 (165.10-195.58)	180.42 ± 6.87 (165.61-200.66)	0.08 ± 0.25 (-5.08-4.83)
BM (kg)	100.59 ± 19.54 (71.82-154.55)	100.82 ± 19.86 (71.09-156.27)	-0.23 ± 0.32 (-7.36-3.64)
Estimated BMI	30.69 ± 4.94 (23.30-42.02)	30.76 ± 4.88 (23.43-41.50)	-0.07 ± 0.86 (-2.06-2.15)

* Significant difference at $p \leq 0.05$

Table III: *Paired Samples T-Test*

			t	df	**p**
BM	-	Self-reported BM	0.639	32	0.527
HT	-	Self-reported HT	-0.217	32	0.830
BMI	-	Estimated BMI	0.497	32	0.623

* = Significance at the $p \leq .05$

DISCUSSION

The purpose of this investigation was to compare the accuracy of self-reported height and body mass data to measured values among a population of LEOs, and determine if correct BMI classifications could be determined using self-report data. The results of this study suggested that self-reported body height and body mass information in this - US based LEO population was accurate, and correct BMI classifications could be determined using this data. This is the first study to investigate the accuracy of self-reported anthropometric data in the US law enforcement population. Based on these findings the researchers rejected the hypothesis that self-reported height and body mass data would be significantly different from measured values and that differences in this data would lead to BMI misclassifications. The results from this study have important implications for strength and conditioning coaches and training staff that are responsible for developing health and wellness interventions for LEOs, and for researchers and other health professionals who, due to time constraints or accessibility, often must rely on self-reported height and body mass measures. This research supports that self-reported anthropometric data may be used as an easy and cost-effective tool for determining the height, body mass and, as such, BMI in this population.

Previous research indicates that information related to self-reported height tends to be over-reported (greater) among those in the general population (Bowring, Peeters, Freak-Poli, Lim, Gouillou, & Hellar, 2012; Nyholm et al., 2007; Wen, & Kowaleski-Jones, 2012; Martin et al., 2016). Among the sample of officers in this study it was observed that the mean self-reported height did not significantly differ from measured height. In fact, the average difference between estimated and actual height was only 0.07 ± 2.03 cm. It was also discovered that 14 of the officers overestimated height, 15 underestimated their height, and 4 were exact in their estimation. This may have been because officers only provided height estimates using whole numbers and may have simply rounded to the nearest ½ inch (1.27 cm). The precision of these estimations may have also been due to officers being familiar with these anthropometric measures due to workplace health intervention programs/requirements, and the constant need to provide these values (e.g. for sizing during equipment issue). Although the sample was drawn from one agency, this study provides some support to agencies that are reliant on their officers or candidates to self-report height during their employment or in the hiring process (Los Angeles County Sheriff's Department, 2017; Lockie et al., 2018).

Several studies have noted that self-reported body mass data tend to be under-reported (lower) within general populations (Bowring et al., 2012; Nyholm et al., 2007; Wen, & Kowaleski-Jones, 2012). In contrast, in this sample of LEOs the mean self-reported body mass did not significantly differ from measured body mass. Similar to Bowring et al. (2012), the differences in self-reported and measured body mass tended to be greater compared to height. However, this may be due to the propensity for body mass to fluctuate based on time of day, hydration and nutritional status when compared to height (which should be stable) (Buckler, 1978). Nonetheless, the officer's self-reported body mass

only differed -0.23 ± 2.03 kg on average from measured BM mass. It was discovered that 12 officers underreported their body mass, 13 over reported their body mass and 6 officers were within 0.45 kg of actual body mass. However, none of these estimations resulted in a misclassification of BMI for the officers in this study. On this basis, when there are no consequences associated with the level of body mass, estimations of body mass can be considered as being relatively accurate within this population and may not impact estimated BMI from self-reported data.

Self-reported height and body mass data have been used in previous research to estimate BMI and overall health status (Bowring et al., 2012, Nyholm et al., 2007; Wen, & Kowaleski-Jones, 2012; Martin et al., 2016). The misreporting or misrepresentation of this self-reported data can lead to inaccurate estimations and misclassifications of an individual's health risk. In this study 97% of the officers were classified correctly according to the National Institute of Health's BMI classification scale using self-reported data. The only officer misclassified underreported their BM (by 1.73 kg), and height (by 5.08 cm), which led to a misclassification of their health status as "Obesity Class II" when the accurate classification was actually "Obesity Class III". Thus, it appears that within this population that self-reported height and body mass can be used to accurately determine epidemiological information (i.e., general health risk or status).

A notable limitation of this study was the lack of female participants. As such, potential sex-based differences in self-reporting these measures may exist. However, whilst Wen and Kowaleski-Jones (2012) suggest that sex may influence self-report accuracy in these measures, potential sex differences may not be significantly different between populations with both males and females found to slightly under report body mass and over report height to a similar extent (Nyholm et al., 2017). Nonetheless, future research on self-reported height and body mass should incorporate female subjects. Additionally, the median age in this study was 40.48 ± 6.66 yrs. Future research, should investigate whether differences exist based on age range. This study also included a small sample of LEOs from one agency. The data shown may not be representative of all LEOs.

CONCLUSION

The results of this study suggest that male LEOs accurately self-reported their height and body mass relatively to their measured data. Additionally, when using a broad BMI classification scale, self-reported height and body mass can be used to accurately determine BMI classification group. When the ability to objectively measure height and body mass is not viable for law enforcement agency staff, self-reported data can be used as a surrogate. However, if any of the data indicates a health risk (i.e. BMI > 25), or if height and body mass directly relates to occupational tasks, it is recommended that staff use more accurate methods to measure height, body mass, and BMI.

REFERENCES

1. Alghamdi, A.S., Yahya, M.A., Alshammari, G.M., & Osman, M.A. (2017). Prevalence of overweight and obesity among police officers in Riyadh City and risk factors for cardiovascular disease. *Lipids in Health and Disease*, 16(1), doi:10.1186/s12944-017-0467-9
2. Bowring, A.L., Peeters, A., Freak-Poli, R., Lim, M.S., Gouillou, M., & Hellard, M. (2012). Measuring the accuracy of self-reported height and weight in a community-based sample of young people. *BMC Medical Research Methodology*, 12(1), doi:10.1186/1471-2288-12-175
3. Buckler, J.M. (1978). Variations in height throughout the day. *Archives of Disease in Childhood*, 53(9), 762-762. doi:10.1136/adc.53.9.762
4. Charles, L.E., Burchfiel, C.M., Violanti, J.M., Fekedulegn, D., Slaven, J.E., Browne, R.W., Hartley, T.A., & Andrew, M.E. (2012). Adiposity Measures and Oxidative Stress Among Police Officers. *Obesity*, 16(11), 2489-2497. doi:10.1038/oby.2008.395
5. Davis, M.R., Easter, R.L., Carlock, J.M., Weiss, L.W., Longo, E.A., Smith, L.M., Dawes, J.J., & Schilling, B.K. (2016). Self-Reported Physical Tasks and Exercise Training in Special Weapons and Tactics (SWAT) Teams. *Journal of Strength and Conditioning Research*, 30(11), 3242-3248. doi:10.1519/jsc.0000000000001411
6. Dawes, J.J., Kornhauser, C.L., Crespo, D. Elder, C.L., Lindsay, K.G., & Holmes, R.J. (2018). Does body mass index influence the physiological and perceptual demands associated with defensive tactics training in state patrol officers? *International Journal of Exercise Science*. (11), 319- 330).
7. Dawes, J.J., Lindsay, K., Bero, J., Elder, C., Kornhauser, C., & Holmes, R. (2017). Physical Fitness Characteristics of High vs. Low Performers on an Occupationally Specific Physical Agility Test for Patrol Officers. *Journal of Strength and Conditioning Research*, 31(10), 2808-2815. doi:10.1519/jsc.0000000000002082
8. Dawes, J.J., Orr, R.M., Elder, C.L., & Rockwell, C. (2014). Association between body fatness and measures of muscular endurance among part-time SWAT officers. *Journal of Australian Strength & Conditioning*, 22(4), 33-37.
9. Dawes, J.J., Orr, R.M., Flores, R.R., Lockie, R.G., Kornhauser, C., & Holmes, R. (2017). A physical fitness profile of state highway patrol officers by gender and age. *Annals of Occupational and Environmental Medicine*, 29(1). doi:10.1186/s40557-017-0173-0
10. Després, J. (2012). Body fat distribution and risk of cardiovascular disease: an update. *Circulation*, 126(10), 1301-1313. doi:10.1161/circulationaha.111.067264
11. Gu, J.K., Charles, L.E., Burchfiel, C.M., Fekedulegn, D., Sarkisian, K., Andrew, M.E., Ma, C., & Violanti, J.M. (2012). Long Work Hours and Adiposity Among Police Officers in a US Northeast City. *Journal of Occupational and Environmental Medicine*, 54(11), 1374-1381. doi:10.1097/jom.0b013e31825f2bea
12. Holliday, K.L., McWilliams, D.F., Maciewicz, R.A., Muir, K.R., Zhang, W., & Doherty, M. (2011). Lifetime body mass index, other anthropometric measures of

obesity and risk of knee or hip osteoarthritis in the GOAL case-control study. *Osteoarthritis and Cartilage*, 19(1), 37-43. doi:10.1016/j.joca.2010.10.014

13. Lockie, R.G., Orr, R.M., Stierli, M., Cesario, K.A., Moreno, M.R., Bloodgood, A.M., Dulla, J., & Dawes, J.J. (2018). The Physical Characteristics by Sex and Age for Custody Assistants from a Law Enforcement Agency. *Journal of Strength and Conditioning Research*, 1. doi:10.1519/jsc.0000000000002452
14. Lockie, R.G., Dawes, J.J., Kornhauser, C.L., & Holmes, R.J. (2019). Cross-Sectional and Retrospective Cohort Analysis of the Effects of Age on Flexibility, Strength Endurance, Lower-Body Power, and Aerobic Fitness in Law Enforcement Officers. *Journal of Strength and Conditioning Research*, 33(2), 451-458. doi:10.1519/jsc.0000000000001937
15. Martin, R.C., Grier, T., Canham-Chervak, M., Anderson, M.K., Bushman, T.T., DeGroot, D.W., & Jones, B.H. (2016). Validity of Self-Reported Physical Fitness and Body Mass Index in a Military Population. *Journal of Strength and Conditioning Research*, 30(1), 26-32. doi:10.1519/jsc.0000000000001026
16. National Institutes of Health (1998). *Clinical guidelines on the identification, evaluation and treatment of overweight and obesity in adults*. In: U.S. Department of Health and Human Services, Public Health Service.
17. Nyholm, M., Gullberg, B., Merlo, J., Lundqvist-Persson, C., Råstam, L., & Lindblad, U. (2007). The Validity of Obesity Based on Self-reported Weight and Height: Implications for Population Studies*. *Obesity*, 15(1), 197-197. doi:10.1038/oby.2007.536
18. Orr, R., Dawes, J., Pope, R., & Terry, J. (2017). It is my job, not my age: Fitness loss between police cadets and officers not explained by age. *Journal of Science and Medicine in Sport*, 20, 58. doi:10.1016/j.jsams.2017.09.311
19. Pasco, J.A., Holloway, K.L., Dobbins, A.G., Kotowicz, M.A., Williams, L.J., & Brennan, S.L. (2014). Body mass index and measures of body fat for defining obesity and underweight: a cross-sectional, population-based study. *BMC Obesity*, 1(1). doi:10.1186/2052-9538-1-9
20. Stommel, M., & Schoenborn, C.A. (2009). Accuracy and usefulness of BMI measures based on self-reported weight and height: findings from the NHANES and NHIS 2001-2006. *BMC Public Health*, 9(1). doi:10.1186/1471-2458-9-421
21. Wen, M., & Kowaleski-Jones, L. (2012). Sex and ethinic differnces in validity of self-reported adult height, weight, and body mass index. *Ethnicity & Disease,* 22(1), 72-78.
22. Los Angeles County Sheriff's Department (2017, July 20, 2017). *What are the selection requirements for Custody Assistant (CA)?*, from http://lasdcareers.org/sp_faq/selection-requirements-custody-assistant-ca/

NBP 2019, 24(2): 17–28

Submitted: 2019-03-27
Published: 2019-07-17

UDK: 342.7
172.13
340.131
doi:10.5937/nabepo24-21119

THE RULE OF LAW IN THE FUNCTION OF HUMAN DIGNITY[1]

Radomir G. Zekavica[2]

University of Criminal Investigation and Police Studies, Belgrade

Abstract: Human dignity is the universal value of human beings. They have this value because they are potentially mindful beings. This does not mean that every man is mindful, but that every man can be mindful, and therefore dignified. It makes possible for people to understand and accept themselves and others as a purpose. Therefore, the cognitive power of people and the ability to impose on themselves the moral principles of conduct themselves are the basic prerequisite for dignity. People can be their own legislators, which means free beings. An important step in achieving human dignity is human will. Human actions must be in line with the mental knowledge of *a priori* principles of action, the essence of which is reflected in the ethics of duty, towards oneself and others. Hence, dignity has two very important aspects. The first concerns the attitude towards oneself, and the other relates to others. As a legal requirement, human dignity is the duty of the state and individuals to refrain from all acts that violate human dignity. By virtue of the rule of law, the state fulfils its duty of protection of dignity as a system of laws containing prohibitions of violation of human dignity. However, the fundamental role of the rule of law in the protection of human dignity should not be seen solely in the set of a ban on such conduct. The rule of law, understood as the ideal of the rule of mindful laws, can provide much more through the standardization of social relations that affirm the conditions for survival of the individual as a free and dignified being and create conditions for the free, creative and responsible life of citizens. This implies the affirmation of not only legal-political, but also socio-economic preconditions for the dignified life of people.

Keywords: human dignity, the rule of law, mindfulness, Kant, reason, impulses.

1 This paper resulted from research on the project *Development of institutional capacities, standards and procedures for fighting organized crime and terrorism in the context of international integration* (no. 179045), financed by the Ministry of education, science and technological progress of the Republic of Serbia.
2 radomir.zekavica@kpu.edu.rs

INTRODUCTION

Dignity is one of the fundamental terms in legal and philosophical theory. At the same time, it is one of those terms about which it is not easy to end debate and give the final word. As it is usual with terms which indicate values, it is a very challenging task to determine their precise meaning. The thing that makes it so challenging is the implied agreement on the content of the value at hand. It is not easy to achieve, because values cannot be subject to exact scientific studies, but are rather open to interpretation by different social subjects, who inevitably include their own moral values into their interpretations. In addition to this, it is not an easy task because the meaning of the term dignity has changed throughout history, and is still changing. Generally speaking, the meaning of dignity has evolved from the view common in the old and middle ages when it was seen as an attribute of a certain social class (nobility, priests), to the modern age, when it is accepted as a universal value of a human being (see: Franeta, 2015). Even today, when it is clear that dignity should not be related to social status, its meaning is still not completely clear and precise. On the contrary, the meaning is getting wider, so that now, in addition to human dignity (Mitrović, 2016; Marjanović, 2013)[3]. we speak about national dignity, dignity of science, art and culture, dignity of animals, and even plants. (Rosen, 2015:23)[4]. Because of this, whenever dignity is discussed, we must first give an answer to the question of what is understood under dignity and what kind of dignity we are speaking about. This must be done especially when we want to relate the term to another one, which may also be multifaceted, such as the notion of the rule of law.

From the title of this paper alone, we can easily notice that it primarily focuses on human dignity. We have thus narrowed down the meaning to the man as someone who has or may have dignity. However, the main goal of this paper is to determine in which way the rule of law can serve human dignity. This includes not only our choice of the core meaning of human dignity and our attempt at defining it as precisely as possible, but also determining the meaning of the rule of law, so that we could analyze in what way the rule of law can serve human dignity.

3 Which also has its different subdivisions, such as natural, social, legal or religious and ideological varieties of human dignity.
4 The Ig Nobel Peace Prize 2018 was awarded to the Swiss federal ethic committee for non-human biotechnology and the citizens of Switzerland for adopting the legal principle according to which plants have dignity.

THE BASIC MEANING OF HUMAN DIGNITY

What is human dignity? Simply put, it is a value possessed by a human being. While this obviously does not give an appropriate response to the question at hand, it does put dignity in the category of values connected to humans. The key question is: what does this value imply? Why do humans, and do all humans necessarily have this value, and can it be lost and in which way? Also, one of the many questions arising from considerations about dignity is whether dignity

is a derived value, or a value *per se*. In the former case, dignity is a term that denotes what we get in return for respecting some other values – life, freedom, property, etc. In the latter case, dignity is a value in its own right, with a specific meaning and content, so that - in social relations and life in general - dignity can be upheld or denied through a simple violation of the value and its meaning.

In an attempt to determine the substance of human dignity, we must start from the holder of this value – a human. A basic anthropological characteristic of human beings is that they are not only beings of impulse, but also beings of reason. Our impulses make us similar, and our reason distinguishes us from animals. Most human impulses (impulse for eating, drinking, sexuality, etc.) serve to preserve a human and his existence. They serve human self-preservation, so, in that sense, they have a positive and creative potential for humans. In addition to these impulses, humans are also guided by impulses that have a destructive potential both for themselves and for others. This ambivalent nature of man is best represented by Freud's division into two basic types of impulses - *eros* and *thanatos,* the first having a positive-creationist nature – the impulse of life (these are impulses of self-preservation and reproduction – sexual impulse/libido), and the other one being of a destructive nature – the impulse of death (manifests itself through aggression towards oneself or others, the destruction of everything created) (Freud, 1994). This, potentially destructive, nature of man is clearly highlighted by Erich Fromm who wrote that human history is a record of incredible destructivity and cruelty, and that human aggression, it seems, far surpasses the aggression of the humans' animal ancestors; a human, contrary to most animals, is a true killer (Fromm, 1989:11).

Fortunately, in addition to the impulsive (irrational) side, humans also have a reasonable (rational) side of their personality. This is also the human personality trait that separates humans from animals most clearly, because it gives them the ability to consciously grasp their own existence and role in different forms of social communities and, thereby, in different forms of social relations. The most important role of human reason is to give people rationality. The term 'reason' was, throughout the history of philosophy, determined in different ways and was often mixed with the term 'rationality'. Ancient Greeks made no difference between understanding and reason, but later philosophy often saw understanding as a lower step of cognition as compared to reason. According to Kant, understanding and reason are different levels of cognitive ability and together with experience account for the overall cognitive potential of humans. "All of our (human) knowledge," thinks Kant "begins with the senses, proceeds then to understanding, and ends with reason." He claims that there is nothing in us above reason that could process the material of our observations and bring it under the supreme unity of our thoughts. (Kant, 1976:222).

This short review of some aspects of human nature serves to help us understand the basic source of human dignity. That source has to be found in the very nature of man and the attributes of humans that allow every human to enjoy dignity. These attributes are definitely not impulses, especially not those which have destructive potential. Impulses that come from the sphere of irrational cannot help humans or animals recogni-

ze values. The only attribute of human nature which makes every man capable of recognizing the meaning, content and importance of a value is reason, i.e. the human ability of being rational. Because of this Kant is completely right when he says that only rational beings are capable of the highest level of knowledge, which presents itself in the recognition of a priori principles of action (faculty of the practical reason). Everything in nature, according to Kant, acts according to laws, but only rational beings are able to act *according to the representations of laws*, or according to principles, and to have *will*. The idea of the objective principle (the objective law of reason), which governs will, is called an order, and the formulation of orders is called the *imperative* (Kant, 2016:46-47). For the topic of human dignity, Kant's formulation of two categorical imperatives as orders which require action which is objectively necessary in itself, regardless of any other purpose, is crucial. The first – act always so that the maxim of your will may always simultaneously be considered as a universal principle of lawmaking; the second – act in such a way that you treat humanity, whether in your own person or in any other person, never merely as a means to an end, but always as the end (Kant, 1979:53; 2016:74).

Recognition of these principles is the act of reason, the result of the rationality of humans, and when rational beings set these behavior principles for themselves, they act as autonomous beings in the realm of purposes. In the realm of purposes, Kant believes, everything has either some price or some dignity. The things that have a price are such that we can replace them with something else as their equivalents; conversely, things that are higher than any price, that do not allow for any equivalents, have dignity (Kant, 2016:82). It is exactly this ability of rational beings to be autonomous, i.e. to act as their own lawmakers - guided by a priori moral principles of the practical reason - that makes human beings dignified. As such, it is above any price because it is an end in itself. Hence, the order from the second categorical imperative clearly relates to the duty to treat ourselves but also every other rational being as an end and not as means. Such a man, according to Kant, is not just his own lawmaker whose will is determined by the a priori principles of the mind (which at the same time makes him a free being), but he is also a man capable of having morality and dignity – "*morality and a man if he is capable of having morality, are the only things capable of having dignity*" (Ibid: 83).

Bearing in mind these words of Kant, we will try to answer the questions from the beginning of this chapter as precisely as possible, in order to move on to the analysis of the ways in which the rule of law can serve the preservation of human dignity. First of all, it is clear that human beings enjoy dignity because they are rational beings. This of course does not mean that every man is rational, but that every man can be rational and thereby dignified. It is therefore the capacity, i.e. the potential for rationality that makes human beings dignified. Rationality allows humans to comprehend and accept themselves and others as an end. So, human cognitive power and the ability to use it in order to impose moral principles of action on themselves are the key prerequisites of dignity. Due to this, animals cannot have dignity within the same meaning of the term that we apply to humans. Because of their lack of awareness about their own value or the value of others, animals cannot keep their dignity through the actions aimed at themselves

or other animals. The dignity that animals can enjoy or can be granted comes from the good will of humans who may offer it to them through appropriate treatment which would help keep animals from suffering, as suffering and pain are the things that they can definitely feel and this, by definition, violates the dignity of the being going through it.

Thanks to rationality, humans can be their own lawmakers, and thereby free beings. An important step towards achieving human dignity is the one concerning will. The will, i.e. actions of humans must be in agreement with the rational recognition of a priori principles of action, whose essence is reflected in the ethics of duty towards oneself and towards others. Hence we see that dignity has two very important aspects. The first concerns the relationship everyone has with themselves, and the other their relationship with others. Both of these concern the duty of a rational being to accept oneself and others as an end, and not just as a means. Following Kant, this fact is the most clearly highlighted by famous German lawyer Günter Dürig in his statement that "*human dignity is violated when a human is lowered to being an object, pure tool, of a replaceable importance*" (Franeta, 2011:834). The purpose of achieving dignity is, therefore, in our duty not to treat ourselves and others as means. Treating someone as a means implies that we are treating them in such a way that their interests (their desires or wellbeing) are given no importance of their own (Rosen, 2015: 80).

This dual relation of duty – towards oneself and towards others, makes dignity a specific value. Unlike other values, such as life, freedom, physical or psychological integrity and many others, dignity is lost the very moment we stop acknowledging that value by our actions not only towards ourselves but also towards others. For example, life as a value remains with someone who takes someone else's life. This is also the case with freedom and countless other values. Dignity is, on the other hand, lost not only when taken from ourselves, but also when we take it away from others.

It is important to note that when we treat ourselves as a means, the fact that we are doing so willingly is not enough of a reason for us to keep our dignity. In other words, someone can decide to turn themselves into a means, but the fact that they made that decision without the coercion of others is not sufficient for their dignity to be preserved. Although autonomy is an important factor of dignity, dignity cannot be reduced to it. Autonomy is not sufficient because it can be abused by someone putting themselves in the position of a means. In doing so, such a person automatically loses his/her dignity.

It is a completely separate issue whether or not and when the state has the right to stop actions like these by individuals.

In support of the debate on this subject it is useful to cite the example that Michael Rosen mentions in his book *Dignity*. Namely, it is about the case of Manuel Vakenem, a person with dwarfism, who was prevented by the local government from participating as an object of throwing in a competition in the launching of people with dwarfism that was supposed to take place at a discotheque in the French town of Morzine Avoriage in 1995. The reason that caused the local authorities to make this decision was the assessment that such an act constituted a violation of human dignity and at the same time a form of violation of public order and citizen security. After an ap-

pellate procedure, the Administrative Court of Versailles annulled the mayor's decision, only for the State Council, as the highest judicial instance, to stand by the local authorities and confirm the decision on the ban. The case ended before the UN Human Rights Committee which also rejected Vakenem's appeal (Rosen, 2015:65-68).

This example is useful because it points to the potential role of the state in the protection of human dignity and at the same time raises the question of its relationship to the rule of law. Namely, it is perfectly clear that the state has the duty to provide, by means of legal acts, the protection of people from the acts which could violate their dignity. This duty is clearly stated by the famous provision of the German Basic Law from 1949 which stipulates that "*Human dignity is inviolable. Respecting and protecting it is the duty of every country's government*" (Article 1). The basic manner in which a state does so within the system of the rule of law is by imposing legal restrictions on actions of individuals and government representatives whose goal is the protection of human dignity against all the actions that represent forms of its violation. In his comments on the above mentioned article of the constitution, Dürig offers a concrete list of violations of human dignity such as: *open injury* (mass exile and genocide in which a man is lowered to being an animal or item); *cruel punishment*; *subordinating a person to objects* and *denial of legal subjectivity to humans*, while giving the same to objects; *turning a man into an* 'object' by the state authorities (using chemical and psycho-technical means for extracting the truth, denial of legal hearings, etc.); *violation of intimacy* (without which there is no personal integrity and identity); *depersonalization* (heterologous insemination); *various forms of honor violation*; life below the basic existential conditions which deprives the man of his subjectivity (life without dignity, the so-called hand-to-mouth lifestyle) (Dürig 1998, according to: Mitrović, 2016: 30; Franeta, 2011: 835).

The key question here is whether or not the state has and - if it does - when does it have the duty to stop actions by which individuals violate their own dignity. The Vakenem case points out the delicacy of a situation like this. On the one hand, there is the need to protect the autonomy of an individual and their right to freely make decisions on actions that concern them, yet, on the other, there is the obligation of the state to protect human dignity. There is no doubt that the state would go the way of paternalism if it took upon itself to protect individuals from all actions by which they could violate their dignity. In such a case, it would be completely legitimate to call for a ban on alcohol because consuming it can lead individuals to situations wherein they do not act in a dignified manner. On the other hand, reducing human dignity to the request for respecting personal autonomy represents an introduction to a very dangerous practice whose outlines can clearly be seen in the modern society, where we can witness the efforts of transhumanists to - by calling for the autonomy of choice - allow the use of increasingly advanced bioethical measures with the goal of "improving human nature" (see: Djurković, 2018). Ruth Macklin supports this with her thesis that dignity is a useless concept and that it means nothing more than respect towards persons and their autonomy (Macklin, 2002:1419).

If we wanted to outline the obligations that a state has in protecting human

dignity in the cases of potential clashes between dignity and autonomy, then it would be good to return to the Vakenem case. Preventing someone from acting in an undignified way towards themselves would be an extreme example of paternalism, unless they were violating the dignity of the entire category of humans which they belong to with their actions. This was the reason that made the authorities, including the UN Human Rights Committee, refuse Vakenem's appeal. It was clear that his actions violated the dignity of all people suffering from dwarfism by using his physical disability as a way to turn himself into an object of entertainment in a contest of throwing people with dwarfism. In the same way, it is legitimate to ban all other actions that in a similar way affect not just the person who voluntarily accepts undignified behavior, but also other members of the same category of humans (for example, banning prostitution). However, in the situations where an act concerns only the person who commits it, with no connection to other individuals in any way, then a state intervention would undoubtedly be an extreme form of paternalism and would, as such, open the door for a thorough redefinition of the role of state in the modern society.

It would be wrong to reduce the role of state in the protection of human dignity solely to relevant legal restrictions. These are definitely important because they show the boundaries that individuals can go to, primarily in their actions towards others. In the system of the rule of law and the lawful state they at the same time draw the line to which the state authorities can take actions towards citizens, thereby fulfilling the basic idea of the rule of law – that the authority is to be limited by its own laws. However, the role of the rule of law in the protection of human dignity is not just negative, in terms of drawing boundaries for actions of individuals and the government. It can be seen in the affirmation of appropriate conditions and circumstances in which the protection of human dignity is possible. It is here that we can see the most important contribution of the rule of law to the protection of human dignity, and in order for it to be completely clear we have to determine the meaning of the rule of law as precisely as possible.

THE RULE OF LAW – THE IDEAL OF THE RULE OF THOUGHTFUL LAWS

Unlike the idea of human dignity, whose meaning has evolved throughout history, the meaning of the idea of the rule of law has remained virtually unchanged. It can be summarized as the request for the public authority to be limited by laws. The change in the interpretation of this idea throughout history resulted from the way in which people answered the question as to whether or not it was enough for the authority to be limited by any laws. For the ancient Greeks, as the creators of the idea of the rule of law, it implied the rule of not any laws, but the laws founded in the reason. With the goal of setting up a rule based on reason and common interests, it was crucial for the Greeks to set up a system of power in which, by using prudent laws, the negative aspects of the nature of political powers were decreased, which meant setting up a system where laws

were not instrumental as a mere tool of the government, but as a tool of rational and just rule. So, the goal of restraining the authority by laws was aimed at suppressing its destructive potentials, and keeping it in within reasonable limits, in order for politics to be possible as a virtue and for freedom as an opportunity for active inclusion of citizens in the political life of the polis. This is, in fact, how the substantial concept of the idea of the rule of law came to be as the idea that does not ignore the issue of the quality of the laws that the limitations of state authorities should rest on. Many centuries later, in German legal theory, there appeared the concept which had the same goal – to limit the state authority by laws, but it gave a completely different interpretation of the question of substantial quality of the laws that the limitation rests on. This gave rise to the formal concept of the rule of law in a state (Rechtsstaat) that does not go into the content of the laws, but is satisfied with their formal correctness. This formal correctness (validity of an action and the competence to enact laws) necessarily leads to the validity and binding nature of legal rules, so that the rule of law in a state exists when these criteria are met, and the authorities are bound by those rules.

The answer to the question of whether the idea of the rule of law should be reduced to the formal or substantial concept is very important for understanding its role in the protection of human dignity. As we have seen, human dignity constitutes a value that human beings have because of the rational and moral potentials of their nature. Accepting the thesis that in order for the rule of law to exist, it is sufficient that only the formal rightness of the decisions and acts of the state authorities is present, would in fact mean accepting the possibility that the rule of law exists even when the authorities are violating or brutally endangering the basic values of a human being, and that the only prerequisite for this is that such values are not protected by law. The formal concept of the rule of law as such cannot be an adequate framework for the protection of human dignity. An adequate form of this protection can only be achieved with the rule of law taken in the substantial sense. As such, it is the ideal of the order in which the law is in the function of keeping an individual as a free and dignified being within a political community and creating conditions that allow citizens free, creative and responsible development of all their potentials.

This purpose of the rule of law was first defined at the so called Chicago Colloquium in 1957. One of the prominent participants at this gathering, Jolowicz, pointed out that the fundamental purpose of the rule of law was to create such a community that would in the best possible way help individuals develop and accomplish their potentials as human beings. The importance of the rule of law lies in its final goal – creating possibilities for individual members of the community that will allow their development through free but also responsible choice between different alternatives (Jolowicz, 1959). The common attribute of the many concepts of the rule of law was pointed out by Hamson, who said that the rule of law is a tool of an organized society which has a goal of creating a community in which a man is enabled to fulfill himself through the complete development of his capabilities. The great resources of a society are the energies of the humans that make it up. The goal is to allow and encourage coordinated release of those energies, and the method is allowing human beings to make res-

ponsible and efficient decisions and encouraging the development of their legal and practical capacities for making these decisions. The rule of law is the phenomenon and the mark of an organized, free society (Hamson, 1959).

The key question is: in what way can the rule of law accomplish these noble goals? It can accomplish them through a certain *quality* of standardization of social relations that has to start from respecting all rational principles of authority.

Namely, the contact point between the rule of law and human dignity is rationality. It gives humans that specific quality, i.e. the possibility of human dignity. It is the confirmation of the highest potentials of human cognition that allows for comprehending not only a priori principles of action but also for comprehending the principles that the legal norms regulating human relations should be based on. It should start with affirming the principles that all individuals should follow in regard to themselves and others (respecting human beings as end), but should also be guided by another, more general goal that is, in our opinion, the pure emanation of rationality. That goal is human creativity. Creativity should be taken as a value *per se*. It is not pure action, but action that leads towards progress, i.e. towards the thing that a mindful person can only understand as individual and public good (Ignatieff, 2006: 24)[5]. So, mindful standardization must be dedicated to creating conditions for creative development of the human personality, and thereby society as a whole (creativity as a guiding and general principle[6]). The principle of mindfulness, applied to the logics of societal norms, should be defined as a *request for all societal relations to be regulated in a way that prevents destructivity in the broadest meaning of the word* (either exterior destructivity – when rules give individuals the authority to violate the rights and freedoms of others, or internal – when they impose auto-destruction). The rule of law, taken as the ideal of the rule of mindful laws, should provide the conditions for societal relations to be regulated in the above mentioned way and thereby allow every individual to develop his/her creative potentials, which will by default uphold human dignity.

The quality of the legal norms pertaining to social relations implies a specific matching content. Human dignity can hardly be achieved with mere proclamation of rational principles and goals. In order for the rule of law to be in the function of human dignity, its laws must contain a specified minimum of rights that create the conditions for accomplishing human dignity.

These rights can, in principle, be divided into two basic categories. The ones that are supposed to provide the autonomy of an individual and the ones that are supposed to provide favourable conditions for the development of all potentials of a human personality, which in turn leads to the affirmation of human dignity. The first group contains the *right*

5 A somewhat similar principle can be seen in the writings of Michael Ignatieff who, starting from the historical experience (especially the atrocities of World War II), speaks of *the individual ability of work* as a minimum of the protection that the concept of human rights should provide. However, stricly interpreting this, the ability of work is a neutral value, because we can work in different ways and with different goals. Ignatieff, in fact, defines it as such.

6 Otherwise, if destruction would be allowed to be the guiding principle, it would, as a final outcome, necessarily guide towards the destruction of those who allowed such a principle. In other words, if destruction became a general principle, in the spirit of Kant's categorical imperative, it would lead to the destruction of society as a whole.

to vote above all. It is necessary because without the participation of citizens in political processes, an individual is a servant, and not a citizen. The right to vote gives the minimal autonomy through willing choice of an individual and giving consent without which obeying laws would be pure coercion and thereby the negation of the rational potential of human beings and their dignity. The second group contains the rights that are supposed to provide the necessary conditions for existence and creative development of the human personality. This group includes the basic personal rights such as the right to life, physical freedom, physical and psychological integrity, fair trial, privacy and property, but also numerous social, economic and cultural rights. Namely, for the full development of human potentials and dignity it is not enough for us just to live or move freely. The developmental potentials of a human being require the fulfilment of numerous other conditions in order to come to their fullest – the right to work, a decent life standard, health care and social welfare, not to mention countless cultural (education, participation in cultural events) and collective rights that allow the individuals within these communities free creative ability and development (e.g. the right of ethnic minorities to use their own language). It is in this field that ideological and doctrinary differences in the interpretation of these rights (their content and the way of accomplishing them) are much more prominent, because they encompass the rights whose importance and necessity, in the context of the developmental potentials of human beings, can be interpreted differently depending on the social circumstances and the cultural model at hand. Because of this, caution is necessary and the choice of these rights, as well as the manner of their realization should be adjusted to the cultural specifics of a given society (more on this: Zekavica, 2018).

Finally, in order for the rule of law to be in the function of human dignity we need institutional and procedural guarantees for the realization of these rights. Without them, the rule of law is a collection of praiseworthy proclamations, but of no real importance. Full protection of human dignity is not possible without an active role of the state that will protect it in practice, which in turn is not possible without an important prerequisite for the rule of law – independent judiciary and judicial control of legislative and executive branches of authority.

CONCLUSION

It took a lot of time for human dignity to gain the status of a value granted to every human being. Human dignity has travelled a long path of evolution from the point where it was first seen as a property of a certain social class, to the understanding that sees it as a value inherent to every human being. A significant contribution to this was given by discussions about human dignity in the philosophical and ethical studies which, starting from Cicero and Thomas Aquinas to Pico della Mirandola and finally Immanuel Kant highlighted the universality of human dignity as a value of every human *per se.* This evolution was accompanied by the evolution of studies on human rights and the awareness that

- from one's birth - every man has natural rights that are to be respected by others, and especially by the state authorities. This connection between natural rights and human dignity can most clearly be seen in the writings of Ernst Bloch, who saw the legacy of the natural law doctrine and Marxist intention of economic liberation of the individual as the only way towards achieving human dignity (Bloch, 1977).

The crucial moment in acknowledging human dignity as a universal value of a human being occurred only when it was defined as a concrete legal requirement and principle. This moment arrived with the first citizen revolutions that marked the beginning of the standardization of human dignity and its being turned into a real value. It was only with the standardization of the idea of human dignity that it was possible to talk about the concrete duty of the state to protect it. Following World War II and the horrific examples of violation of the basic human rights, human dignity became a fundamental constitutional principle of modern states. Thus the rule of law, understood in its substantial sense, could also be in the function of its protection by providing legal protection of the rights and freedoms that allow every person to enjoy human dignity through legally defined obligations of the state in this area. Dürig was right when he claimed that human dignity is an integral part of human rights and not a separate right. It is the core value of human rights and the highest constitutional principle that contains the essence of human rights (Franeta, 2011:830).

However, the core role of the rule of law in the protection of human rights should not be seen purely in the set of prohibitions banning actions that violate someone's dignity (injury of honour or image, reducing a man to the level of an object or tool, violating one's rights – to life, freedom, integrity, etc.). The rule of law, taken as the ideal of the rule of mindful laws (which it has been since the conception of the idea) can offer much more by regulating human relations so as to ensure the conditions for survival of the individual as a free and dignified being inside the political community and by creating conditions that allow citizens a free, creative and responsible development of all of their potentials. This implies the affirmation of not only legal and political but also social-economic prerequisites for a dignified life of a man.

Of course, we should not be naïve and believe that the rule of law, even in its ideal form and realization, can stop the violation of human dignity. Violation of human dignity will exist until man changes himself – until he overcomes the impulsive-destructive potentials of his nature and develops a mindfulness of his own. This change is at the same time the hardest one, because it requires serious effort from an individual. It requires a kind of individual revolution and accepting the highest ethical principles that must be supported by the practical acts of the individuals' will. Because of this, we must go back to Kant, but also all the other prominent ethicists in history (Socrates, Confucius, Christ), all of whom requested the same from all of us – change yourselves and see a value that should be respected both in yourselves and in others.

REFERENCES

1. Bloch, E. (1977). *Prirodno pravo i ljudsko dostojanstvo*. Beograd: Komunist.
2. Đurković, M. (2018). *Između kiborga i himere*. Beograd: Catena Mundi.
3. Franeta, D. (2011). Ljudsko dostojanstvo između pravnodogmatičkih i filozofskih zahtjeva. *Filozofska istraživanja*, *31*(4), 825-842.
4. Franeta, D. (2015). *Ljudsko dostojanstvo kao pravna vrednost*. Beograd: Pravni fakultet Univerziteta.
5. Frojd, S. (1994). *S one strane principa zadovoljstva*. Novi Sad: Svetovi.
6. From, E. (1989). *Anatomija ljudske destruktivnosti*. Zagreb: Naprijed.
7. Hamson, C. J. (1959). General report. *Annales de la Faculté de Droit d'Instanbul, 9*(12), 1-17.
8. Ignjatijef, M. (2006). *Ljudska prava kao politika i idolopoklonstvo*. Beograd: Službeni glasnik.
9. Kant, I. (1976). *Kritika čistog uma*. Beograd: BIGZ.
10. Kant, I. (1979). *Kritika praktičkog uma*. Beograd: BIGZ.
11. Kant, I. (2016). *Zasnivanje metafizike morala*. Beograd: Dereta.
12. Marjanović, M. (2013). Ljudsko dostojanstvo kao društvena i pravna vrednost. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *47*(3), 95-107.
13. Mitrović, D. (2016). Diptih o ljudskom dostojanstvu. *NBP – Žurnal za kriminalistiku i pravo*, *22*(1), 24-40.
14. Olowicz, J. A. (1959). Digest of discussion. *Annales de la Faculté de Droit d'Instanbul, 9*(12), 24-71.
15. Rosen, M. (2015). *Dostojanstvo*. Beograd: Clio.
16. Zekavica, R. (2018). *Ideja vladavine prava*. Beograd: Kriminalističko-policijska akademija.

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO
NBP 2019, 24(2): 29–44

Submitted: 2019-06-19
Published: 2019-09-24

UDK: 343.93:343.541/.545-053.2/.6 (497.11)
doi:10.5937/nabepo24-22247

EXPLOITATION OF MINORS FOR PORNOGRAPHIC PURPOSES
THE SOCIODEMOGRAPHIC AND CRIMINAL PROFILE OF THE PERPETRATOR

Valentina Đ. Baić[1]
Zvonimir M. Ivanović
University of Criminal Investigation and Police Studies, Belgrade
Milan V. Oljača
University of Novi Sad
Faculty of Philosophy, Department of Psychology

Abstract: The paper presents research in the form of a survey aimed at examining the sociodemographic and criminal profile of the perpetrator of the crime of displaying, acquiring and possession of pornographic material and exploitation of a juvenile for pornography under Article 185 of the Criminal Code of Serbia, with particular reference to the imposed criminal sanctions. The survey was conducted at the beginning of 2018 and included 62 convicted male persons aged 18 to 70, prosecuted under jurisdiction of the Special Prosecutor's Office for Combating High-Tech Crime in the period from 2012 to 2016. The results of the research show that the perpetrators of the said criminal offense are exclusively male individuals of an average age of 36.6 years, whose structure in terms of the working status is extremely diverse, starting from workers of various occupations, students to pensioners. In terms of other socio-demographic characteristics, the results of the survey show that the largest percentage of the convicted offenders have completed secondary school, that the number of the employed and unemployed is the same, that they are not married, gravitate towards urban areas, and have not been convicted before. In terms of the *modus operandi*, the results of the survey show that two methods of execution are dominant: the first implies the use of P2P technology on the Internet and the use of certain closed networks, which allow searching, downloading and sharing of photos and audio-visual data whereas the other involves creating a false profile on the Facebook social network.

Keywords: exploitation of minors for pornographic purposes, pedophilia, sociodemographic profile of the perpetrator, crime profile of the sexual predators.

1valentine.baic@kpu.edu.rs

INTRODUCTION

The extensive application of information communication technologies through computers and mobile phones, i.e. the use of the Internet, has significantly affected many aspects of modern life, enabling not only greater connectivity, easier communication and access to information of different content, but unfortunately also opened the possibility for potential risks and many abuses (Baić, Ivanović, Simeunović-Patić, 2017). Such progress has almost without any limitations opened up the possibility of researching the virtual world, both for those who know a lot about it – tech-savvy and for the minors, who know much less about it (Baić, 2018; Pregrad, Tomić-Latinac, Mikulić, Šeparović, 2009). The particular danger lies in the fact that this type of communication allows for greater anonymity, which in the end can lead to the appearance of disinhibitive behavior, which is characterized by easier contact with unknown persons and easier communication of intimate data (Baić et al., 2017, Kuzmanović, Lajović, Grujić, & Medenica, 2016). Greater openness and confidentiality are also linked to the ease of hiding the real and presenting a false identity, which may be a problem, especially when the identities of those asumed to be peers are adopted by ill-disposed adults, that is, by "sexual predators" who lurk for minors and exploit their emotional, psychological or physical weaknesses and abuse them for sexual purposes (Baić et al., 2017; Ivanović, Lajić, & Joga, 2016). Therefore, the misuse of information communication technologies (ICT) and the increasing global expansion of the Internet access resulted in the fact that juvenile pornography has become one of the most widespread forms of sexual victimisation of the youngest population (Pavlović, Petković, & Matijašević-Obradović, 2014).

The Serbian Criminal Code - in the context of the use of an electronic communications tool – refers to juvenile pornography in Article 185 and defines it as "showing, acquiring and possessing pornographic material and exploiting a minor for pornography". For this reason, and given the problem we are dealing with, the object of our interest has just been directed towards this criminal offense, which includes several illegal activities starting from: production, offering or making available, then distributing, transferring, possessing and consciously obtaining juvenile pornography. Therefore, within the Criminal Code of Serbia, the concept of exploitation of minors (through information communication technologies) is linked to criminal offenses against sexual freedom, that is, to juvenile pornography, created by the exploitation of minors,[2] children aged up to 14 years and minors aged 14-18.

Bearing in mind that this is a criminal offense characterized by severe consequences, significant vulnerability of the youngest population, poor control, and a large dark figure, the aim of this paper is to promote the improvement of the child protection system by raising the awareness of both expert and general public in Serbia and beyond its borders in order to strenghten the systems for

2 In the legislative system of the RS there are two categories of minors in the broader sense of the word 'minor' – children who are up to 14 years of age and minors from 14–18 years of age (within this group there are two more categories – younger minors 14-16 and older minors 16-18). Within the scope of this criminal offence there is a special form of this act which is aggravated form of the criminal offence under Article 185 CC when the object of the criminal offence is a child.

protection of children and juveniles. It is with this objective in mind that the paper presents a research study on exploring the socio-demographic and criminal profile of the perpetrator of the criminal offense under Article 185 CC, focusing in particular on the sentencing policy applied to such cases.

In the text below, the authors will elaborate a review of some of the available research results that have dealt with the problem of exploiting minors for pornographic purposes, as well as the sociodemographic characteristics of the perpetrators of this crime, and then present the results of the research concerned and, finally, give a brief and general overview of the main results, their implications and recommendations for improving the system of protecting minors from exploitation on the Internet.

OVERVIEW OF PREVIOUS RESEARCH

A more significant and organized presence of juvenile pornography, that is, photographs and magazines that depict minors in a sexual context, was recorded in the 1960s in some European countries, such as Denmark, Norway, Sweden and the Netherlands. Today, in the 21st century, thanks to the development of information and communication technologies, juvenile pornography has become global criminal activity, which unfortunately continues to expand continuously through the Internet. According to a research published in England in 2003, some 27,000 sexual predators visited websites with juvenile pornographic content (Robbins & Darlington, 2003), while today the number, according to the federal authorities in the US alone, is between 500,000 and 750,000 thousand. This is certainly one of the reasons why more attention is paid to this issue in contemporary research in relation to the problems of peer violence in the virtual world (Livingstone, Kirwil, Ponte, & Staksrud, 2013). The results of the studies that deal with the victimological aspects of this phenomenon show that 25% of users of social networks aged between 10 and 17 were exposed to unwanted pornographic content (Herring, 2002), that is, 19% of female juveniles experienced online sexual harassment at least once (Mitchell, Finkelhor, & Wolak, 2007).

In Croatia, a survey was conducted in 2015 covering 76 convicted perpetrators of the exploitation of minors for pornography on the Internet (Vejmelka, Brkić, & Radat, 2017). The results of the study showed that the perpetrators were exclusively male, of the average age of 41.3 years, and that there was a relatively large number of prisoners aged 56 and over. In terms of education levels, the results showed that the largest number of convicts had secondary school education (65.8%), but there was also a certain percentage (21.1%) of persons with higher and high education (in terms of Serbian standards, equivalent to college and university degrees), as well as those who completed master studies. The structure of the convicts according to the working status was diverse, starting with students, individuals who own private companies, to pensioners. The highest number of convicts was employed (44.7%), while the percentage of the unemployed was 38.1%. Regarding the marital status, as many as 60.5% of

the offenders were unmarried (single, divorced), and had no offspring.

When we summarize some of the foreign pedophile (sexual predator) studies, the final conclusions that are drawn imply that they are a heterogeneous group with different socio-demographic characteristics (Schiffer, 2008; McCarthy, 2010; Henshaw, Ogloff, & Clough, 2017), who use minors exclusively to satisfy sexual needs (Seto & Eke, 2005). In 90% and more cases, they are male, homosexual or bisexual persons oriented towards minors, aged 26-40, where the share of minors (as perpetrators) is about 11%. In the communities in which they live, they are not recognized as a threat, but rather as individuals who are well integrated, functional and without any previous convictions. However, a large number of those who were prosecuted repeated the criminal offenses to the detriment of children or minors (Seto, Cantor, & Blanchard, 2006). In terms of pathology there are different opinions, ranging from those that pedophiles are persons with disorders, frequently with serious emotional disorders, caused by negative cognitive distortions (Sheldon & Howitt, 2007), up to the view that no pathology has been diagnosed for this category of perpetrators (Price, Lambie, & Krynena, 2015).

In 2015, within the National Study on the Social Problem of Child Sexual Abuse, a survey was conducted in Serbia covering 2,053 pupils, aged 10 to 18 from 97 primary and secondary schools. The results of the survey show that sexual harassment and violence are most common at home (33%), on social networks (22%), in open space (park/nature) (14%) and at school (7%). Almost a third of respondents (31%) received pictures or messages with explicit sexual content, via SMS or the Internet (Facebook and other social networks) (Bogavac, Otašević, Cucić, & Popadić, 2015).

At the end of 2015, another important study of this issue was conducted in Serbia, which was carried out as a unique virtual experiment, based on real events. For the purpose of this research, a virtual image of an underage Belgrader was created and nicknamed so as to suggest the age of 12 (Ana12BG) (Ivanović et al., 2016). The results of the research have shown that the Internet "chatting" was mainly based on sexually-orientated conversations, initiated by 80% of minors, as well as almost 90% of people aged 40 and over. About 30% of minors and about 40% of people over 40 years of age asked for sexually explicit photos from the virtual "Ana". The authors state that the Internet is certainly a medium used by a large number of individuals whose sexual tendencies tend to be satisfied in contact with minors (Ivanović et al., 2016).

METHODOLOGICAL FRAMEWORK OF RESEARCH

Sample

The survey included 62 convicted male persons, aged 18 to 70, who were prosecuted in the period from 2012 to 2016 under the jurisdiction of the Special Public Prosecution Office for Combating High-Tech Crime, in Belgrade, for the committed criminal offense of displaying, acquiring and possession of pornographic material and exploitation of a minor for pornography under Article 185 of the Criminal Code of Serbia.

Procedure

The research was carried out at the beginning of 2018 on the premises of the Special Public Prosecution Office for Combating High-Tech Crime, in Belgrade, and it involved the analyses of the available documentation from the cases. All the analyses were made on the data collected in the dossier review for each convicted person, for which - due to the confidentiality of the data - the consent was obtained from the Republic Public Prosecutor's Office and the Special Prosecutor's Office for High–Tech Crime (Cybercrime).

The research first examined the structure of the population of the perpetrators in terms of the most important sociodemographic features, such as age, education, occupation, employment, marital status, the type of the place of residence and previous convictions. The socio-economic status data were not complete and were therefore not included in the analysis. The second part of the research concerned the analysis of the *modus operandi* in order to identify the characteristic pattern of behavior of the perpetrator of the crime. At the same time, the paper also presents the results of the imposed criminal sanctions.

Data processing methods

The research applied qualitative and quantitative data processing methods. The qualitative data analysis was applied to the data on the (1) mode of operation (*modi operandi*), i.e. the manner of committing the crime, and (2) the occupation of the perpetrator. In both cases, the procedure for carrying out the analysis was identical. Quantitative data processing methods were applied to: (1) descriptive statistics and frequency tables, in order to obtain a basic insight into the data structure, as well as (2) $\chi 2$ test, to examine the significance of the relationship between categorical variables.

RESULTS

Age structure

The age of the convicted persons ranges from 18 to 70 years. The average age is 36.64 years, while 68% of the convicts (± 1 standard deviation from the arithmetic mean) are in the range of 23.85 to 44.49 years. In relation to the age decade (Chart 2), the largest number of convicted persons is aged 31 to 40 (33.9%) and ages 21-30 (29.0%), slightly less than the age from 41 to 50 years (17.7%), while very few convicted persons are between 61 and 70 years of age (8.1%), as well as up to 20 years of age (3.2%).

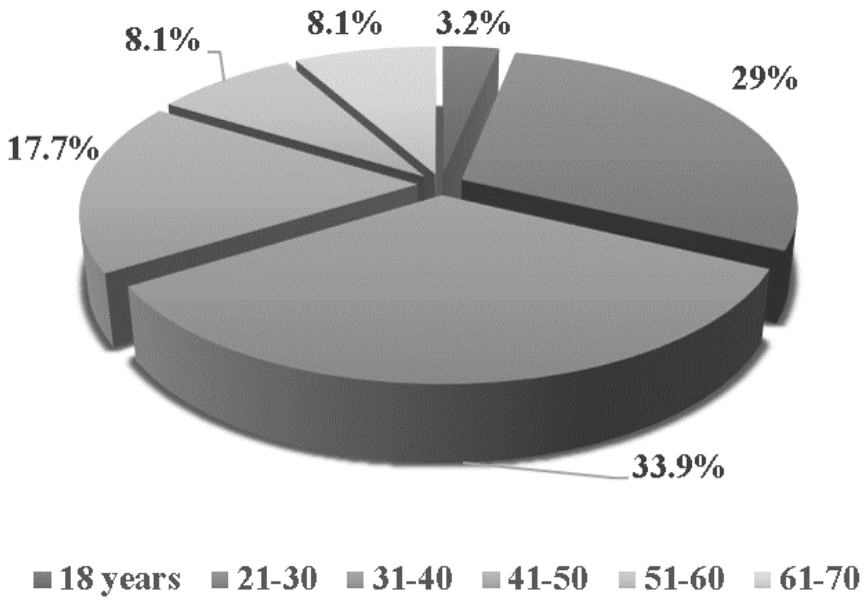

Chart 1: *Age structure of convicted persons*

Education

The results show that the level of education among the convicted persons is not equal ($\chi 2$ (3) = 70.0, p <.001). Analyzing the data, it was determined that the largest number has a secondary school education (71.0%), while there was a significantly smaller number of convicts with elementary (8.1%), high (college) (9.7%) and higher (university) education (11.3%) (Chart 2).

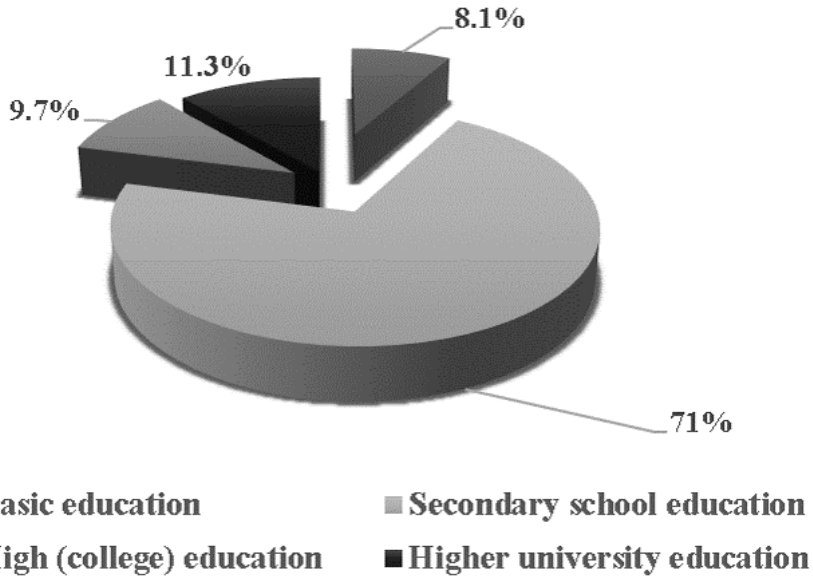

Chart 2: *Educational structure of convicted persons*

Occupation

The frequency of individual categories of occupations of the convicted persons is presented in Chart 3. Data is missing for 27.4% of the convicted persons. The largest number of convicts are workers of different professions (27%), followed by students (12.9%), pensioners (8.1%), electrical technicians (6.5%) and employees (4.8%), while the remaining occupations are very little represented, such as graphic artists, pharmaceutical technicians, veterinary technicians, cooks, etc. (1.6 - 3.2%).

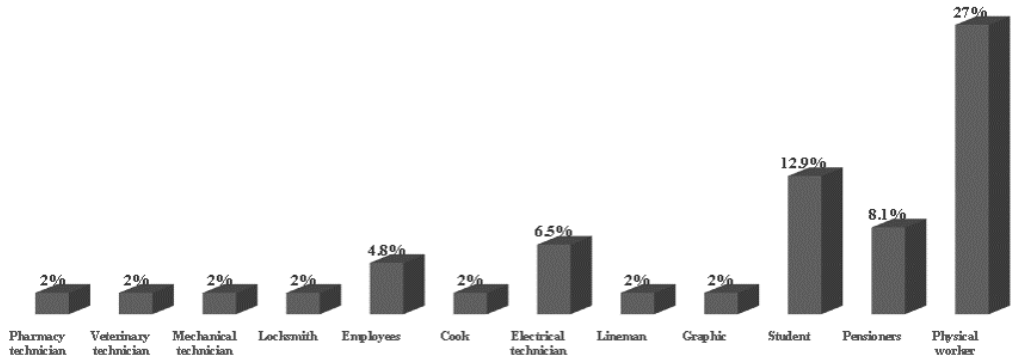

Chart 3: *Occupation of convicted persons*

Employment

The results show that the highest number of prisoners are either employed or unemployed (both categories amounting to 41.9%) and they are statistically significantly more represented ($\chi 2$ (3) = 28.4, p <.001) than occasional/seasonal employees and pensioners (both categories 8.1 %) (Chart 4).

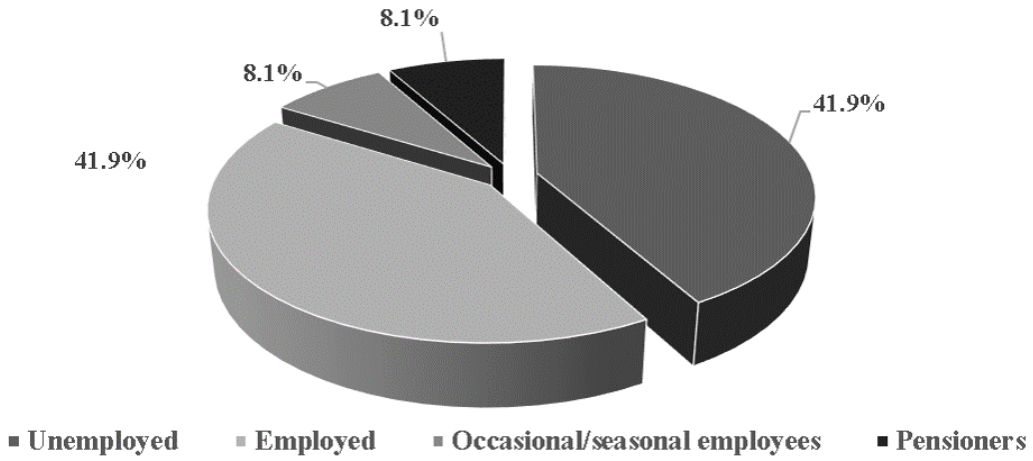

Chart 4: *Employment structure of convicted persons*

Marital status

The highest number of the convicted persons are not married (74.2%; Chart 5). Unmarried persons are significantly more frequent ($\chi 2$ (3) = 28.4, p <.001) than married (19.3%), divorced (1.1%) and those living in an extramarital community (4.8%).

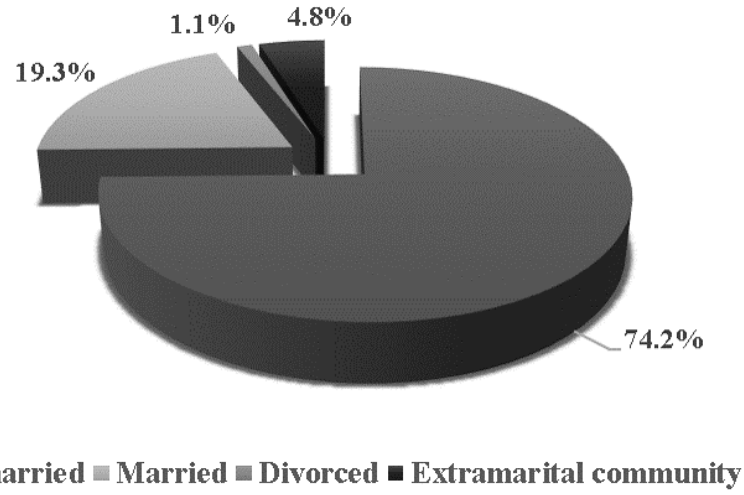

Chart 5: *Marital status of convicted persons*

Place of residence characteristics

A significantly higher number of the convicted persons ($\chi 2$ (2) = 106.7, p <.001) live in the city (95.2%) compared to the number of those living in villages (3.2%) or towns (1.6%). The results regarding the characteristics of the place of residence are shown in Chart 6.

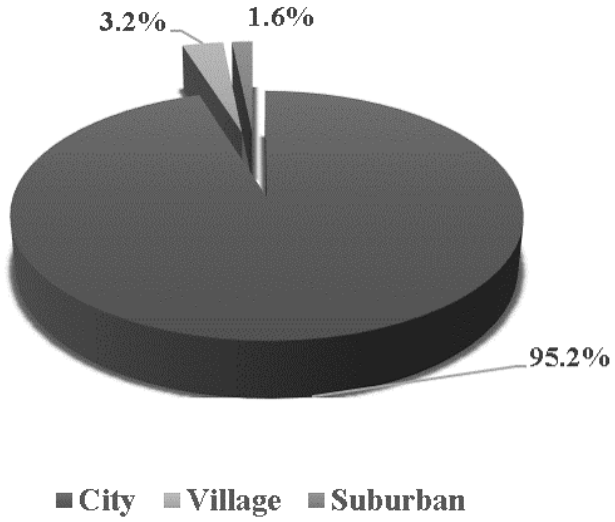

Chart 6: *Place of residence of convicted persons*

Previous convictions

The results of the survey show that the highest number of convicted persons was not previously convicted (96.7%, Chart 7), while only two persons (3.3%) had previously committed a criminal offense, both a criminal offense against property and a criminal offense against sexual freedom. These differences are statistically significant ($\chi 2$ (1) = 54.3, p <.001).

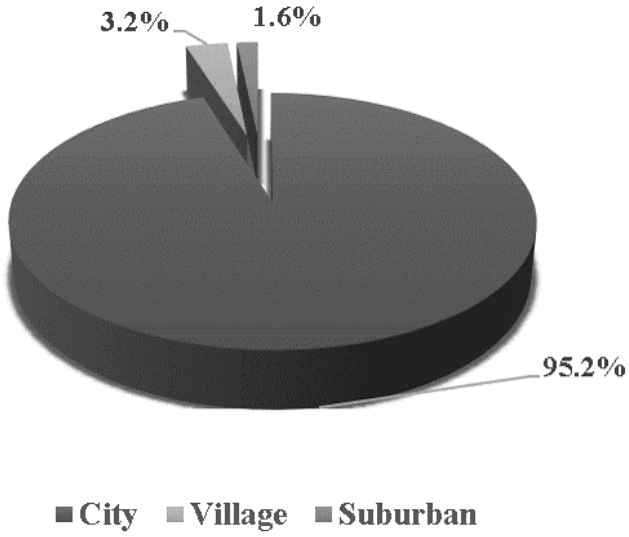

Chart 7: *Previous convictions*

Criminal offenses across the regions of Serbia

The number of crimes committed under Article 185 of the Criminal Code per region of Serbia is presented in Chart 8 (Annex 1). Most of the convicts are from Belgrade (37.1%) and the region of Vojvodina (30.6%), then from the region that includes Šumadija and Western Serbia (16.1%) and South-East Serbia (14.5%), with one convicted person coming from the region of Northeast Serbia (1.6%). The frequency of this crime in the regions of Serbia is expressed as the ratio of the frequency of the crime in the region and the number of inhabitants of the region. The highest number of convicted persons was from the area of Northeastern Serbia (p = 0.000027) and Vojvodina (p = 0.000025), then within the region of Southeast Serbia and Šumadija and Western Serbia (p = 0.000015), while the lowest frequency in the region of Belgrade (p = 0.000015). The link between the number of crimes committed for individual cities and the number of inhabitants is statistically significant

(r = .97, p <.001).

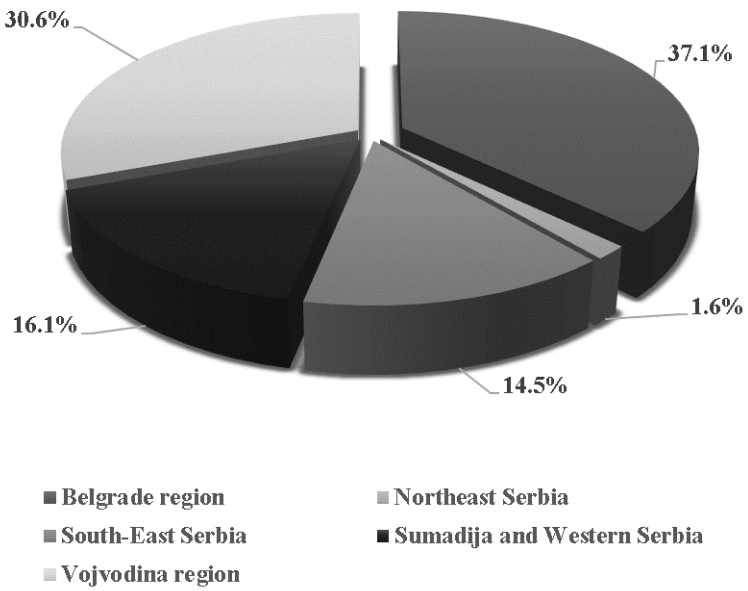

Chart 8: *Committed crimes in relation to regions*

Sanctions imposed

When it comes to the length of the imposed criminal sanction, the results of the research show that in the majority of cases the perpetrators of the criminal offense referred to in Article 185 of the Criminal Code of Serbia were sentenced to imprisonment of 6 to 12 months (48.4%), as well as from 1 to 2 years (22.6%). The mentioned prison sentences were enforced statistically significantly more often ($\chi 2$ (6) = 72.58, p <.001) in relation to all remaining prison sentences. The results are presented in Chart 9.

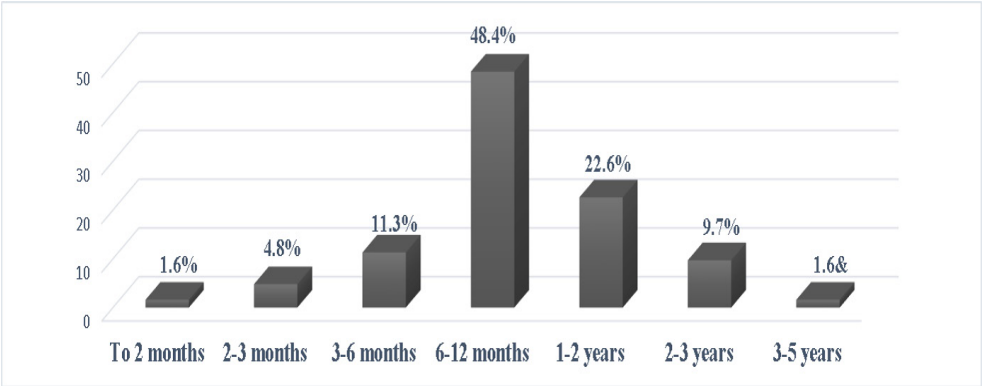

Chart 9: *Severity of sanctions of imprisonment for the offence under Article 185 CC*

Modus operandi

By analyzing the available documentation, it is very clear that persons convicted of a criminal offense under Article 185 of the Criminal Code of Serbia used information communication technologies, primarily a personal computer and a mobile phone, that is, the Internet for:

- searching, downloading and sharing of photos and audio-visual data generated by the exploitation of minors in sexual conotation;
- exploitation of a minor for the production of pictures and videos of pornographic content;
- displaying images or videos of explicit sexual content;
- intimidation and threat of coercion, in order to keep the victims in fear and obedience.

Regarding the method of execution, it involved the so-called P2P[3] technology and the online social network Facebook. With the help of P2P technology and Shareaza software, Endonkey, LimeWire turbo, Torrent, and eMule, the perpetrators searched, downloaded and shared photos and videos of pornographic content that were created by the exploitation of minors aged 3-17 years. In the search box for the listed content, they entered terms such as "porn", "teen", "beauty", "gorgeus", "pthc", etc. On the Facebook social network, the perpetrators sent requests for friendship to minors, representing themselves as minors, with the aim of gaining and, above all, persuading them to send photographs or videos of explicit sexual content. After receiving the first photos or videos, the victims were blackmailed and threatened to make these contents available to their friends, school colleagues and parents, via the Internet and social networks.

3 P2P is a model of communication via the Internet equivalent to the client/server model, most commonly used for file sharing. P2P is the abbreviation for "peer to peer". P2P is technology developed for the exchange of data between users via the Internet as a network. With P2P clients based on the Gnutella protocol, users with compatible software can create files on their hard drives, connect to P2P service, and then locate, access and share the desired data.

DISCUSSION

The need for conducting this research was reflected in the lack of systematic research related to the problem of exploitation of minors for pornographic purposes, on the territory of the Republic of Serbia, and further beyond its borders. According to the results of the investigation, the persons convicted of committing the criminal offense referred to in Article 185 of the Criminal Code of Serbia are exclusively male, of an average age of 36.6 years, with a relatively large percentage of those between 20 and 30 years of age (29%). In terms of education the results show that the highest number of convicted persons had a secondary school education (71%), while one in six convicts in the sample had a college or university education qualification. The structure of the convicts according to the working status is extremely diverse, starting from workers of different professions, electrical engineers, employees, students, and retirees. At this point, it is important to note that the occupational data was incomplete, especially for those convicted persons who had a college or

university education degree, due to which we remained deprived of this type of information. In terms of employment, we recorded almost identical percentages of those employed and unemployed (42%). If we bear in mind that there was a percentage of persons who were occasional/seasonal employees (8%), and that 8% were pensioners, we come to the conclusion that these are persons who for the most part of their lives did not have work engagement. In terms of other socio-demographic characteristics, the results show that as many as 71% of the convicts were not married, gravitated towards urban areas, and had not been convicted before.

In order to complete the analysis, we also presented the data related to the frequency and distribution of the problem of exploitation of minors for pornographic purposes across the regions of Serbia. The results of the survey show that there is a relative prevalence of the cases in the regions of Belgrade and Vojvodina, that is, the city of Belgrade and Novi Sad (Baić, Kolarević, & Gojković, 2015)[4] followed by the regions of Šumadija and Western Serbia, the region of Southeastern Serbia and the region of North-East Serbia, with the smallest percentage of committed crimes. Regarding the region of Šumadija and Western Serbia and South-East Serbia, there is a certain uniformity of the distribution of this issue. However, if we observe the frequency of this crime in relation to the number of inhabitants in the regions, we find that the highest number of perpetrators come from the areas of Northeast Serbia and Vojvodina, then from the regions of South-East Serbia, Šumadija and Western Serbia, while the lowest frequency is recorded in the region of Belgrade.

In an attempt to identify the most prominent characteristics of the conduct of the perpetrator of the criminal offense referred to in Article 185 of the Criminal Code of Serbia, from the aspect of the methods of execution or *modi operandi*, the analysis found that the perpetrators performed this criminal offense in two ways. The first way involved the use of personal computers and certain software that functioned as a closed network, such as Shareaza, Endonkey, LimeWire Turbo, Torrent, and eMule, within which they inquired into the data related to juvenile pornography. After that, they were given the opportunity to search, download and share photographs and audio-visual data of pornographic content, which were created by the exploitation of minors aged 3-17 years. In most cases the perpetrators stored the data on the hard disk of their personal computers.

The other way meant that the perpetrators created false profiles on the social network Facebook, with the intention to use a falsely created identity of a minor in order to establish contacts with potential victims more easily and engage in the communication with them, asking them to send photos of their sex organs, breasts or naked bodies. In some cases, the perpetrators, after receiving the first photographs, blackmailed and threatened the victims that the photos would be made available to their friends, schoolmates or parents unless they sent them pictures with a sexual connotation. At the same time, a number of perpetrators sent their photographs with explicit contents to victims, such as, for example, images of their genitals in erection, ejaculation, video clips in which they masturbate, and the like.

4 Findings on the region of Belgrade and Vojvodina, in particular the cities of Belgrade and Novi Sad, can be related to previous studies of the etiopathogenesis of criminal behaviour, which indicate a significant impact of the migration factors of the population and the process of urbanization.

CONCLUSION

The exploitation of minors for the production, distribution, possession and display of pornographic material is, unfortunately, one of the most severe forms of abuse of the youngest population, and had been recognized as such by the competent state agencies in Serbia. This is supported by the fact that the members of the Ministry of Internal Affairs, the Office for Combating Organized Crime, the Department for Combating High-Tech Crime in cooperation with the Special Prosecutor's Office for High-Tech Crime have, over the past several years, apprehended more than 100 people as part of the operation code named *Armageddon*. However, the treatment of competent state authorities is limited to the arrest and prosecution of suspects, which is interpreted as preventive even though it is a repressive act. The fact is that the general prevention in the criminal-legal sense is achieved by prescribing criminal offenses, stipulating and applying criminal sanctions, i.e. by their enforcement and execution. However, the results of this study show that the perpetrators were sentenced leniently, because in almost 50% of the cases a prison sentence of 6-12 months was imposed. It should be kept in mind that those offenders have a qualitative disorder related to satisfying their sexual drive, which is why there is a real danger of recidivism. This is a serious problem due to which in the future the legislator should consider tightening the sanctions that are envisaged not only for the commission of the criminal offense under Article 185, but also for all the criminal offenses against sexual liberties, covered by Chapter Eighteen of the Criminal Code of Serbia. The problem of recidivism cannot generally be solved only by prescribing stricter criminal sanctions, but it ensures at least that the offenders are deprived of their liberty for a long period of time and prevented from committing new criminal offenses.

Regarding the results of this research, we must point out that their potential significance lies in the fact that the obtained data could be an integral part of the operational database of the Ministry of Internal Affairs of Serbia, which would be used by those dealing with sexual offenses. This database should additionally be completed with new data related to criminal behavior of pedophiles, as well as the data relating to general and specific personality characteristics, possible psychological disorders, etc. (Baić, Batić, & Srdić, 2014; Baić, Kolarević, & Ranković, 2017).

Considering the fact that social networks represent the ideal domain for both registered and potential Internet predators (Ivanović et al., 2016), as well as the fact that some underage children in Serbia, even at the age of seven or eight (although the age limit for creating and using a profile on this social network is much higher), thanks to their parents, have their own Facebook profiles, it is logical to assume that the problem of exploitation of minors for pornographic purposes will be more frequent, which is also confirmed by the results of the research carried out in Serbia in 2016 (Ivanović et al., 2016). Since there is no effective technology for protecting privacy from pedophiles, we believe that the comprehensive, systematic approach of all competent state institutions is the most important for the prevention and suppression of exploitation of minors through information and communica-

tion technologies. In order to improve the protection system, in addition to tightening the criminal policy and limiting Internet protocols that are not suitable for minors, it is necessary to develop awareness of real risks through the use of media and various school and other projects (Dragin, Muškinja, Duškov, & Bundalo, 2013; Kuzmanović et al., 2016) and promulgate a more secure way of using the Internet, especially due to the fact that Internet control is not sufficient and realistic.

REFERENCES

1. Baić, V., Batić, S., & Srdić, D. (2014). Sexually deviant behaviour of adolescents. In D. Kolarić (Ed.) *Thematic Conference Proceedings of International Significance Archibald Reiss Days*, Vol. I (pp. 421-428). Belgrade: Academy of Criminalistic and Police Studies.
2. Baić, V., Kolarević, D., & Gojković, V. (2015). Prostorno-vremenske karakteristike krivičnog dela silovanja. In Lj. Mašković (Ed.), *Kriminalističko-forenzička obrada mesta krivičnih događaja*, Vol. II (pp. 37-46). Beograd: Kriminalističko-policijska akademija.
3. Baić, V., Ivanović, Z., & Simeunović-Patić, B. (2017). Distribution and characteristics of cyber violence among elementary school students - Survey results in Serbia. *Journal of Psychological and Educational Research*, 25(1), 93-114.
4. Baić, V., Kolarević, D., & Ranković, M. (2017). Sociodemografske karakteristika izvršilaca krivičnog dela silovanja. In D. Kolarić (Ed.), *Forenzički metodi u kriminalistici* (pp. 255-272). Beograd: Kriminalističko-policijska akademija.
5. Baić, V. (2018). *Kriminalistička psihologija*. Beograd: Kriminalističko-policijska akademija.
6. Bogavac, Lj., Otašević, S., Cucić, V., & Popadić, D. (2015). *Nacionalna studija o društvenom problemu seksualnog zlostavljanja dece u Republici Srbiji*. Beograd: Incest Trauma Centar.
7. Dragin, A., Muškinja, O., Duškov, M., & Bundalo, Z. (2013). *Eksploatacija dece na internetu: program prevencije eksploatacije dece u Jugoistočnoj Evropi: izveštaj o istraživanju Pokrajinskog ombudsmana*. Novi Sad: Pokrajinski ombudsman.
8. Henshaw, M., Ogloff, J.R.P., & Clough, J.A. (2017). Looking Beyond the Screen: A Critical Review of the Literature on the Online Child Pornography Offender. *Sexual Abuse: A Journal of Research and Treatment*, 29(5), 416-445. doi:10.1177/1079063215603690
9. Herring, S. (2002). Cyber violence: Recognizing and resisting abuse in online environments. *Asian Women*, 14, 187–212.
10. Ivanović, Z., Lajić, O., & Joka, M. (2016). Korišćenje interneta i rizici po seksualni integritet maloletnika – eksperiment "Krstarica". *Kriminalistička teorija i praksa*, 5, 43-55.

11. Kuzmanović, D., Lajović, B., Grujić, S., & Medenica, G. (2016). *Digitalno nasilje – prevencija i reagovanje*. Beograd: Ministarstvo prosvete, nauke i tehnološkog razvoja Republike Srbije; Pedagoško društvo Srbije.
12. Livingstone, S., Kirwil, L., Ponte, C., Staksrud, E. (2013). *In their own words: What bothers children online? with the EU Kids Online Network*. London: EU Kids Online, London School of Economics and Political Science.
13. McCarthy, J.A. (2010). Internet sexual activity: A comparison between contact and non-contact child pornography offenders. *Journal of Sexual Aggression*, 16(2), 181-195. doi:10.1080/13552601003760006
14. Mitchell, K.J., Finkelhor, D., & Wolak, J. (2003). The Exposure Of Youth To Unwanted Sexual Material On The Internet: A national survey of risk, impact, and prevention. *Youth & Society*, 34(3), 330-358. doi:10.1177/0044118x02250123
15. Mitchell, K., Finkelhor, D., & Wolak, J. (2007). Youth Internet Users at Risk for the Most Serious Online Sexual Solicitations. *American Journal of Preventive Medicine*, 32(6), 532-537. doi:10.1016/j.amepre.2007.02.001
16. Price, M., Lambie, I., & Krynen, A.M. (2015). New Zealand adult internet child pornography offenders. *Journal of Criminal Psychology*, 5(4), 262-278. doi:10.1108/jcp-01-2015-0001
17. Pavlović, Z., Petković, N., & Matijašević Obradović, J. (2014). Dečja pornografija. *Zbornik radova Pravnog fakulteta u Splitu*, 51(1), 45- 61.
18. Pregrad, J., Tomić-Latinac, M., Mikulić, M., & Šeparović, N. (2009). *Iskustva i stavovi djece, roditelja i učitelja prema elektroničkim medijima*. Zagreb: Ured UNICEF-a za Hrvatsku.
19. Robbins, P., & Darlington R. (2003). The Role of the Industry and the Internet Watch Foundation. In A. MacVean and P. Spindler (Eds.), *Policing Paedophiles on the Internet* (pp. 79-86). Goole: New police Bookshop.
20. Schiffer, B. (2008). Brain Response to Visual Sexual Stimuli in Homosexual Pedophiles. *Journal of Psychiatry and Neuroscience*, 33(1), 23-33.
21. Seto, M.C., & Eke, A.W. (2005). The Criminal Histories and Later Offending of Child Pornography Offenders. *Sexual Abuse: A Journal of Research and Treatment*, 17(2), 201-210. doi:10.1007/s11194-005-4605-y
22. Seto, M.C., Cantor, J.M., & Blanchard, R. (2006). Child pornography offenses are a valid diagnostic indicator of pedophilia. *Journal of Abnormal Psychology*, 115(3), 610-615. doi:10.1037/0021-843x.115.3.610
23. Sheldon, K., & Howitt, D. (2007). *Sex Offenders and the Internet*. Chichester, England; Honoken, NJ: John Wiley & Sons.
24. Vejmelka, L., Brkić, G., & Radat, K. (2017). Dječja pornografija na internetu – obilježja osuđenih počinitelja. *Pravni vjesnik*, 33(2), 77-100. doi:10.25234/pv/4780

APPENDIX

Appendix 1: *Number of committed criminal offences from Article 185 of the Criminal Code of Serbia - distribution through the regions of Republic of Serbia*

Region	City	UBP	UPPr	BS	BSr	P
Belgrade	Belgrade	21		1659440		
	Zemun	1	23	168170	1873696	0.000012
	Borča	1		46086		
North-eastern Serbia	Negotin	1	1	37056	37056	0.000027
South-eastern Serbia	Niš	2		260237		
	Leskovac	1		144206		
	Požarevac	2		75334		
	Pirot	1	9	57928	590126	0.000015
	Surdulica	1		20319		
	Boljevac	1		139		
	Ivanjica	1		31963		
Sumadija and Western Serbia	Kragujevac	2		179417		
	Kruševac	2		128752		
	Valjevo	1		90312		
	Šabac	1	10	115884	649783	0.000015
	Arandjelovac	1		46225		
	Paraćin	1		54242		
	Despotovac	1		23191		
	Batočina	1		11760		
Vojvodina	Novi Sad	7		341625		
	Sremska Mitro-vica	1		79940		
	Sombor	2		47623		
	Gakovo	1	19	1810	770499	0.000025
	Subotica	3		141554		
	Zrenjanin	2		123362		
	Novi Kneževac	1		11269		
	Senta	2		23316		

Legend: UBP – The total number of perpetrators of the offense referred to in Artticle 185 of the Criminal Code of Serbia in relation to the city. UBPr – the total number of perpetrators in relation to the region. BS – number of inhabitants (2011 census). BSr – the total number of inhabitants of all cities in which the perpetrators live, at the level of the region. P – proportion of the perpetrators in the region and the number of inhabitants of the region (BSr).

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO
NBP 2019, 24(2): 45–63

Submitted: 2019-03-13
Published: 2019-09-21

UDK: 343.85:343.54/.55-054.73 (497.11)
doi:10.5937/nabepo24-20916

MEASURES FOR PREVENTION OF DOMESTIC VIOLENCE AND FOR PROTECTION OF VICTIMS IN SERBIA'S LEGAL SYSTEM WITH SPECIAL REFERENCE TO EMERGENCY MEASURES

Saša M. Marković[1]
University of Criminal Investigation and Police Studies, Belgrade

Abstract: Over the last two decades, combating domestic violence has been one of our country's main goals. Serbia is one of the 12 countries that have ratified *the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence* (*the Istanbul Convention*) before its entry into force on August 1, 2014, and as of June 1, 2017 the Law on the Prevention of Domestic Violence (LPDV) has been used in Serbia, which was adopted with the aim of regulating in a general and uniform manner the organization and conduct of state authorities and institutions, thereby enabling the effective prevention of domestic violence and the prompt, timely and effective protection and support for victims of domestic violence. Prescribing emergency measures has radically changed the way the victims of domestic violence are protected. In this paper, we will explore and try to answer several questions: what measures are available to state institutions to prevent violence and protect victims; whether the competent authorities and institutions apply these measures and to what extent; whether it was necessary to introduce urgent measures into our legal system and, finally, whether the activities to combat domestic violence so far produce results, that is, whether this negative social phenomenon is sufficiently suppressed.

Keywords: violence, family, urgent measures, protective measures,perpetrator.

1 sasamarkovic975@gmail.com

INTRODUCTION

"Marriage and family as institutions in modern society are of the utmost importance for establishing normal relations in society and for the development of new generations. Although marital and family life fall within the sphere of intimacy that the legislature does not need much to go into, still, some regulatingis necessary above all to protect marriage and the family as institutions of society"(Đorđević, 2009: 93). *Family Law* (FL), as well as the earlier *Law on Marriage and Family Relations* (The Law on Marriage and Family Relations, *The Official Gazette of the Socialist Republic of Serbia* Nos. 22/80, 24/84, 11/88, 22/93, 25/93, 35/94, 46/95, 29/01), oes not define family.It is therefore useful to determine the concept of family in the legal literature as the "fundamental and supreme notion of family law"(Panov, 2012: 33). The Istanbul Convention, like other international human rights treaties, contains no definition of family. According to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms "everyone is entitled to respect of their private and family life, home and correspondence" (*Convention for the Protection of Human Rights and Fundamental Freedoms*) [2] In its practice, the European Court of Human Rights (ECHR or the European Court of Justice) has "always interpreted the concept of family completely autonomously - independently of the provisions of domestic law - and according to the factual situation in each individual case. Essentially, the right to respect family life includes the right of family members to live together and develop their relationships. On the other hand, the community of life is not a *conditio sine non* of family life, which means that family life also exists among family members who live apart"(Draškić, 2011: 50).

In our family law, family can be defined as "a group of persons connected by marriage or extra-marital union and kinship, among whom there are legally established rights and duties, whose disrespect entails certain legal sanctions, or as a set of relatives having mutual rights and duties established by law" (Mladenović, 1981: 46), or "as a group of persons related by marriage and kinship" (Bakić, 1988: 35), or "as a household community of persons connected by marriage and extramarital union and kinship or only by kinship (blood or civil) who have mutual rights and obligations" (Janjić-Komar, Korać, 1996: 41), or "as a community of persons connected by marriage or marital relationship, or kinship, or by the household community of parents, children and other close relatives among whom there are rights and obligations" (Babić, 1999: 30), or as "a community of relatives connected by responsibility for life and mutual well-being" (Janjić-Komar, 2006: 250) or "biological-social community which represents the bridge between the biological world of the individual and the social world of formed personalities"(Draškić, 2011: 49).

However, if we define domestic violence, we will conclude that the family is viewed from a much wider angle than it was stated. The Criminal Code (CC) narrowly defines family members (See the Criminal Code Article 112). The most recently enacted law that addresses

2 http://www.echr.coe.int/Documents/Convention_ENG.pdf , accessed on February 25, 2019.

the issue of domestic violence - LPDV, broadens the definition of domestic violence even in relation to FL, which, in our view, has already broadly defined concept term family member, e.g. "the persons who have been or are still in an emotional or sexual relationship are regarded as family members" (Marković, 2018: 65). It is impossible not to notice that this definition of domestic violence introduces into our legal system, in addition to marital and non-marital family relations, partner relationship as well as economic violence as a form of domestic violence in accordance with Article 3 of the Istanbul Convention (Kolarić, Marković: 2016: 23).

In the text of this paper the author will analyse the strategy of combating domestic violence in the Republic of Serbia, and will try to answer the question how, in what way and by what methods it is possible to improve the effectiveness and efficiency of the internal affairs authorities in order to achieve better results in confronting this negative social phenomenon.

PROTECTIVE MEASURES FOR THE VICTIMS OF VIOLENCE

Until the beginning of this century, there was no strategy in Serbia to confront domestic violence. As a separate crime, domestic violence was introduced into our country's criminal justice system in 2002. Until then, much other classic incrimination was applied to the perpetrators of such acts, and the fact that violence was committed against a family member could be considered as an aggravating circumstance (Marković, 2015: 109). What we can state with a high degree of certainty is that the phenomenon of increased repression is no longer related to the internal needs of the state, but is increasingly linked to compliance with European standards (Kolarić: 2018: 12). This is the most common reason for reforms beginning in the first decade of the twentieth century until now. Temporamutantur. Times change, and so do we. The claim is true and can be viewed both nationally and internationally (Kolarić: 2016: 641). In addition to the classic repressive measures provided for in the criminal legislation (arrest, detention, custody, imprisonment, etc.), since August 2009, the competent authorities have had a security measure in place to prohibit the offender from approaching and communicating with the injured party (Article 89a CC). However, in the period between 2010 and 2016, only 465 of these security measures were ruled by court rulings (Marković, 2018: 217). Moreover, as of October 1, 2013, by applying the new Criminal Procedure Code generally, the court, as an alternative to ordering detention, was given the opportunity to set a measure during the course of criminal proceedings –restraining order, meeting or communicating with a specific person and visiting certain places. (The Criminal Code, *The Official Gazette of the Republic of Serbia*, 55/2014).

Previously, as of January 1, 2006, there was a possibility that one or more protection measures provided for in the Family Law could be imposed against a family member of the abuser. Their pur-

pose was to prevent, by eliminating the circumstances that in the past allowed the perpetrator to commit violence, to prevent new violence in the future, i.e. to effectively protect the victim, their physical and mental integrity, and to give them complete personal security. These measures are very rarely pronounced, regardless of the fact that the guardianship authority has been given the power to file a lawsuit, and the Constitutional jurisdiction has been extended to the public prosecutor despite the repressive and preventive treatment of victims of domestic violence, i.e. they were given the power to file a lawsuit ex officio.

By applying the Law on Prevention of Domestic Violence, as of June 1, 2017, two emergency measures are available to the competent authorities for preventing domestic violence: "a measure of temporary expulsion of the perpetrator from the apartment and a measure of temporarily prohibiting the perpetrator to contact and approach the victim of violence" (Article 17 of theL-PDV). Emergency measures may last for up to 32 days. For violation of urgent measures imposed and/or prolonged, the LPDV provided for an offence punishable by imprisonment for up to 60 days (Article 36 of the LPDV). By prescribing this offence, the protective measures provided for in the Misdemeanour Act, the prohibition of access to the injured party, facilities or the place of committing the offense may be fully implemented. It is pronounced to prevent the perpetrator from repeating the offense or to continue threatening the injured party.

From the above we conclude that the Serbian legal system stipulates a number of measures that can be implemented in combating domestic violence, whereby it is up to the competent authorities in each particular case to choose the most appropriate and implement them.

EMERGENCY MEASURES

By ratifying the Istanbul Convention, our country has committed itself to "take the necessary legislative or other measures and ensure that all relevant authorities assess the risk of mortality, the severity of the situation and the risk of recurrence of violence in order to manage the risk, and, if necessary, provide coordinated protection and support victims" (Article 51 of the Convention). Also, introducing emergency measures into our legal system was one of the obligations.

The risk assessment of the risk of violence by the victim is based "on the information available and shall take place as soon as possible" (Article 16 of the LPDV). For this reason, everyone is obliged to report domestic violence to the police or the public prosecutor, and the public prosecutor is obliged to do this to the police. This means that there are no exceptions, the risk assessment must be done in each reported case, that is, the competent police officer has learned, whether a criminal or misdemeanour charge is filed against the perpetrator, or it can be guessed from the reported event that there is no imminent danger of violence. Risk assessment is also done when family members deny that the complaint is true, but

also in cases where it is necessary to deprive the perpetrator of their liberty because of the crime committed. The term "as soon as possible" means that the competent police officer carries out the risk assessment as soon as they receive it, regardless of whether or not a possible perpetrator is available to the law enforcement agencies. The main goal is to protect the victim and prevent future violence.

Emergency measures must be imposed whenever a risk assessment indicates that there is an imminent threat of violence in the future. Thereafter, that person may be arrested and/or detained for a crime suspected of having been committed in the past. Therefore, a possible perpetrator may also have the status of a suspect, and the application of the provisions of the LPDV does not present a problem for the implementation of the provisions of the LCP. In doing so, the police and the public prosecutor should take into account the provision of Article 29 of the Constitution of Serbia, where "a person deprived of freedom without a court decision shall be guaranteed to be handed over to the competent court within 48 hours or else there is an obligation of release". This means that no longer than 48 hours may elapse from the moment of bringing a possible perpetrator of domestic violence to their possible surrender to a competent court for custody. Regardless of the fact that detention under LPDV can last up to 8 hours and detention under LPC up to 48 hours, their total duration should not exceed 48 hours (Marković, 2018a: 253).

We have emphasized that LPDV provides for the possibility of imposing and extending two emergency measures, specifying the possibility of simultaneously imposing both emergency measures in one order. Although there is a possibility in theory, it is difficult to imagine the case in practice of ordering independently a measure to temporarily expel the offender from the apartment. Namely, if we analyse the content and meaning of both urgent measures and the essence of their pronouncement, it is logical that if the perpetrator moves away from the family home, household or apartment where the victim resides, it is necessary to prohibit them the possibility of contact and approach the victim of violence in the family, too. Although legally possible, it would be illogical for the perpetrator to be temporarily expelt from the apartment without any other emergency measure being issued, then approach the victim in the corridor of the apartment building where the victim resides, or in the street going from the apartment to work, or as they go to the store for basic supplies, and commit psychic or physical violence towards them. Such an order would have no effect, and it would be ineffective.

"Urgent measures are quasi-sanctions that are substantially identical to criminal law sanctions but are not pronounced in the procedure which precedes them" (Ristivojević: 2018: 150). It should bear in mind that emergency measures are not a punishment for a possible perpetrator. They have a preventive effect because they warn the offender that according to the law it is forbidden to commit violence in the future, and as such they also function to prevent the act for the first time or to repeat acts of violence. Therefore, emergency measures should not be insignificant to the perpetrator, but rather effective and efficient in order to achieve their goal of special and general prevention, and their ultimate goal is to

protect the family in the broadest sense, as the "basic cell" of human society, but also each of its members individually, especially those that can be classified as particularly vulnerable groups (women, children, the elderly and the ill). Emergency measures protect not only victims of violence but also perpetrators, because by their existence and action they prevent them from acting and repeating violence and consequently protect them from suffering severe legal consequences. Emergency victims should be provided with safety, daily life activities for a certain period of time, relief from trauma and recovery from injuries, but also the time needed to file a lawsuit and bring family protective measures.

A family member exposed to violence suffers the consequences of victimization, or the process of suffering. "Victimization is a process in which someone or something becomes a victim" (Ignjatović, 2015: 16). "Victim, as a phenomenon, is broadly understood to mean a person who is in agony, suffers serious damage, no matter the cause and threat (by this term we mean victims of accidents and natural disasters)" (Ramljak, Simović, 2006: 16). Criminologically and in the criminal-legal sense, the concept of victim is narrowly defined and encompasses the persons whose rights have been directly violated or threatened with the commission of a criminal offense (See: Ignjatović, Simeunović-Patić, 2011: 20). LPDV did not define the concept of a victim of domestic violence, but by its analysis we can conclude that this term is significantly expanded. A victim, in terms of domestic violence as defined in this Law, implies not only a family member who has been subjected to domestic violence (physical, psychological, sexual or economic) once or more, but also a family member who has not been subjected to violence if the competent police officer identified the risk (danger) of being exposed to domestic violence in the immediate future. This means that the concept of victim also includes the concept of potential (latent) victim. We can say that the goal of preventing victimization in domestic violence is to recognize the dangers of a victimized situation and to discourage a violent family member from committing violence against a vulnerable family member.

A possible perpetrator who is deprived of their liberty (brought and detained) for conducting a preventive procedure, shall be issued emergency measures, following an assessment of the risk that there is an imminent danger of domestic violence, by issuing an order in writing. At this stage of the procedure, during the issuing of the order, and after the risk assessment is completed, the possible perpetrator goes into the phase of the perpetrator of domestic violence, therefore emergency measures are issued to the perpetrator of the violence (Kolarić, Marković, 2018: 56). Bearing in mind that a police order, which is limited to 48 hours, can be extended to another 30 days at the proposal of the public prosecutor in court proceedings, the question arises if this is an administrative decision in which the decision was made in the form of an order. The above procedure of the NPS meets all legal requirements which determine that it is an administrative decision, because an order imposing urgent measures, in accordance with Article 4 of the Law on Administrative Disputes, has all the characteristics of an administrative act of a positive character, which is a formal, constitutive and simple act with

limited duration to be issued ex officio rather than at the request of the party (Skoko, 2018: 180). It should be emphasized that instantaneous protection of the issued order is not stipulated, the court may only, at the proposal of the public prosecutor, extend the emergency measures issued by the order, but it may not revoke or annul the order (Marković, 2018b: 108). The Supreme Court of Cassation also stated in one of its decisions that an order imposing emergency measures had the character of an administrative act. If we were to accept this statement, the order should be used in Article 141of the Law on General Administrative Procedure (*The Official Gazette of the Republic of Serbia", Nos. 18/2016, 95/2018 (Authentic Interpretation)* and it should first and foremost contain the parts and form of the resolution prescribed by the LGAP. Namely, the LGAP prescribes that "if the decision is not issued by the head of the body but by an authorized official, the introduction shall include his personal name and the legal basis of his authority". Furthermore, such an act should also have a rationale, and the orders issued in the practice of the Ministry of the Interior do not have it in the first two years of implementation of the law. We consider that, although it is clear that an order has the characteristics of an administrative act, it is not, but we can define it only as one specific police authority, whose form is prescribed by the LPDV. Otherwise, if it were taken that the order was an administrative act, it could be annulled in an administrative dispute, which would be conducted in accordance with Article 3 of the Law on Administrative Disputes.

THE MEASURE OF TEMPORARY EXPULSION OF THE PERPETRATOR FROM THE APARTMENT

The measure of temporary expulsion of the perpetrator from the apartment implies a prohibition on the perpetrator to temporarily access the housing of the victim. So, by apartment we mean any part of the household (room, apartment, house, holiday house, etc.) in which the victim resides. In some cases, the dwelling may include all dwelling facilities in a household (house, shed, garage, barn, etc.). The term "apartment"may be interpreted in its broadest sense, with the measure always in the forefront of the best interests of the victim and our primary goal being how to best protect the victim in the future.

The main concern is whether a competent police officer may expel the offender from the apartment of which they are the owner. We can see that in the LPDV the term "eviction" is not used, as defined by the FL, but the "expulsion". In this case, the expulsion is temporary and lasts relatively short – up to 48 hours. The basic question raised here is whether the police can restrict the right of ownership, which is guaranteed by Article 1 of the Additional Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ECHR has long had the view that the state may restrict this basic human right in order to protect a legitimate general interest. In addition, the ECHR considers that "the state's interference in socio-economic

issues, such as housing, is very often necessary in order to achieve social justice and public well-being, and that in this area the freedom of assessment that states have in implementing social and economic policies must necessarily be broad".According to the ECHR, "this freedom of assessment must be recognised not only to the domestic legislator, but also to judicial and other authorities, which were invited to interpret and apply the effective legal regulations"(Petrušić, 2007: 61).

Therefore, even when the possible perpatrator is the exclusive owner of the real estate, the order for expulsion from the appartment does not influence the question of ownership. The owner is only temporarily restricted to use their ownership due to the existence of immediate danger of violence. The Constitutional Court, too, has this same view. It is considered that the eviction of a possible perpetrator from an apartment or house of which they are the sole owner did not result in a violation of property rights. Ownership is an absolute right, but the state may stipulate restrictions in the general interest. The measure to expel a potential perpetrator from the apartment is a legitimate restriction on property rights as this protects the general, public interest: protecting the victim against violence. The interference of property rights (and other property rights), i.e. controlling the way of its use is socially justified and allowed, because it respects the requirement of legality - legality (provided by law), and also, seeks to achieve the general, i.e. public interest, which is certainly protection against domestic violence (requirement legitimacy), which is also reflected in the constitutional guarantee of dignity and free development of personality (Article 23 of the Constitution), inviolability of physical and psychological integrity (Article 25 of the Constitution) and protection of the psychological, physical, economic and any other exploitation of a child (Article 64 paragraph 3 of the Constitution) as well as satisfying the requirement of reasonableness and proportionality. The prescribed emergency measure is only temporary in nature and it does not usurp (revoke) but only restricts some property rights of a family member who is assessed to be likely to commit violence in the immediate future (see more in: Marković, 2018: 263-264). Therefore, by expelling the perpatrator from the apartment - the rights of the owner are restricted only by *iusutendi*, not *iusdispenendi* (more precisely, the right of disposal) (Panov: 2012: 282).

In Serbia, in 2018, according to the data kept in the unique electronic database of the Ministry of Interior, out of a total of 19,150 orders passed, a measure of temporary expulsion of the perpetrator from the apartment was issued in 8,305 of them. We emphasized that this measure is not generally issued on its own, which means that approximately the same number of orders were issued, which were simultaneously issued both emergency measures. Interestingly, in 10% of cases (826 times), this emergency measure was imposed on a female family member. It is interesting to note that the largest number of these interim measures were issued at the Police Department of Novi Sad - 848, and then at the Police Directorate of Belgrade - 821. The least perpetrators of violence were temporarily removed from the apartment at the Pirot Police Department - 102, and at the Prokuplje Police Department - 103.[3]

3 Data of the MIA of the Republic of Srebia, memo 05.13. No. 235-50619/19-1 as ofJune17,2019.

THE MEASURE OF TEMPORARY PROHIBITION OF THE PERPETRATOR TO CONTACT THE VICTIM OF VIOLENCE OR TO APPROACH THEM

This measure has a preventive purpose - to prevent the possibility of committing violence, without having to restrain the victim from performing their daily activities or to disturb their usual life activity, but to prevent opportunities for the perpetrator to commit violence. The measure should allow the victim to free themselves from the fear that a possible perpetrator will suddenly appear near them and attack them. The imposition of a measure is necessary when there is an imminent danger that a potential perpetrator will, for the first time, commit or repeat violence. The conditions for its imposition exist not only when the immediate danger is identified that the victim of violence will suffer violence in the near future, but also when the risk assessment concludes that only approaching the victim or establishing a verbal or non-verbal contact with the potential perpetrator of violence with the victim was a form of psychical violence, since, in certain situations, approaching the victim, calling on the phone, or other means of communication can have psychological consequences.

We see that this emergency measure consists of two prohibitions.

The first prohibition is to prohibit the offender from contacting the victim. The essence of this measure is to prohibit the possible perpetrator from all forms of contact with the victim (including for instance the prohibition of sending e-mails on the Internet, comments on the victim's Facebook profile, etc.). Even if the victim tries to make contact with the perpetrator (e.g. by telephone) for the duration of the prohibition, the perpetrator must not accept the contact (call) but ignore it and inform the police about the event. In such situations, NPS may conduct a procedure where it will conduct a risk assessment and identify the immediate danger of psychological violence in the family by the victim, who may at the same time become a possible perpetrator of domestic violence. The purpose of emergency measures is prevention - prevention of violence, but also protection of the victim. It is argued that communication ban is one possible solution to limit a potential perpetrator from being in a situation of committing violence. In addition to being urgent and timely, the protection of the victim must also be efficient and effective. During emergency measures, it is not enough to adopt a protection plan, and for the state authorities to "boast" on statistical data on the number of emergency measures or individual protection plans, but also that the planned and taken protection measures have an effect on the potential perpetrator to stop the violence if they planned it in the future, that is, to prevent ad hoc situations in which the victim would be at risk. The victim needs to feel safe, to know that they are safe and not to be in danger, that is, the state has done everything in its power to protect them. Therefore, the victim must be interviewed, provided with information and pointed out to the potential risks of violence, while also considering the overall safety of other family members (primarily children) and providing adequate protection.

The second prohibition is to prohibit the perpetrator from approaching the victim. The essence of this measure is to prevent a possible offender from approaching the victim. The overriding goal of this measure is to prevent physical violence and other types of violence. Namely, the victim should be able to recover psychologically from traumas experienced in the past by a possible perpetrator, and the appearance of the perpetrator of violence in the victim's vicinity is a certain form of psychological violence. In some cases the imposition of this prohibition precludes the commission of sexual and economic violence in the family, especially when it comes to children or the elderly and the sick. Unlike the FL, which provided for similar measures of domestic violence protection for a court to determine the distance that the abuser should not approach the victim, the LPDV did not provide for that the NPS can set a certain distance that the perpetrator should not approach the victim. We believe that a violation of this measure would exist in situations where the person to whom the measure was issued or extended comes into the victim's sight with the intention of disturbing them psychologically. This means that if the perpetrator had met the victim in a public place, and as soon as perpetrator noticed them, the perpetrator would not have violated the emergency measure. These are possible situations, especially in small towns. But if the perpetrator, by knowing the victim's habits, tries to meet them and approach them, e.g. if they would deliberately visit the store every morning at the time the victim goes grocery shopping or near the kindergarten at the time the victim brings the children, then there would be a breach of the emergency measure.

The data from the Ministry of Internal Affairs of the Republic of Serbia show that in 2018 a 19,074 interim injunctions were imposed on the perpetrator to contact and approach a victim of violence, most notably at the Belgrade Police Department - 1,743 and then at the Novi Sad Police Department - 1,731. The least of them were pronounced at the Police Directorate Prokuplje - 249. We see that this measure of pronunciation is slightly less than 2.5 times more than the measure of temporary removal from the apartment.

VIOLATING EMERGENCY MEASURES AND THE PROTECTIVE MEASURE "PROHIBITION ON APPROACHING THE DAMAGED PERSON, THE FACILITIES OR THE SCENE OF THE VIOLATION"

The Law on Prevention of Domestic Violence in Article 36 provides for a misdemeanor for violations of emergency measures that have been issued or extended, with a sentence of up to 60 days in prison.

"Misdemeanour proceedings in some cases where the legal grounds for bringing under section 190 of the Misdemeanor Act (MA) can be met can be much more effective than other types of court proceedings, with the victim of violence being adequately protected from further violence on the spot. The police must bring the suspect of committing a misdemeanor, together with

the request for initiating misdemeanor proceedings to the magistrate of the misdemeanor court without delay"(-Marković, 2015a: 219), or, if the legal conditions are fulfilled, for a maximum of 24 hours. In this way, we will protect the victim of violence on the spot. The applicant for initiating misdemeanor proceedings shall propose to the court that a verdict be delivered immediately in application of the provisions of Article 308 of the MA. Namely, a conviction can be enforced before its validity, among other things, if the defendant is punished for an offense with serious consequences, and there is a reasonable doubt that they will continue committing the offense, repeat the offense or avoid the enforcement of the imposed sanction. In addition, the provision stipulated in the third paragraph of Article 36 of the LPDV emphasizes that a conviction for the basic form of this offense can be executed before its validity, according to the Misdemeanour Act. This means that, for a violation of an emergency violation that has been issued or prolonged, the court may, at the applicant'smotion, pass a judgment that is enforceable before it becomes final and ruling.

The Misdemeanour Act prescribes a protective measure "prohibition of access to the injured party, facilities or the scene the offense" which is issued"to prevent the perpetrator from repeating the offense or to continue jeopardising the injured party (the victim). This measure is issued at *the written request of the applicant* for the initiation of the misdemeanor procedure or at the oral request of the injured party pointed out at the hearing during the misdemeanor procedure"(Marković, 2018: 218). The court must decide on the applicant's request.Failing to do so will result in a material breach of the provisions of the misdemeanor procedure (MA, Article 247, paragraph 2).

Thus, by the verdict of the Misdemeanor Court in Požarevac 01.No: 97/18 of 21, November 2018, the perpetrator of the misdemeanor referred to in Article 36, paragraph 1 of the LPDV committed in circumstances (Article 45 of the MA), with the misdemeanor referred to in Article 9, paragraph 1 of the Law on Public Law and Order is a single sentence of 30 days' imprisonment, whereby the court did not decide on the request of the Applicant - Požarevac Police Directorate to impose a protective measure on the perpetrator "prohibiting access to the injured party, objects or place of committing the offense". The verdict was passed as enforceable before its ruling on the applicant's motion, and despite the significant violation of the misdemeanor procedure by the court, it became final (no other motion for protective measure was decided and the applicant did not file a complaint).

In the following example, the defendant A. A. was sentenced to a fine of 20,000 dinars for committing the offense referred to in Article 36, Paragraph 1 of the LPDV. On January 25, 2018, at around 3PM the person mentioned on the same day they violated the emergency measure of temporary expulsion from the apartment, which was issued on January 22 at 3PM and extended by the decision of the Primary Court in Valjevo NP no. 22/18 as of January 23, 2018, by entering the apartment and taking his personal belongings while the victim's grandmother V.A. was in the apartment. With the same verdict for committing the misdemeanor under Article 8, paragraph 1 of the Law on Public Law and Order (LPLP) the

offender was fined with 10,000 dinars for forcibly opening the front door, which was locked on January 22 at 3PM when they entered the apartment, using physical force, causing damage to the doorknob whereby causing material damage. The court did not decide on the request of the Ministry of the Interior to impose a protective measure on the defendant "prohibiting access to the injured party, facilities or place of committing the offense". The court also refused to comply with Article 308 (1) (2) of the MA so the judgment did not become enforceable before it became final and ruling. The Misdemeanor Court of Appeal sustained the applicant's appeal (it was well founded), overruled the first instance verdict on the grounds of material breach of the misdemeanor proceedings referred to in Article 264, paragraph 2, item 3 of the MA, and remitted the case for retrial and decision (The judgement of the Misdemeanour Court, Pržn No. 21/18 as of February 2018:2).

The reasoning of the judgment states that one of the reasons for making such a decision is that: "the first-instance court did not consider or decide on the protective measure, or gave reasons whether the conditions for the imposition of the protective measure were fulfilled or not, and for what reason."

It is interesting that the defendant in this case, A.A., also violated the second emergency measure after the first instance verdict – an interim ban on contacting and approaching the victim B. A. (both emergency measures issued and extended by the decision of the Primary Court in Valjevo NP No. 22/18 of 23 January, 2018) by repeatedly contacting the injured party by telephone (as determined by a forensic examination of the injured party V. A.'s cell phone). The perpatrator was brought to a judge of the misdemeanor court under Article 190 of the MA, where he was sentenced to 15 days of imprisonment, which was enforceable immediately pursuant to Article 308 of the MA. (The judgement of the Misdemeanour Court in Valjevo 6Prn. 9/18 as of January :29)

By the same judgment, the applicant's motion to impose a protective measure on the defendant was rejected. The Misdemeanor Court of Appeal sustained the applicant's appeal and reversed the First Instance Verdict, imposing a protective measure on the accused A. A. for a period of six months from the date of enforcement of this verdict. The following was stated in the rationale of the judgment: "Having in mind the established factual situation, as well as the fact that the defendant contacted the injured V. A. herein by the telephone of their sister A. G. within a short time after the extension of the emergency measure and by the decision of the Primary Court in Valjevo, whereby showing perseverance in the conduct of the offense for which they were found responsible for and continued to threaten the injured party, and the identity of the defendant as well as the degree of vulnerability of the injured party, at the request of a court of second instance on the basis of the established condition, it is necessary, as stated by the Applicant in its appeal, to impose a protective measure to the defendant A. A.(...) pursuant to Article 61 of the MA. In view of the aforementioned, this court passed its decision as in the operative part of the judgment, but pursuant to Article 61, paragraph 4 of the MA, the prohibited approach to the injured party measure also includes the prohibition of access to the apartment or household

during the period for which the prohibition applies."

"The decision of the court imposing a restraining order must include: the time period in which it is enforced, information on the persons the offender may not access, an indication of the facilities that he may not access and at what time, places or locations within which the offender is prohibited." This measure, regardless of whether the offense was committed in a shared dwelling, "also includes a measure prohibiting access to a shared dwelling or household during the period covered by the prohibition. A protective restraining order may be imposed for up to one year, counting from the enforceability of the judgment"(the MA, Article 61). Pursuant to the provisions of the MA, the said measure should run from the day the judgment is enforced, however, if the defendant is sentenced to imprisonment, the measure is not counted for the duration of this measure, as provided for in Article 89a of the CC. Namely, Article 310 of the MA provides for, inter alia, that "imprisonment and protective measures shall be executed in accordance with the law governing the execution of criminal sanctions, unless otherwise provided by this Law". For this reason, we will apply the provision of Article 89a of the CC and the sentence of imprisonment imposed by the judgment will not be counted for the duration of the protective measure. "The injured party shall be notified on the decision of the court imposing a restraining order as well as: the police department competent for the execution of the measur; the competent guardianship authority if the measure relates to a ban on the perpetrator's approach to children, spouse or family members"(the MA, Article 61, Paragraph 6).

If the punished person "who has been issueda restraining order by an enforceable verdict, and who approaches the injured party, premises or the place of the committed offense during the measure or makes contact with the injured party in an unlawful manner or at an inappropriate time, they shall be sanctioned by the regulation providing for the offense for which this measure was issued"(the MA, Article 62). The misdemeanor referred to in Article 36, paragraph 1 of the LPDV is punishable by a sentence of up to 60 days of imprisonment so that an identical sentence can also be imposed for a violation of the protective measure if it has been previously imposed for that offense.

Thus, for committing the offenses referred to in Article 36, paragraph 1 of the LPDV, the defendant S.S. was sentenced to 60 days in prison and given a protective measure of "prohibition toapproach the injured party, premises or the place of committing the offense" for a period of three months, counting from the day the judgment was enforced because the judgment rendered it enforceable even before it became final. Namely, on September 13, 2018, the offender was found by the NPS walking around in the company of their mother, who was the victim of violence, at about 10:20AM, and on September, 7 2018 they were issued and prolonged the emergency measure of temporary restraining order and communication in relation to the victim. On November 26, 2018, after serving a prison sentence, the defendant S.S. was found by the NPS in the family apartment where their mother resides, for the duration of the above protective measure. The offender was remanded to the magistrate after being detained for committing the misdemeanor referred to in Artic-

le 62 of the MA in relation to Article 36, paragraph 1 of the LPDV. They were sentenced to 60 days imprisonment and a one-year protective measure "prohibited approach to the injured party, premises or place of the offense".

In the following example, the defendant R. Z. was sentenced to 60 days in prison for violating the protective measure "prohibition of approaching the injured party, premises or the place of committing the offense", which was imposed to them for 10 months for committing the offense referred to in Article 36 of the LPDV. For committing a new offense, in addition to their sentence, the defendant was sentenced to a new protective measure of the same content for a period of 12 months. Namely, they were found by police officers in the family home of the injured - family members, thereby violating the prohibition to approach the victim, that is, the premises - the family house where the injured parties live.

There is a possibility that an emergency measure that has been prolonged may be violated repeatedly, with the offender not available to the police and the court. In that case, a single misdemeanor proceeding will be conducted according to their invention, whereby a "prolonged misdemeanor is committed because the perpetrator with a single intent makes more of the same time-related misdemeanors, which constitute a whole due to the identity of some of the following circumstances: the injured party, the identity of the case the offense, the use of the same situation or a lasting relationship, the unity of the place or space of the offense. In such cases, for offenses referred to in Article 36 section 1 committed in concurrence of offenses, a single sentence of up to 90 days may be imposed." (the MA, Article 46).

There are also situations where an emergency measure that has been prolonged is violated two or more times and individual misdemeanor proceedings are conducted. Namely, the duration of emergency measures that have been extended is 32 days from the moment the order comes, so it may happen that the perpetrator violates an emergency measure, is sentenced, and then again violates the same emergency measure. Thus, the offender G. A. who was sentenced to 10 days in prison on October10, 2018, violated both emergency measures extended by the decision of the Primary Court in Šabac 7.P2N567/18 as of October, 6 2018. After coming out of prison onNovember 2, 2018, the person mentioned violated again both of the emergency measures which were still effective. The new verdict sentenced them to 30 days in prison. In both cases, the applicant did not propose the imposition of a protective measure for the initiation of the misdemeanour proceedings, and therefore the court could not even order it. Although it is evident from this example that the victim will not be protected by the release of the offender and the emergency measures will expire at that moment unless the prosecutor, CSR or other authorized person files a lawsuit to determine the protection measures under the provisions of the MA. Therefore, with the new knowledge of the existence of a threat of domestic violence, the competent police officer must reinitiate a new procedure under the provisions of the LPDV.

In the Republic of Serbia, for the first two years of the application of the LPDV, there were 3,432 violations re-

ferred to in Article 36, paragraph 1 of this Law, most notably in the Novi Sad Police Administration - 331, in Belgrade 272, in Niš 260, Požarevac 216, in Leskovac 202, and the least in Prokuplje 35 and Prijepolje 39. Most of the persons were convicted in Novi Sad - 282, imprisonment 268, followed by Belgrade - 234, imprisonment 200, Niš -222, and imprisonment 207. It is interesting that the most severe sentences are pronounced in Belgrade, where 78 sentences were handed down, which are over 30 days, followed byNiš, where there were 73 such sentences, and then in Novi Sad, where 47 of them were pronounced. We see that the strictest criminal policy of the courts is in Niš because 35% of imprisonment was pronounced for more than 30 days. Most of the protective measures "the prohibition of approaching the injured party, objects or place of committing the offense" were issued in Valjevo 35 (and 93 persons convicted), in Belgrade 16, Novi Sad 6, and in Šabac 1. In other police departments this protective measure was not pronounced.

CONCLUSION

In order to obtain relevant information, it is necessary to introduce as soon as possible a Central Record of Domestic Violence Cases. The LPDV clearly stipulated this, and sets forth deadlines for this, but Article 32 has not yet been applied. In the first two years of the application of this law, each competent authority has been keeping its records, with the case of domestic violence not having a unique number. A recent survey shows that in the period between June 1,2017, and May 31, 2018, 56.5% of emergency measures were extended (Bošković, Puhača, 2019:44). According to the data of the Ministry of Internal Affairs for 2018 out of 27,202 pronounced emergency measures, 17,083 or 63% were extended. However, according to the Republic Public Prosecution, 17,915 motions to extend emergency measures were filed and the court adopted 17,300 and the Ministry of Justice gives similar data as the Republic Public Prosecution. There were 17,783 proceedings for the prevention of domestic violence. If we cross this data, we will come to a different conclusion with respect to investigations using only the data of the MIA, most probably because the decisions on prolonged emergency measures are not kept up to date by the competent police officers in official records. Our 2018 survey shows that for 94% of the orders, the public prosecution makes a proposal to extend emergency measures, and the court adopts 97% of the proposals. In conclusion, of the ten emergency measures, nine are extended. This shows us that the police perform a good risk assessment and adequately pronounce emergency measures. In this way, we wanted to point out what kind of mistakes in reaching conclusions could lead to the use of wrong data.

The research we conducted shows us that the protective measure "the prohibition of approaching the injured party, objects or the place of committing the offense" is pronounced the most in the territory of the Kolubara Administrative District; in the territory of the Police Administration of Novi Sad towards

2%, whereas in the area of 23 regional police departments this protective measure was not pronounced. The main reason is that authorized applicants do not make such a motion in the request for misdemeanour proceedings. However, what is not taken into account is that by imposing this measure, the victim of violence can be effectively protected for a longer period. The overriding goal of imposing measures should be effectiveness and efficiency in achieving results, i.e. every police officer manager and the competent police officer in their work should think about how to do the right thing in the right way when dealing with the protection against the domestic violence.

Furthermore, we consider it more expedient that seeing that LPDV already regulates criminal proceedings in one part should have also provided the reasons for the obligatory initiation of court proceedings for determining measures of protection under the Family Law. Namely, from the research we conducted, we can conclude that emergency measures have become the dominant measures for the protection of victims of domestic violence, with a large number of recidivist - they are pronounced several times during the year for the same persons and are not accompanied by family protection measures. Moreover, the competent authorities in a negligible number of cases file lawsuits for the determination of protection measures. According to the Ministry of Justice, in 2018, 2,479 lawsuits were filed with the courts in Serbia to determine protection measures, and 17,783 cases for extension of emergency measures were opened. According to the data from the Republic Public Prosecution, in the same period the primary public prosecution filed 297 lawsuits for determining protective measures(out of whichPrimary Public ProsecutionZrenjanin–216, Primary Public ProsecutionNiš -67 and Primary Public Prosecution Šabac - 54[4]) as well as 17,915 motions for extending the emergency measures.[5]This means that in the courts of general jurisdiction this year there have been seven times more proceedings under the provisions of the Law on Prevention of Domestic Violence than under the provisions of the Family Law, and three basic public prosecutors make an exception in filing lawsuits for the determination of protection measures. They filed as many as 2/3 of the total number of lawsuits filed by all public prosecutors. We consider that the main reason for the small number of lawsuits filed, and the uneven practices of public prosecutors, is the same as the reason why the police do not make proposals for the protection measures in misdemeanour proceedings - there is no obligation for the public prosecutors and the guardianship authority, which are alternatively designated for that purpose by law, to file a lawsuit, i.e. they are left to decide whether or not to file a lawsuit. Such is not the case with emergency measures, when the legal requirements are fulfilled, the police have a duty to pronounce them, and the public prosecution submits a motion to the court for extension. That is why, according to the MIA, in 2018, in the reported 27,738 events, 19,150 orders were issued declaring 27,202 emergency measures. Orders were issued in 16,377 cases to males. In addition there were 30,992 casualties recorded, of which 29,104 were adults and 1,077 were under the age of 14 at the time of reporting the event. The largest number of victims is fema-

4 The memo of the Primary Court in Šabac, SU VIII- 42 -10/2019 as of June 20,2019.
5 The memo of the Republic Public Prosecution, No. Pi 37/19, as of June 12,2019.

le – 22,212. Based on the above, we can conclude that the emergency measures have become the dominant way of protecting victims of domestic violence, primarily adults (94%), most of them female (72%), whereby in 85% the order was made to a possible male offender. These data also confirm to us the results of numerous studies so far that the perpetrators of violence are men and the victims are women, in most cases.

REFERENCES

1. Babić, I. (1999). *Porodično pravo*. Beograd: Službeni glasnik.
2. Bakić, V. (1988). *Porodično pravo u SFRJ*. Beograd: Savremena administracija.
3. Bošković, A. & Puhača, J. (2019). Analiza praktične primene Zakona o sprečavanju nasilja u porodici, s posebnim osvrtom na primenu hitnih mera. *NBP – Žurnal za kriminalistiku i pravo, 24*(1), 30–48. doi:10.5937/nabepo24-20343.
4. Council of Europe (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms*. Rome. Retrived March 21, 2019, from http://www.echr.coe.int/Documents/Convention_ENG.pdf.
5. Council of Europe (2011). *Council of Europe Convention on preventing and combating violence against women and domestic violence.* Istanbul. Retrived March 21, 2019, from https://rm.coe.int/168008482e
6. Draškić, M. (2011). *Porodično pravo i prava deteta*. Univerzitet u Beogradu, Pravni fakultet.
7. Đorđević, Đ. (2009). *Krivično pravo: posebni deo*. Beograd: Kriminalističko-policijska akademija.
8. Ignjatović, Đ. Simeunović-Patić, B. (2011). *Viktimologija*. Univerzitet u Beogradu, Pravni fakultet.
9. Ignjatović, Đ. (2015). *Kriminologija*. Univerzitet u Beogradu, Pravni fakultet.
10. Janjić-Komar, M., Korać, R., Ponjavić, Z. (1996). *Porodično pravo*. Beograd: No- mos.
11. Janjić-Komar, M. (2006). Roditeljska odgovornost. *Novo porodično zakonodavstvo* (str. 247–251). Univerzitet u Kragujevcu, Pravni fakultet.
12. Kolarić, D. (2018). Tvrdo jezgro ljudskih prava u praksi Ustavnog suda Srbije i Evropskog suda za ljudska prava u Strazburu: ustavnosudska zaštita u krivičnoj stvari. *Revija za krivično pravo i kriminologiju*, *56*(2), 9–59.
13. Kolarić, D. (2016). Dinamična faza krivičnog zakonodavstva Republike Srbije. *Pravni život*, 9, 641–669.
14. Kolarić, D., & Marković, S. (2018). Pojedine nedoumice u primeni Zakona o sprečavanju nasilja u porodici. *Anali Pravnog fakulteta u Beogradu, 66*(1), 45–71. doi:10.5937/analipfb1801045k
15. Kolarić, D., Marković, S. (2016). Predgovor; Stvarni registar. *Zakon o sprečava- nju nasilja u porodici*. Beograd: Službeni glasnik.

16. Krivični zakonik. *Službeni glasnik Republike Srbije*, br. 85/2005, 88/2005,107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/19
17. Marković, S. (2015). Uloga policije u suzbijanju nasilja u porodici u prekršajnom postupku. *NBP – Žurnal za kriminalistiku i pravo*, 20(2), 211–231. doi:10.5937/nabepo24-20343.
18. Marković, S. (2018). *Sprečavanje i suzbijanje nasilja u porodici*. Beograd: Službe- ni glasnik.
19. Marković, S. (2015). *Uloga policije u otkrivanju i dokazivanju nasilja u porodici*. Doktorski rad, Univerzitet u Beogradu, Pravni fakultet.
20. Marković, S. (2018). Policijska strategija u borbi protiv nasilja u porodici: os- novna kriminalističko-strateška usmerenja u Republici Srbiji. *Bezbednost, 60*(3),100–116. doi:10.5937/bezbednost1803100m
21. Marković, S. (2018). Pojedina iskustva u primeni Zakona o sprečavanju nasilja u porodici. *Organizacija pravosuđa i efikasnost sudske zaštite: evropski standardi i stanje u Srbiji: krivičnopravni aspekt*. Beograd: Srpsko udruženje za krivič- nopravnu teoriju i praksu.
22. Mladenović, M. (1981). *Porodično pravo*. Beograd: Privredna štampa.
23. Panov, S. (2012). *Porodično pravo*. Univerzitet u Beogradu, Pravni fakultet.
24. Petrušić, N. (2007). *Međunarodni i domaći pravni okvir ženskih ljudskih prava i rodne ravnopravnosti: kliničko obrazovanje*. Niš: Ženski istraživački centar za edukaciju i komunikaciju: Pravni fakultet : Advokatska komora.
25. Prekršajni apelacioni sud, Presuda: Pržn. br. 212/18 od 24. 12. 2018.
26. Prekršajni apelacioni sud, Presuda: Pržn. br. 17/18 od 9. 2. 2018.
27. Prekršajni apelacioni sud, Presuda: Pržn. br. 21/18 od 9. 2. 2018.
28. Prekršajni sud u Požarevcu, Presuda: Prn. br. 97/18 od 21. 11. 2018.
29. Prekršajni sud u Valjevu, Presuda: Prn. br. 6/18 od 26. 1. 2018.
30. Prekršajni sud u Valjevu, Presuda: Pri. br. 42/18 od 13. 9. 2018.
31. Prekršajni sud u Valjevu, Presuda: Pri. br. 47/18 od 27. 11. 2018.
32. Prekršajni sud u Valjevu, Presuda: Pr. br. 173/19 od 15. 1. 2019.
33. Prekršajni sud u Valjevu, Presuda: Prn. 9/18 od 29. 1. 2018.
34. Prekršajni sud u Šapcu, Presuda: Prn. br. 53/18 od 2. 11. 2018.
35. Prekršajni sud u Šapcu, Presuda: Prn. br. 44/18 od 10. 10. 2018.
36. Ramljak, A., Simović, M. (2006). *Viktimologija*. Banja Luka: Panevropski univer- zitet Apeiron.
37. Ristivojević, B. (2018). Da li je Zakon o sprečavanju nasilja u porodici zakazao? *Zbornik radova Pravnog fakulteta u Novom Sadu*, (1), 137–152.
38. Skoko, D. (2017). Upravnopravna zaštita od nasilja u porodici. *Bilten VKS*, (3), 170–184.
39. Sentenca iz presude VKS Kzz 804/2018. (2019). *Bilten VKS*, (1), 9–10.

40. Zakon o prekršajima. *Službeni glasnik Republike Srbije*, br. 65/2013, 13/2016 i 98/2016 (odluka Ustavnog suda).
41. Zakonik o krivičnom postupku. *Službeni glasnik Republike Srbije*, br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 i 35/19..
42. Zakon o sprečavanju nasilja u porodici. *Službeni glasnik Republike Srbije*, br. 94/16.
43. Zakon o braku i porodičnim odnosima. *Službeni glasnik SRS*, br. 22/80, 24/84, 11/88, 22/93, 25/93, 35/94, 46/95 i 29/01 (prestao da važi).
44. Ustavni sud, Rešenje IU broj 296/2005 od 9. jula 2009. *Službeni glasnik Republike Srbije*, br. 101/09..

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO
NBP 2019, 24(2): 65–78

Submitted: 2018-10-19
Published: 2019-09-16

UDK: 327.56-314.15 (4-15)"20"
323.28
doi:10.5937/nabepo24-19230

CAUSE AND EFFECT RELATION BETWEEN THE CURRENT MIGRATIONS AND TERRORISM IN WESTERN EUROPE

Nedeljko Cvetković[1]
Academy for National Security, Belgrade
Danilo Vujović

Abstract: The key subject analyzed within this article - the existence, and character, of the cause and effect connection in regard to the current migrant crisis and the rise of terrorist activity in Western Europe – required first a look back at the terms terrorism and migration, their respective characterisitics, as well as the geopolitical factors affecting them; secondly, it required an analysis of their mutual interaction; and finally, a comparison of the points of view taken by all the parties involved when approaching this problem, as well as determining certain potential solutions to the myriad of problems caused by the migrant crisis. This subject, we feel, is relevant due to the important role terrorism has in causing the migration of muslim population from Africa and the Middle East toward the European Union, as well as the potential effect of the said migration on the spreading of terrorism within Europe itself. Whilst researching the literature needed to write this article, the authors used the method of content analysis. Existence of the direct link between terrorism - as one of the causes of migrations, and migrations - as a condition helping the expansion of terrorism into Europe, presents itself as a result of the conducted research.

Keywords: terrorism, migration, radicalization, transfer of violence, infiltration.

INTRODUCTION

Among the security risks facing the modern states, terrorism takes one of the spots at the very top of the list. It could be said that it even surpasses the dangers such as nuclear or world war, if for no other reason than for the fact that these armed conflicts are only potentail threats, which present almost equal dangers for both parties involved, while terorrism stands as a very real form of risk,

1 cvele1981@gmail.com

which carries of its share of lives almost daily (Statista, 2017)[2].

What makes terrorism especially problematic from the standpoint of those tasked with fighting it is the all too often inability of determining one's opponent, meaning that a terrorist act can be carried out by almost anyone. At times, it takes only one person to cause the chaos of terrorist strike, like the one that happened in Nice on July 14th, 2016 (BBC, 2016)[3]. Combating this type of warfare - for which we can safely say that it will be even more present in the future, since the nuclear potential of the most powerful of the worlds states will keep the status-quo when speaking of the open conflict of wider scales, is largely down to successful prevention of the escalation of violence. However, it is not enough to just act repressively in order to prevent future terrorist acts; we have to deal with long-term structural solutions that address the problems triggering the very appearance of terrorism. (Zwitter, 2011: 7-13)

Prevention depends on a multitude of factors, ranging from the economic and geopolitical situation, through social relations in individual countries - whether it is the countries from which the terrorists come from or those they are heading for; to the financial and numerical powers of the agencies that fight terrorism. Not even science itself has a unique position on this phenomenon. The definitions include everything from the strategy of political communication for the psychological manipulation of masses by which unarmed civilians (and persons who do not participate actively in armed conflicts, such as prisoners) are deliberately chosen for victims to impress third parties (Schmid, 2016:14), through the spreading of fear and panic (Dragojlović, Jovanović, 2016: 65), to those stating that terrorism is carried out by a subnational or non-state entity (Hoffman, 1998:43). Common to all definitions of terrorism as a concept is that it is aimed at achieving a political-interest objective and that its perpetrators primarily use violence to create an atmosphere of fear in order to achieve the goals of the organization behind them.

Since terrorism is often a reaction to the conflicts of the unequals, such as those in Iraq and Afghanistan since the beginning of the 21st century (Stern, McBride, 2003) and the current one in Syria, meaning that the agents of terrorism have an opponent that is more powerful than them, for the success of the terrorist act the anonymity of the perpetrator until the implementation phase is crucial. Anonymity also brings with it the fact that even less courageous and marginal groups can be motivated to commit a terrorist act, since the fear of retribution and punishment is significantly reduced (Silke, 2003:85). With this in mind, over the past several years, and especially with the exacerbation of the conflict in the Arab world, migration to the European Union has grown into a very serious security challenge[4](Mijalković, 2016:5).

Migrations themselves, if we define them as entering [immigration] or ex-

2 In 2016 alone, 25,621 people were killed by terrorists. See: "Number of casualties due to terrorism worldwide between 2006 and 2017"

3 Mohamed Lahouaiej Bouhlel is a typical example of the perpetrator of a terrorist act that has been radicalized over the Internet and was working alone.

4 It is estimated that in 2005 some 175 million people in the world had the status of an international migrant, in 2013 there were around 214 million, 2016, there are more than 224 million. A logical conclusion is that migrations evolved, and that they also evolved the risks and threats of migration to the security of people, states and international communities.

iting [emigration] by (groups of) people from one or another, usually a very distant, location with the intention of settling there, permanently or temporarily, pose a challenge to the security of all states on the route they encompass. Whether voluntary or involuntary, legal or illegal, they involve the need for, primarily security, control of persons participating in them, whether they are leaving or entering a country (Schmid, 2016:14). The current refugee crisis, whose roots can be traced back to the "period between 2007 and 2011 when the first major groups of migrants from Africa and the Middle East started on the EU path" (Gajić, 2016:81), has raised this need to an even higher level since it carries a great potential risk of the presence of anonymous terrorist agent among the refugee population. The risk of the possibility that among the sea of refugees, set in motion by the conflicts with a clear stamp of Islamist terrorist organizations, there is even one member of these organizations is not something that the country in which they immigrate can accept.

In a world under pressure from the threat of a nuclear war, migration can be a major security challenge (Simeunović, 2015:7). The interconnectedness of these two phenomena, whether one causes another or they overlap each other, must be at the very center of interest for both science and the security agencies of all countries.

TERRORISM (VIOLENCE) AS A TRIGGER FOR MIGRATION

When speaking about the security challenges that the problems of terrorism and migration carry, we can no longer talk about individual countries and their approach to solving the given problems. The world has long since passed such a framework of considerations. According to A. Gajić, both of these phenomena must be evaluated as "accompanying the globalization" (Gajić, 2016:77). In his presentation, Gajić focuses on the "migration and fate of migrants" (Gajić, 2016:77), but if we look at the facts, we will see that countries like Syria, Iraq and Afghanistan, which are the scene of armed conflicts and a large number of terrorist attacks, are also some of the biggest refugee sources (de Wenden, 2016:118), and thus the link between migration and terrorism becomes clearer.

In the context of globalization, which leads to the intensification of social relations on the world stage, connecting distant places in such a way that the events that have taken place miles away influence local events and vice versa (Giddens, 1988:69), the old conflicts between East and West gain a completely new form. The disbalance that emerged in the field of military and political power with the fall of the Berlin Wall, led to a situation in which the West, led by US military and NATO, found itself in a global conflict with terrorism, especially Islamist, after the September 11, 2001.

As Islamist terrorism, which has its roots in the jihadist movement, which is experiencing an expansion with the Soviet-Afghan conflicts of the 1980s (Neumann, 2014: 9)[5]. with the arrival

5 The Jihadist movement advocates and justifies armed struggle and brutal acts of violence, while diminishing the importance of the spiritual and

of the 21st century, assumed the place of the leading danger to global security, whether it was "internal or international" (Dragojlović, Jovanović, 2016:63) the focus of the conflict transferred to the territories of the countries of the Middle East (Voronkova, 2017: 5)[6] and North Africa. US interventionism, with the support of NATO, had, at least as an official, task to root out terrorism and bring democracy to the then authoritarian regimes. Whether the justification that the West used after the 2001 US attacks hid oil or some other state or corporate interest, is a question that does not have an answer, at least not a definite one.

What can, however, be said with certainty is that foreign interventions often make bad situations worse, prolong conflicts and lead to asymmetric tactics of resistance groups - including terrorism (Schmid, 2016:29). In Iraq alone, where the international coalition has systematically reduced the ISIS territory, the number of victims of terrorist attacks in 2016 rose more than anywhere else in the world, with 2,800 more deaths than the previous year (Institute for economics & peace, 2017: 18). In addition to the escalation of terrorism and related violence, a phenomenon that also follows international military interventions are refugee crises (Schmid, 2016: 47)[7].

Although terrorism can be seen as a protest against foreign intervention by the individual states (Robbins, 2017), the supranational coalitions and the leading Western countries and their military actions are not the only ones responsible for the intensification of conflict on both military and political scene. Political and media factors are very important, often synergistically influencing the development of the geopolitical situation.

The weakness of the state as a system in the Middle East, Afghanistan and North Africa, shown in the political, economic and social instability, opened the way, through internal conflicts and external interventions, for various forms of violence, violation of human rights and the destruction of material and cultural goods. In such a situation, it is not surprising that the answer by the widest civilian population have been the mass migrations, primarily towards Western Europe (Beriša, Rakić, 2016:36).

Terrorism, as it consciously attacks the civilian population, is one of the most influential causes of international migration. The greater the number of terrorist acts in a country and the higher the rate of mortality as a consequence of the same, the greater the number of people migrating from that country (Hasan, 2018)[8]. From this point of view, we can classify terrorism as a so-called "push" factor, that is, the one that starts mi-

non-violent version of jihad, for the defense of Muslim countries and the liberation of the ummah. The movement represents salafistic teaching, which promotes the extremely narrow and puritanical interpretation of the Sunni Islam, imposes its own vision of society and rejects every kind of human laws and democracy.

6 The war in Syria with 50,000 new victims in 2016 reached a figure of about 290,000 since 2011, while the conflicts in Iraq and Afghanistan in 2016 added to their own number of victims another 17,000, or 16,000 lives.

7 The overreaction of the US and intervention in Iraq in 2003 (when Saddam Hussein was wrongly accused of supporting Al Qaeda and possessing weapons of mass destruction) alone, directly or indirectly led to the deaths of between 137,000 and 165,000 civilians and internal displacement around 1,300,000 people, as well as the creation of more than 1,400,000 refugees. The US intervention in Afghanistan and attacks across the border with Pakistan after September 11, 2001 cost about 26 000 and 21 500 civilians ... The population of Afghan refugees in Pakistan is around 1 500 000 documented people.

8 With nearly 600,000 registered refugees from Syria in 2017, their total number in Turkey has risen to 3,400,000. Only a small portion of them managed to continue migration to Western Europe. See: Hasan, H., "What awaits Syrian refugees in 2018?".

grants from their previous environment (Gajić, 2016:77). However, terrorism is not the only phenomenon that affects the emergence of migration; the terror of the government, as well as economic and environmental factors can largely be responsible for the international movement of the population.

When we talk about a "weak state" as a favorable ground for terrorist organizations, and the growth of their impact on the movement of the population, it should be said that these are countries that either support terrorism, such as the Taliban regime in Afghanistan from 1996 to 2001, or are , like Lebanon, too weak to oppose it. The third type of environment in which terrorism can be the trigger of migration is a terrorist proto-state, such as the ISIS, from whose territories by July 2017, international refugees or those internally displaced, totaled over 8,000,000 people (BBC, 2018) [9].

Under these circumstances, terrorism can trigger three types of population response: fighting, fleeing and hiding (Schmid, 2016:16). For us, certainly the most interesting is the most common one (whenever there are conditions for it), which is flight, ie migration. It is a rarity that an isolated terrorist act causes a massive population movement, but within "weak states" the civilian population is almost always exposed to a series of brutal terrorist attacks.

Such serial attacks, characterized by non-discriminatory violence, lead to fear among the population and the natural need to move away from the source of danger. Such a reaction is often exactly what the perpetrators are attacking and expecting. There are indications that ISIS has not only attempted to tax migrants and thus fund further terrorist acts, but also through the refugee flows tried to infiltrate its fighters, especially returnees from other battlefields, which is a huge challenge for the security of the European countries which these migrants are striving to reach (Schmid, 2016:28).

Whether we are talking about migration as a planned consequence of terrorist acts or just as a follow-up phenomenon in the states that are affected by a high degree of terrorist activity, it is clear that terrorism and migration are in a causal relationship. What we can also claim is that both phenomena are closely linked to the absence of a powerful state apparatus, especially in the countries of the Arab world.

9 Over 5,500,000 Syrians have left the country, while 2,800,000 Iraqis have been internally displaced since the ISIS conflict.

MIGRATIONS – A TRANSIT OF VIOLENCE

In the conditions of the migrant crisis, which has been threatening the world's security outlook for almost a decade, the media have become extremely effective weapons in creating a xenophobic environment. Whether it is Silvio Berlusconi who declares that western civilization is superior to Islamic (Pavlićević, 2016:65), Viktor Orban, who takes for himself the position of the defender of Christianity and raises the wall at the border, or the Tramp that recognizes Jerusalem as the capital of the city in an already very heated atmosphere (Wilson center, 2017)[10],

10 Although the US media and administration emphasize that this is a cessation of the US's "double game" with Israel and Palestine, it is a

the demarcation line between "us and them" becomes clear. The animosity towards Muslims in Europe is affirmed primarily by the right-wing or extreme right, which sees them as a threat to European culture, and, in contrast to the official stance of the EU which implies tolerance, regards them as deviant, enemies and terrorists (Pavlićević, 2016:64).

The other side does not lag behind in this fight. One of the goals of the terrorist organizations is the free access to the world media system through public violence, which is always reported (Schmid, 2016:16). The escalation of conflicts and social polarization, which terrorists are striving for, are also pulling a precise line between friends and enemies, so ISIS claims that it is the personal duty of all Muslims to migrate to Caliphate (Schmid, 2016:3), while all those who leave it are treated as infidels. The Internet and social networks open endless possibilities of publishing various messages, as well as radicalization and recruitment of new fighters, especially among the young Muslims from the West. "The German newspaper, Deutsche Welle, states that about 400 jihadists from Germany are fighting on the side of the ISIS, and that this number is unofficially over 1800 militants" (Despotović, 2016:21), which is sufficient proof of the efficiency of the Internet in the hands of terrorists.

Terrorist organizations are also benefiting from the fact that, after the fall of the Arab Spring, many Muslims have become convinced that nonviolent change is not possible (Parezanović, 2012)[11]. In such an atmosphere of hostility, we can expect only further spreading of the conflict. In addition to the existing one toward the EU the new direction of terrorist activity could be towards the north and Russia, especially after the serious involvement of Russia in the conflict in Syria (Dnevnik.hr, 2017)[12].

The extent of migration from the turmoil and war affected countries of North Africa and the Middle East, whose alarming peak reached in 2015, again draws the attention of the world, and especially the public in Europe - as a primary participant in the process of caring for the migrants and neutralizing the negative effects of this social phenomenon. The significance of this and the accompanying phenomena is best seen in the UN estimation that there are currently 71 million different migrants in Europe (Simeunović, 2017:32). These numbers are only likely to grow in the foreseeable future (Kern, 2017)[13].

The movement of the peoples in its various manifestations has characterized human history since its creation. Looking at the "closer" past (post-Cold War period), migratory movements, as A.

clear risk that such a move would further distance Mahmoud Abbas from the negotiating table.

11 According to Marko Parezanovic, Syria is a classic example for a theoretical analysis of the phenomenon that manifests itself when a failed political upheaval turns into a more complex form of social conflict, such as terrorism, the guerrilla action, or an armed conflict of wider proportions.

12 "The coalition led by America, supported by the Syrian army and Russia, has thrown out the Islamic State from Syria and Iraq, its post-war strongholds, after which many ISIS fighters ended up in Avanistan, warns Zamir Kabulov, head of the Middle East Department of the Russian Ministry of Foreign Affairs. "Russia was among the first countries to warn of the expansion of ISIS in Afghanistan. Lately, the Islamic State has increased the presence in that country. According to our estimation, their strength counts more than 10,000 combatants, and they continue to grow. This includes new fighters who gained experience on the battlefields in Syria and Iraq, "Kabulov told RIA Novosti".

13 The Muslim population in Germany could rise to 20 million by 2020, according to the president of the Bavarian Association of Local Governments Uwe Brandl.

Schmid emphasizes, can be seen through the prism of numerous factors among which he highlights the following:

a) Unequal distribution of wealth at global level - one percent of people own as much as the rest of human population,

b) A demographic explosion of the population combined with economic stagnation, with the population rising faster than the economy, which is particularly characteristic of parts of Africa and the Middle East,

c) Mass global unemployment (currently 200,000,000 people according to the ILO's estimates) and the emergence of an even more massive "working poor" category (income of employees below the border for the smooth functioning of individuals and families),

d) Environmental degradation (characterized by floods, desertification, forest destruction, water shortages in large measure, uncontrolled exploitation of natural resources in countries of origin of migrants) (Miljlković, Petrović, 2016:2)[14],

e) Changes in the tactics of warfare that have transformed the civilian population into the main target, creating internal and external migration movements within countries affected by the conflict,

f) The re-emergence of exclusive nationalism and the rise of religious intolerance, which cause ethnic and religious cleansing,

g) A technical and technological revolution in transport that allows mass migration over long distances,

h) The expansion of smuggling and trafficking of humans as a highly profitable, low-risk business by organized crime, which provides false papers, transport, entry and exploitation to those who are capable and willing to pay (Mijalković, Petrović, 2016: 3)[15],

i) The presence of ethnic diaspora in "global cities" abroad that make bridges for voluntary legal migration (eg through family reunification) and illegal migration (eg through trafficking in human beings, employment in an illegal or "black" labor market) (Schmid, 2016:15; Mijalković, Petrović, 2016: 6)[16].

The current migrant crisis has consequences for three continents, bringing with it the appearance of a new form of migration movements "the family migration" (Mihić, 2016:111).[17] We should add to this the fact that the largest number of migrants come from Syria, Iraq and Afghanistan, the territories that represent the fertile ground for the operation and development of terrorist organizations, and their focused radicalization of youth (Lečić, 2017:107; Čerin, 2017)[18]. The danger of possible infiltra-

14 "Due to serious and permanent degradation of the environment due to pollution, natural or technical-technological disasters, the existing living environment makes it impossible for the population to live and work, or makes the life of the population difficult and problematic with numerous health problems."

15 It is claimed that this is, behind only trafficking in narcotics and weapons, the most cost-effective crime-organized business that, just since the beginning of this century, makes a billion dollars a year in Europe, with the minimal risk.

16 The consequences of mass migrations are the destabilization of the existing national labor markets due to the massive inflow of new labor. At the same time, these new so called black labor markets, which destabilizes the legal labor market, public finances and the state budget, also "jeopardize" the existing black labor markets.

17 The percentage of women and children transiting into EU countries during the previous year (2015) was unrecorded in recent human history.

18 These claims are supported by the German media's reports of the attempts by a 12-year-old boy of Iraqi descent to install an explosive device at a New Year's fair in Ludwigshafen (a person believed to be the youngest person in Europe arrested for suspicion of planning a terrorist act) ... ... Then the arrest of two boys aged 15 and 17 in the southern German province of Baden-Württemberg, who planned armed attacks around

tion (in a new form of migration movement) of indoctrinated and radicalized members of this part of the population is significant (Čerin, 2017)[19].

A special security challenge is illegal migration movements (smuggling of migrants and human trafficking), whose fluctuation is accompanied by continuous recruitment, illegal transportation and reception in the countries of destination by criminal organizations (Mihić, 2016:111). This leaves additional space for radicalized members to continue covert activities outside the "scanner" of the security sector, as well as the possibility of upgrading already established links in criminal circles by linking to illegal arms, documents and narcotics markets (Schmid, 2016: 8)[20].

Taking into consideration the essence of migration, we note that they carry a security risk (they destroy national borders, change the ethnic, age, religious, educational and working structure of the population, increase crime rates, abuse social programs, are followed by the boycott of the host country culture, and impose their own way of life arising from the religious and social conditions in the country of origin ...) of further increased infiltration of radicalized members of terrorist organizations. The investigation, which was conducted after the attack in Paris in 2015, shows that a Syrian citizen who took part in it had passed through the Balkan route and the Republic of Serbia in October 2015 (Lečić, 2017:109). In addition, coming from the war-torn area of the Middle East, Nabil Fadli, a suicide bomber who killed ten German tourists on the Sultan Ahmet Square in Istanbul on January 12, 2016, entered the country as an asylum seeker a week earlier. Tunisian Valid Salihi, whose registration was carried out at a reception center in Germany, attacked a police station in Paris on the occasion of the anniversary of the attack on the newspaper, Charlie Ebdo (Mijalković, 2016:28). The cases above are examples of the abuse of the migratory population for infiltration of the radicalized members of terrorist organizations (See, 2018: 9)[21], by which the transfer of violence into the territory of a centuries-old enemy is carried out. The migrant population, one part of it that is, carrying its past with itself, brings animosity that can lead to new conflicts, which significantly increases the danger of terrorist activity. Special responsibility lies with the host country, which must make adequate efforts to achieve the social integration of migrants, especially in avoiding any form of segregation, which would make it easier for the various extremist groups to become involved.

Frankfurt.... French authorities arresting three 15-year-olds linked to jihadists and planned attacks last year... ... In Austria, fourteen six-year-olds were recruiting their peers on behalf of the Islamists.

19 According to State Department PR member John Kirby, ISIL originally used children in the collecting information, and is now using them to commit suicide attacks. Kirby added that in the first three months of 2015, ISIL recruited and trained 400 children for fighting.

20 At one point in 2015, only 25 to 30 percent of refugees arriving in Germany had passports or other valid documents.

21 A problem apart is the returnees from the Middleeastern battlefields, who in large percentage show unpredictability in behavior, due to the fact that a significant proportion of them suffer from PTSD. They are candidates for direct or indirect terrorist action under the so-called "lone wolf" principle, as well as potential agents of radicalization of other persons and other operational and technical tasks. Also, the so-called "veteran's effect" makes the terrorist acts, implemented by these persons, have a greater chance of "success" and a greater number of victims.

POSSIBLE EU RESPONSES TO THE SECURITY CHALLENGES OF THE MIGRANT CRISIS AND THE DETECTION OF THE RADICALIZED PART OF THE MIGRANT POPULATION

Adequacy of the response to the enormous extent of migration movements and interactively connected terrorism are often determined by two criteria: acceptability within general democratic principles and success in problem solving. Measures that can be successful are often unacceptable (for example, the raising of the fence by Hungary on the border with Serbia secured by the army and police or the raising of the fence on the Austrian border by Germany), on the other hand, the measures that are acceptable to our democratic principles are often unsuccessful (for example, when terrorism-related persons are provided with the full protection of the democratic system) (Sedeberg, 2002:267-284).

Consensus policy

The current crisis further deepens the inability to achieve a unified political position within the European Union, followed by various disagreements between members, diplomatic incidents,[22] as well as the boycott of Hungary, Slovakia and increasingly hard attitude bt Poland in regard to the number of migrants they are ready to accept on their territory. An adequate response to a migrant crisis that will, in the future, continue to burden Europe, should be sought in a policy of consensus. The number of migrants to be received by individual members should be aligned with their capacities (economic power, population, population policy, demographic structure, possibility of social-engineering ...). This way accepting more than a million migrants into the European family of 500 million people would not be a problem (Schmid, 2016:15).

22 There have been protests on several occasions by Hungary and Croatia towards Serbia, Slovenia towards Croatia, Austria towards Slovenia and Croatia, as well as constant disagreements between Greece and Macedonia, and others.

Increasing the capacity of "Frontex"

Time appears as a factor with a special impact on admissibility and effectiveness, often as a limiting factor. Solutions that are acceptable for a shorter period of time need not be successful for a longer period and vice versa. The organization for the control of European borders - Frontex, until recently had only 310 employees and a budget of 114 million euros. Current requirements that are placed before this organization require increasing the capacity and resources of the same. The possibility of holding on to the Schengen agreement will be conditioned by the ability of all member states, particularly the Mediterranean countries (Italy and Greece), which are under constant constant pressure from migrants for many years.

Introducing innovative solutions in the process of dealing with the migrant population

The migrant crisis, whose maximum was reached in 2015, has shown the necessity of introducing innovative solutions in the process of acceptance and care of migrants (Schmid, 2016: 9)[23], as well as in the discovery of radicalized individuals within the refugee population (DW, 2017)[24]. The German Migration Office has reported that the identity of 400,000 people is not known, while 130,000 asylum seekers who at some point entered Germany were "gone" and became invisible to the security and civil sector - some of them have probably moved to other countries (Schmid, 2016:44).

Globalization processes are accompanied by an increasing influence of multi-national companies whose main driving force (profit) sees the migrant crisis as a potential source of income by offering new solutions. Erick Prince, a close associate of Trump Administration, offered the services of his own company, Frontier Services Group, in stopping and returning hundreds of thousands of migrants seeking their "luck" coming to Europe from Libya. Noting that this company will close the migration channel, for only a fraction of the funds that the EU spends for the Frontex forces that are trying to close the migration channel through the Mediterranean Sea. (Blic, 2017)

The offered alternatives represent only technical solutions in stopping migration and cross-cutting of terrorism. It is necessary to find solutions that will enable the management of migrant populations to prevent terrorism. Alex Schmid, a UN official, points out two measures that need to be taken:

First: asking the asylum-seekers in Europe to publicly commit themselves to the respect of the laws of the host country, its political culture and key European values (the rule of majority democracy with respect for minority rights, the rule of law, human rights, freedom of thought, social solidarity, pluralism and mutual tolerance)

And Secondly: oblige them to assist the authorities in the process of identifying potential terrorists (operative-perpetrators of terrorist acts, persons recruiting new members or persons wishing to join terrorist organizations) (Schmid, 2016:51).

The idea of a deradicalization process that was accepted by the West with great enthusiasm collapses when faced with the results of the implemented measures (Mohamed, 2018)[25], regardless of the high use of material resources (Kern, 2017)[26] and significant engagement of state institutions.

23 During the reception of migrants, the German police managed to take fingerprints of about 10 percent of the migrant population.

24 Since the Berlin Christmas attack, members of the German Criminal Investigation Service (BKA) are applying a completely new analytical system called Radar-iTE, which presents a questionnaire on socialization and the attitude of violence. The purpose of the questionnaire is to gather information about the suspect. The system should serve to detect particularly dangerous and radicalized persons, thus the service should focus on the supervision of these people.

25 Deradialisation programs conducted in Great Britain, as claimed by the "Behavioural Insights Team" partly owned by the British government, are at best ineffective and at worst counter productive. This company has analyzed 33 programs and according to their conclusions only two programs were successful.

26 Preliminary reports on the deradicalisation programs that have been carried out reveal that the French government has nothing to show for

The possibility of directing the migrant population in such a way, followed by collecting and adequate exchange of information on disguised and radicalized activists of terrorist organizations would enable a more secure operation of the whole security sector of the EU..

tens of millions of euros spent in the fight against Islamic radicalization.

CONCLUSION

The threat of terrorism is increasingly present and affecys both the individual states and the entire international community. The US-Russia coalition (first after the Second World War), assisted by China's logistical efforts in the process of neutralizing the self-proclaimed Islamic State of Iraq and Levant - ISIL[27], merely confirm the necessity of the process of neutralizing this global danger, which the international community has repeatedly mentioned.

The areas of North Africa and the Middle East, pressed by decades of national turmoil, socio-economic problems and military interventions of various coalitions led by the United States, as well as the frequent use of terrorism as an answer to a more powerful enemy, have produced an enormous population of migrants.

It is undeniable that migration caused by frequent terrorist activities (which in the areas such as Iraq and Afghanistan represent the so-called "push" factor), or the use of migration channels for proven infiltration of radicalized members of terrorist organizations, unambiguously prove the existence of interaction between these social phenomena. According to the authors of this paper, the increase in the migration of the population from the war-affected area, where the most significant terrorist organizations exist, also increases the risk of terrorist activity, which confirms the causal relationship between the growth of migration movements and terrorism in the EU. All transit countries are exposed to this type of risk, particularly those that are the ultimate destination of migrant population, tohse that have a heterogeneous population with a high percentage of Muslims (Brussels) (Anastasijević, 2015)[28], Clichy (Paris) (Đorić, 2018:58)[29] and countries taking part in military interventions in the states of origin for the migrants (France and Great Britain).

Migration movements and terrorist activities are becoming more and more complex. The new emerging forms of terrorism and migration, created in the imagination of their inspirators and organizers, necessitate a constant adaptation and finding of new ways and methods in countering these social phenomena. The EU's appropriate response to the process of resolving the migrant crisis and its terrorism-related activities will primarily depend on EU consensus policy. Such a policy will enable increasing the EU's capacity and introducing innovative solutions in the process of

27 ISIL represents an unrecognized state, a jihadist paramilitary formation, which controlled large parts of Iraq and Syria. It draws its roots from Sunni fundamentalist groups that began in Iraq in early 2004, after the US invasion.

28 It is estimated that there are about 600,000 Muslims living in Belgium today, or 6% of the total population (in Brussels there are 25% of them), of which half are Moroccans, and a quarter are Turks and Kurds.

29 The suburbs of Paris, where 90 percent of the immigrant families live.

monitoring and controlling the migrant population, particularly in the detection of radicalized members. Innovative solutions will also require a choice between European political values (Mijalković, Petrović, 2016:14)[30] and security, due to the necessity of finding solutions that successfully deal with terrorism and migration, minimizing the listed values (Rapoport, 2002:271).

At the ends of this spectrum, which democratic societies will face, there will be privacy and security. The future is likely to require the restriction of some human rights that we perceive as fundamental, either at the expense of the migrant population or the EU citizens, in order to reach a consensus on preserving security.

30 At the moment, the world, Europe more so than anyone else, is faced with a great and, first of all, serious contradictory dilemma of choice between: the freedom of global movement of people, goods and capital, which is considered to be an advanced democratic practice, against the restriction of the waves of economic migrants and (false) refugees; asylum seekers from central Eurasia, whose freedom of movement it is trying to limit because they are allegedly threatening the interests of European states, which is contrary to democratic trends.

REFERENCES

1. Anastasijević, D. *Srce tame*. https: //www. vreme. com/cms/view. php?id=1347129. (31.05.2018)
2. *Attack on Nice: Who was Mohamed Lahouaiej-Bouhlel*. http://www.bbc.com/news/world-europe-36801763. (19.02.2018.)
3. Beriša, H., & Rakić, M. (2016). Migrantska kriza–Studija slučaja Republike Srbije. *Kultura polisa,* br. 30: 35-60.
4. Čerin, S. *"Deca džihada", najjače oružje u rukama terorista*. https://rs.sputniknews.com/analize/201701031109489402-Deca-dzihadisti-Bliski-istok/. (23.03.2018.)
5. de Wenden, C.W. (2016). Irregular Migration in France. U: A. Triandafyllidou (Ur.), *Irregular Migration in Europe: Myths and Realities*. Routledge.115-124. doi:10.4324/9781315589848
6. Despotović, D. (2016). Geopolitički i demografski aspekti aktuelne migrantske krize. *Kultura polisa,* 30: 11-28.
7. Dragojlović, J., & Jovanović, M. (2016). Migrantska kriza - bezbednosni izazovi, rizici i pretnje. *Kultura polisa,* 30: 61-70.
8. Gajić, A. (2016). Geopolitika sirijskih migracija i EU. *Kultura polisa,* 30: 21-33.
9. Giddens, A. (1988). *Posledice modernosti*. Beograd: Filip Višnjić.
10. *Global terrorism index*. (2017). Institute for economics and peace. http://www.economicsandpeace.org; 5th ed.; [Pristupljeno 30. maja 2018.].
11. *Gospodar rata dao ponudu Evropi*. https://www.blic.rs/vesti/svet/gospodar-rata-dao-ponudu-evropi-zaustavicu-migrante-za-samo-deo-cene-koju-vec-placate/fcspz74. (25.05.2018.)
12. Hasan, H. *What awaits Syrian refugees in 2018*. https://www.middleeastmonitor.com/20180111-what-awaits-syrian-refugees-in-2018/ (27.02.2018.)

13. Hoffman, B. (1998). *Inside Terrorism*. New York: Columbia University Press.
14. https://www.srbijadanas.com/clanak/glavni-borci-islamista-su-deca-teroristi-se-oslanjaju-na-decu-vojnike-uznemirujuci-video-16.
15. *Islamic State and the crisis in Iraq and Syria in maps*. http://www.bbc.com/news/world-middle-east-27838034. (27.02.2018.)
16. Kern, S. *Sumorna demografska budućnost Nemačke*. http://www.nspm.rs/savremeni-svet/demografska-buducnost-nemacke.html?alphabet=l. (01.09.2018.)
17. Kern, S. *France: Deradicalization of Jihadists "Total Fiasco"*. https://www.gatestoneinstitute.org/9982/france-deradicalization. (14.03.2019.)
18. Lečić, B. (2017). Aktuelne migracije ka Evropi i problem terorizma. *Kultura polisa,* br. 2: 95-116; posebno izdanje
19. Mihić, B. (2016). Migracije - od krijumčarenja migranata do "velike seobe naroda". *Nacionalna bezbednost,* 109-127.
20. Mijalković, S., & Petrović, I. (2016). Bezbednosni rizici savremenih. *NBP - žurnal za kriminalistiku i pravo,* br. 2: 1-19.
21. Mijalković, S. (2016). Izazovi identiteta u kontekstu terorističkih napada "Pariz 2015". *NBP – žurnal za kriminalistiku i pravo,* br. 1: 24-45.
22. Mohamed, A.Z. *Why Britan's Deradicalization Programs Are Failing*. https://www.gatestoneinstitute.org/.../britain-deradicalization-pr.... (14.03.2019.)
23. *Naučno "filtriranje" radikalnih islamista*. http://www.dw.com/sr/nau%C4%8Dno-filtriranje-radikalnih-islamista/a-41884193. (19.03.2019.)
24. Neumann, P.R. (2014). *The New Jihadism: Global Snapshot*. London: The International Centre for the Study of Radicalisation and Political Violence (ICSR).
25. *Number of casualties due to terrorism worldwide between 2006 and 2017*. https://www.statista.com/statistics/202871/number-of-fatalities-by-terrorist-attacks-worldwide/. (13.02.2018.)
26. Parezanović, M. *Sirija i "arapsko proleće"*. http://www.nspm.rs/savremeni-svet/sirija-i-arapsko-prolece.html?alphabet=l. (10.10.2018.)
27. Pavlićević, P.D. (2016). Migrantska kriza - evropsko javno mnjenje i proces integracije imigracione populacije. *Kultura polisa,* 31: 57-70.
28. Rapoport, D.C. (2002). The Four Waves of Rebel Terror and September 11. *Anthropoetics,* 8(1); 36-52.
29. Robbins, J. *Does Military Intervention Increase the Terror Threat*. https: //www.bbc. com/news/uk-40061551 (10.10.2018.)
30. *Rusi upozoravaju - "Teroristi IS-a su u Afganistanu i imaju više od 10.000 boraca, a SAD ih podcjenjuje"*. https://dnevnik.hr/vijesti/svijet/rusi-upozoravaju-teroristi-islamske-drzave-u-afganistanu-imaju-vise-od-10-000-boraca-a-amerika-ih-podcjenjuje---500946.html. (28.05.2018.)
31. Schmid, A.P. (2016). Links Between Terrorism and Migration: An Exploration. *Terrorism and Counter-Terrorism Studies,* doi:10.19165/2016.1.04
32. Sedeberg, P. (2002). Global Terrorism: Problems of Challenge and Response. U C.W. Kegley (Ur.), *The New Global Terrorism*. Cambridge: Pearson. 267-284.

33. See, S. (2018). Returning Foreign Terrorist Fighters: A Catalyst for Recidivism among Disengaged Terrorists. *Counter Terrorist Trends and Analyses,* Vol. 10; No. 6: 7-15.
34. Silke, A. (2003). *Terrorists, Victims and Society: Psychological Perspectives on Terrorism and its Consequences*. Chichester, UK: John Wiley and Sons. doi:10.1002/9780470713600
35. Simeunović, D. (2017). Migraciona kriza kao bezbednosni izazov za zemlje zapadnog Balkana - stanje u 2017. i perspektiva. *Kultura polisa, posebno izdanje,* br. 2: 31-56.
36. Simeunović, D. (2015). Migracije kao uzrok političkih anomalija u evropi. *NBP - žurnal za kriminalistiku i pravo,* br. 3: 1-18.
37. Stern, J., & Mcbride, M.K. (2013). *Terrorism after the 2003 Invasion of Iraq*. Providence: Brown University - Watson Institute for International and Public Affairs. http://watson.brown.edu/costsofwar/files/cow/imce/papers/2013/Terrorism%20after%20the%202003%20Invasion%20of%20Iraq.pdf.
38. *Trump's Jerusalem Decision: Implications and Consequences*. https://www.wilsoncenter.org/event/trumps-jerusalem-decision-implications-and-consequences. (27.02.2018.)
39. Voronkova, A. (2017). Editor's Introduction. *Armed Conflict Survey,* 3(1), 5-12. doi:10.1080/23740973.2017.1311537
40. Zwitter, A. (2011). *Human Security, Law and the Prevention of Terrorism*. Milton Park: Routledge

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO
NBP 2019, 24(2): 79–95

Submitted: 2019-02-12
Published: 2019-08-16

UDK: 343.95:159.97 (497.6)
doi: 10.5937/nabepo24-20558

THE DIFFERENCE IN CRIMINAL THINKING STYLES AND THE DEPTH OF INVOLVEMENT IN CRIMINAL LIFESTYLES WITH REGARD TO THE AGE, RECIDIVISM AND VIOLENCE OF A CRIMINAL OFFENCE

Žana S. Vrućinić[1]
University of Banja Luka, Faculty of Security Studies
Bosnia and Herzegovina

Abstract: The aim of this study is to determine the differences in criminal thinking styles measured by Psychological Inventory of Criminal Thinking Styles, PICTS (Walters, 1995; 2005), on the one hand, and criminal behavioural styles measured by Lifestyle Criminality Screening Form score, LCSF (Walters, White & Denney, 1991) on the other hand, given the age, type of crime and recidivism. The sample of this research consisted of 126 inmates of Banja Luka Correctional Facility. The results show that younger convicts violate social rules more than the older ones. The convicts who commit violent crimes have higher scores in interpersonal intrusiveness, while convicts who are prone to non-violent crimes have more present discontinuity as a criminal thinking style. Recidivists, unlike un-recidivists, have higher scores in self-indulgence and social rule break, and also have significantly more pronounced criminal thinking styles of mollification, entitlement, super-optimism and discontinuity. Theoretical and practical implications of these findings are discussed.

Keywords: convicts, criminal thinking styles, behavioural criminal styles.

INTRODUCTION

Trying to define human functioning as a certain "lifestyle", Walters (1990) identified that perpetrators of criminal offences have a specific lifestyle called "criminal lifestyle". Walters' (1990) lifestyle model proposes that criminal behaviour is based on a lifestyle made up of four behavioural styles termed interpersonal intrusiveness, irresponsibility, self-indulgence, and social rule breaking. This criminal lifestyle is further proposed to be the result of three factors, namely conditions, choice, and cognition. Conditions are seen as the internal or external factors, such as heredity and family

1 zana.vrucinic@fbn.unibl.org

that determine people's predisposition to adopting a criminal lifestyle. Within these constraints, people have options or choices about the behaviour and lifestyles they pursue. Finally, people will develop justifications for their behaviour. Therefore, these three factors are interdependent, and produce a dynamic set of multi-directional influences on criminal behaviour (Palmer & Hollin, 2003).

In addition, the theory of the criminal life style presupposes the existence of eight criminal thinking styles based on a criminal personality model where special emphasis is placed on cognitive errors in thinking (Yochelson & Samenow 1976; 1977). Cognitive errors are present in all aspects of life. They are considered errors solely from the perspective of personal responsibility and the society's point of view. Each error must first be considered individually, and then put into the context of the overall behaviour. Based on previously identified cognitive errors (52 errors), as well as making certain changes and adding new terms Walters and White (1991, according to Walters, 1990) identified certain cognitive styles such as - mollification (MO), cut-off (CO), entitlement (EN), power orientation (PO), sentimentality (SN), super-optimism (SO), cognitive indolence (CI), and discontinuity (DS) that are involved in maintaining a criminal lifestyle.

According to the criminal lifestyle theory, stages of the development of the criminal lifestyle are divided into four categories with respect to age (Walters, 1990, p. 114) - pre-criminal stage, early criminal stage, advanced criminal stage and stage of criminal maturity ("criminal burn out stage"). The first category includes respondents aged 10 to 18, the second category includes respondents aged 18 to 20, and the third category includes respondents from late 20s to the early 40s, while the last category includes persons over 40.

A criminal career refers to a longitudinal sequence of crimes committed by an individual at some point in time (Blumstein, Cohen, Roth & Visher, 1986), while the criminal lifestyle is a blend of different thoughts, motives and behaviours that can ultimately lead to the commission of a criminal offense. The basic dimensions of a criminal career are participation in the commission of criminal offenses, the frequency of committing crimes, the gravity of the crimes committed, and the length of the criminal career (Blumstein et al., 1986). For the purpose of this paper, the age of the respondents, the recidivism, and the type of committed criminal offense, i.e. the violence of a criminal offense are taken from the concept of a criminal career.

CONNECTION BETWEEN CRIMINAL LIFESTYLE AND AGE, RECIDIVISM AND THE TYPE OF CRIMINAL OFFENSE

According to our previous findings, the questionnaires used in this study, which derived from the criminal lifestyle theory, LCSF (Lifestyle Criminality Screening Form, Walters, et al., 1991) that measures the depth of involvement in criminal lifestyle, and the PICTS (Psychological Inventory of Criminal Thinking Styles, Walters, 1995) that measures the criminal thinking style, have been

used in different studies on a sample of convicts to inform risk judgments for institutional misconduct, criminal recidivism, and violence (Walters, Revella & Baltrusaitis, 1990; Walters & Chlumsky, 1993; Walters, 2002; Walters, 2003; Walters, 2003a; Walters, 2005; Walters, 2007a; Walters et al., 1991; Walters, 1996; Walters, 1997; Walters & Di Fazio, 2001; Walters, 2011; Walters, 2006).

The criminal lifestyle theory by Glenn Walters has also been tested in Southeast Europe, especially in Croatia (Doležal, 2009; Jandrić, Nišević, 2010; Doležal & Mikšaj-Todorović, 2008). Doležal (2009) combines the depth of involvement into criminal lifestyle (LCSF) with the age, recidivism and the violence of a criminal offence. The research results have shown that there are significant differences in the depth of involvement into criminal lifestyle considering the age, recidivism and the violence of a criminal offence in a way that the youngest interviewees, recidivists and violators are more deeply involved in criminal lifestyle than other convicts.

It is now a truism that age is one of the strongest factors associated with criminal behaviour. In fact, some have claimed that the age-crime relationship is invariant, or universal across groups, societies, and times (Hirschi & Gottfredson, 1983). According to the findings in the field of criminal career (Blumstein et al., 1986), the younger the criminal offender is, the greater the likelihood is that a criminal career will be longer. In Doležal's survey (2009), higher results on LCSF describe the youngest respondents (18-29 years). Given four categories of criminal lifestyle measured by LCSF, the same survey pointed out that criminal lifestyle of the youngest respondents is characterized by irresponsibility, social rule breaking, self-indulgence, and interpersonal intrusiveness to some extent.

The age criterion in relation to the depth of involvement in the criminal lifestyle and the type of criminal thinking styles is important in terms of identifying which age group is more involved in the criminal lifestyle and which criminal thinking styles are more pronounced, this representing important information for targeted preventive programs, as well as specific programs in penological treatment (Doležal, 2009).

One of the main behavioural components of the criminal lifestyle is interpersonal intrusiveness. Interpersonal intrusiveness is often manifested as aggressive, violent acts towards others, and the difference in the degree of its manifestation is reflected in the nature of the acts committed (Doležal, 2009). In Doležal's survey (2009), the perpetrators of violent crimes, unlike the perpetrators of non-violent crimes, are characterized by high level of interpersonal intrusiveness. For crimes such as rape or murder, it is considered that the degree of interpersonal intrusiveness is higher than for crimes of trafficking in illegal drugs or arson (Walters, 1990). The criminal lifestyle theory assumes that persons with higher interpersonal intrusiveness have a higher predisposition to commit violent crimes or criminal acts with elements of violence (Doležal, 2009).

The research of recidivism is used to improve procedures related to the risk assessment for re-commissioning a criminal offense or to identify individuals who require intensive treatment during the process of re-socialization in correctional facilities. In accordance with a recognized fact in the field of criminal career (Blumstein et al., 1986), there is a group of people who constantly recidiva-

te thereby going deeper into a criminal lifestyle (Walters, 1990). The concept of professionalism in the commission of criminal offenses implies a high level of ability to commit crimes, the transformation of crime commission into the way of acquiring money for everyday life and, most importantly, the development of a specific lifestyle (Walters, 1990: 57). The criminal lifestyle of the recidivist is primarily characterized by a social rule breaking and self-indulgence (Doležal, 2009). Criminal career research (Palmer & Carlson, 1976; Gottfredson et al., 1978, according to Blumstein et al., 1986) confirmed that the information about the earlier commission of crimes is the best predictor of future criminal behaviour.

The relation between criminal thinking styles (PICTS) and the depth of involvement in criminal lifestyle (LCSF) was verified at the sample of 415 convicts stationed in the Department of Diagnostics and Treatment Programming in Zagreb Prison in the period from December 2007 to February 2009 and it was established that convicts more deeply involved into criminal lifestyle (moderate and deep involvement) have more pronounced criminal thinking styles (Jandrić Nišević, 2010). The predictive validity of the PICTS was verified at the sample of 399 convicts stationed in the Department of Diagnostics and Treatment Programming in Zagreb Prison in the period from March 2004 to June 2005, whereas the result sum at the Level of Service Inventory-Revised - LSI - R (Andrews & Bonta, 1995) was taken as a criterion variable, and PICTS items, that is, eleven factors at the same questionnaire were taken as a predictive variable. The majority of predictors have shown a significant contribution in explaining criterion variable (Doležal & Mikšaj-Todorović, 2008).

In the basic postulates of the lifestyle theory and criminal lifestyle theory, there are two factors that determine one's lifestyle - behaviour and thinking (Walters, 1990). It is without doubt that the depth of involvement in the criminal lifestyle and criminal thinking styles are very important for understanding the whole concept of criminality, each from its own point of view. In relation to this, according to our previous findings, there are no studies that, when explaining individual criminal behaviour, take into account information from both concepts in relation to age, type of crime and recidivism. The importance of simultaneous observation of the depth of involvement in the criminal lifestyle and the types of criminal thinking styles is reflected in the possibility to recognize high-risk populations and make better classification of the existing perpetrators of crimes with regard to age, type of crime and recidivism. Accordingly, the penological treatment would be more individualized according to the needs of the individual.

The aim of the research is to gain insight into the differences in criminal thinking styles and the depth of involvement in the criminal lifestyle of convicts with regard to the age, recidivism and type of crime. Based on the results of previous research (Doležal, 2009), we can assume that there are differences in the depth of involvement in the criminal lifestyle with regard to age, recidivism and type of crime in a way that younger respondents, recidivists and convicts committing violent crimes are more deeply involved in criminal lifestyle. So far, according to our knowledge, there have been no studies dealing with criminal thinking styles with regard to age, recidivism and the type of crime and we cannot clearly set up hypotheses. We can say that our research in this part is exploratory.

METHOD

Subjects

The sample in this research was convenient and consisted of 126 prisoners of the Banja Luka Correctional Facility (The Republic of Srpska, Bosnia and Herzegovina). The average age of respondents serving the prison sentence is 38.83 years (SD = 12.13). As it was previously mentioned, the author of the criminal lifestyle theory has defined stages of the development of the criminal lifestyle with regard to age (Walters, 1990: 114). Having in mind the age structure of the sample in this research, we have defined categories which somewhat correspond to the age categories of the criminal lifestyle. The convicts were divided into two groups: younger convicts (19–35) and older convicts (35–70). Most of the respondents have completed secondary school (62.3%), while 22.6% of respondents completed primary education. The part of other categories in the sample (without education, college and faculty) is negligible. When talking about marital status, 33% of respondents are married, while 22.6% are in common law marriage. 20.8% of the respondents are unmarried. The part of other categories in the sample (divorced, not married, widower) is negligible.

The convicts who were subjects in this research have stated as a reason for serving a prison sentence the commission of the criminal offenses in the following areas: Crimes against life and limb (Chapter XII of the Criminal Code of the Republic of Srpska); Criminal offences against sexual freedom (Chapter XIV of the Criminal Code of the Republic of Srpska); Criminal offences against marriage and family (Chapter XVI of the Criminal Code of the Republic of Srpska); Criminal offences against public health (Chapter XVII of the Criminal Code of the Republic of Srpska); Criminal offences against property (Chapter XX of the Criminal Code of the Republic of Srpska); Criminal offences against the economy and the payment system (Chapter XXI of the Criminal Code of the Republic of Srpska); Criminal offences against official duties (Chapter XXV of the Criminal Code of the Republic of Srpska); Criminal offences against public peace and order (Chapter XXVIII of the Criminal Code of the Republic of Srpska); Criminal offences against the public safety of persons and property (Chapter XXX of the Criminal Code of the Republic of Srpska); Criminal offences against environment (Chapter XXIX of the Criminal Code of the Republic of Srpska); Criminal offences against the economy, market integrity and in the area of customs (Chapter XVIII of the Criminal Code of Bosnia and Herzegovina); Crimes against humanity and values protected by international law (Chapter XVII of the Criminal Code of Bosnia and Herzegovina); Conspiracy, preparation, associating and organized crime (Chapter XXII of the Criminal Code of Bosnia and Herzegovina).

Of the total sample of the perpetrators of criminal offences, 40 respondents (31.75%) committed criminal offences with elements of violence, 62 respondents (49.21%) committed criminal offences without elements of violence, while 24 respondents (19.05%) committed criminal offences belonging to both categories. It should also be noted that 21 respondents (16.67%) are serving a prison sentence for up to one year; 57 respondents (45.24%) are serving a prison sentence of one to five years; twenty-five respondents (19.84%) are serving

a prison sentence from five to ten years, while sixteen respondents (12.70%) are serving a prison sentence of 10 to 15 years. One respondent (0.79%) is serving a prison sentence of 15 to 20 years, while six respondents (4.76%) did not provide the information regarding the duration of the sentence. There are 56 (44.44%) recidivists in the sample. Of these, 28 (22.22%) were previously criminally punished for criminal offences against property.

Instrumentation

The depth of involvement in the criminal lifestyle was measured with the updated version of LCSF (Lifestyle Criminality Screening Form, Walters, et al., 1991), which, besides 14 original items, was supplemented with four items and in theory it measures four behavioural styles typical for criminal lifestyle: irresponsibility (5 items), self-indulgence (4 items), interpersonal intrusiveness (5 items) and social rule breaking (3 items). After the metric characteristics of the questionnaire were analysed, Buđanovac and Jandrić (2007) proposed the update of the instrument reliability and added further four items to the questionnaire. The items are scored by 0-1 and 0-2 system and the result provides for total at each subscale.

A description of the four scales can be seen in Table 1. Having in mind that LCSF consists of a subscale with a relatively small number of items, internal consistency was verified by calculating mean inter-item correlations. In our study, the value of MIC for the irresponsibility subscale is R=.14, for self-indulgence R=.21, for interpersonal intrusiveness R= .24, and for social rule breaking R= .52 All mean inter-item correlations fall in the recommended range of .15-.50 (see Briggs & Cheek, 1986, according to Clark & Watson) except for mean inter-item correlation for the subscale irresponsibility which is something lower.

The variable of criminal thinking style was measured with PICTS (Psychological Inventory of Criminal Thinking Styles, Walters, 1995; 2005). This instrument has a total of 80 items in two scales of validation confusion (CF) and defensiveness (DF) which were developed in order to detect non-veridical response, and eight scales representing the criminal thinking styles mollification (MO), cut-off CO), entitlement (EN), power orientation (PO), sentimentality (SN), super-optimism (SO), cognitive indolence (CI), and discontinuity (DS).

Each subscale consists of 8 items. Items have a 4-level Likert format. A description of the eight thinking scales and two validity scales can be seen in Table 1. Internal consistency for PICTS was also verified by calculating mean inter-item correlations. In our study, the value of MIC for confusion is R= .18, for defensiveness R=.23, for mollification R=.31, for cut-off R=. 45, for entitlement R= .18, for power orientation R= .40, for sentimentality R=.39, for super-optimism R=.35, for cognitive indolence R= .36, and for discontinuity R= .44. All mean inter-item correlations fall in the recommended range of .15—.50 (see Briggs & Cheek, 1986, according to Clark & Watson, 1995).

Procedure

The survey was carried out at the Correctional Facility in Banja Luka in November 2017 with 126 respondents. Prior to the visit to the Correctional Facility for research purposes, we requested and were granted the consent by the Ministry of Justice. It should be noted that the Correctional Facility currently has 147 male inmates and that certain number of them was not able to participate in the research. Namely, some of the respondents were excluded from the research because they have been imposed a measure of solitary as a result of the violation of discipline, then mentally ill individuals who have significantly reduced mental capacity, those participating in work of common interest for the life and work of the convicted persons (on pig farms), illiterate, foreigners, those who are on leave, and those who did not want to participate in the research. The research at the Correctional Facility was conducted by the authors with the help of correctional officers. The respondents filled out the questionnaires in the area intended for eating. The respondents were provided with basic information on what is being researched, and it was emphasized that it was anonymous and that the results will be used exclusively for research purposes.

RESULTS

Descriptive statistical indicators (M, SD) obtained on PICTS and LCSF questionnaires in relation to age, type of offense and recidivism are shown in Table 2. In order to determine the difference in the depth of involvement of convicts in the criminal lifestyle and the difference in their criminal thinking styles in relation to age, type of crime and recidivism, six multivariate analyses of covariates were conducted. These variables, individually, were analysed in MANCOVA as criterion variables, or as covariates. Preliminary analyses determined that the assumptions about the normality of the distribution, linearity, homogeneity of the variation, homogeneity of regression slopes and reliability of covariance measurement were not violated.

Table 1. *Descriptions of the PICTS and LCSF scales*

Scale	Description[b]	Scale	Description [c]
Confusion [a]	Psychological distress, mental confusion, poor reading skills, or deliberate attempt to portray oneself as having psychological disturbance.	Irresponsibility	Global sense of irresponsibility in all aspects of one's behaviour - neglecting social, moral and legal obligations to others and acts as if one is accountable to no one but himself.

Defensiveness [a]	Defensive test-taking style in which the respondent is attempting to present oneself as free of minor difficulties, deficiencies and foibles.	Self-indulgence	Lack of one's self-restraint and continual search for pleasure despite the negative long-term consequences of one's action.
Mollification	Justification, rationalization of criminal behaviour; focus on external factors.	Interpersonal intrusiveness	Callously encroaching on the rights, feelings and private lives of one's victims with little regard for the destructiveness of one's behaviour.
Cut-off	Elimination of deterrents (e.g., fear, anxiety, disgust) to criminal behaviour.	Social rule breaking	Reveals a blatant disregard for the laws and norms of society.
Entitlement	Perception of oneself as privileged or special.		
Power orientation	Focus on power and control over others.		
Sentimentality	Deny or minimize harm by performing good deeds to appear kind and generous.		
Super-optimism	Over-confidence in ability to avoid negative consequences.		
Cognitive indolence	Putting little effort into problem-solving or critical evaluation of thought.		
Discontinuity	Being easily distracted; trouble following through on good intentions.		

[a] Validity scale [b] From Walters, 1995 [c], Walters et al., 1991.

After statistically eliminating the influence of covariates in each MANCOVA individually, it was established that convicts statistically differ in the depth of involvement in the criminal lifestyle with respect to the age $\Lambda w = .908$, $F(6,119) = 2.55$, $p < 0.05$, the type of criminal offense $\Lambda w = .827$, $F(6.119) = 5.09$, $p < 0.01$ and recidivism, $\Lambda w = .906$, $F(6.119) = 2.51$, $p < 0.05$ (see Table 2). There was a difference in criminal thinking styles with regard to the type of criminal offense, $\Lambda w = .829$, $F(6,119) = 1.88$, $p < 0.05$, as well as the difference in criminal thinking styles with respect to recidivism, $\Lambda w = .864$, $F(6.119) = 1.44$, $p < 0.05$ (see Table 2). Table 2 shows the results of six multivariate analyses of covariates (F and p), a difference between groups of convicts in relation to age, type of crime and recidivism on individual scales of questionnaires PICTS and LCSF. The degrees of freedom for all F ratios in the table are df 1 = 6, df 2 = 119.

Table 2. *Descriptive statistis and MANCOVA results of convicted persons for the PICTS and LCSF scores considering age, type of crime and recidivism (N=126)*

		M (SD)		Bonferroni test		
		Younger N=60	Older N=66	Mean Difference M1-M2	Effect-size (Cohen's d)	F
LCSF	irresponsibility	2.50(.23)	2.22(.22)	0.28	.53	.75
	self-indulgence	1.45(.19)	1.30(.18)	0.15	.38	.33
	interpersonal intrusiveness	2.11(.26)	1.47(.25)	0.64	.78	3.16
	social rule break	2.13(.22)	1.19(.21)	0.93**	.91	9.50**
PICTS	confusion	16.60(.41)	16.99(.39)	-0.39	-.44	.45
	defensiveness	17.87(.45)	18.05(.43)	-0.18	-.20	.08
	mollification	14.94(.61)	14.80(.57)	0.14	.12	.03
	cut-off	12.52(.61)	12.52(.58)	0.01	.00	.00
	entitlement	14.47(.61)	14.04(.57)	0.43	.34	.25
	power orientation	13.48(.56)	12.98(.52)	0.50	.42	.40
	sentimentality	17.55(.72)	16.65(.67)	0.90	.54	.78
	Super-optimism	13.85(.62)	13.67(.59)	0.17	.15	.04
	cognitive indolence	15.14(.63)	14.29(.59)	0.86	.57	.91
	discontinuity	12.79(.63)	13.96(.66)	-1.16	-.67	1.66
		Violent criminal offenses N=64	Non-violent criminal offenses N=62	Mean Difference M1-M2	Effect-size (Cohen's d)	F
LCSF	irresponsibility	2.20(.21)	2.56(.25)	-0.36	-.01	1.20
	self-indulgence	1.20(.17)	1.60(.20)	-0.40	-.73	2.25
	interpersonal intrusiveness	2.21(.23)	1.16(.28)	1.04**	.90	7.81**
	social rule break	1.54(.20)	1.77(.24)	-0.23	-.46	.53
PICTS	confusion	17.10(.36)	16.38(.42)	0.72	.68	1.59
	defensiveness	17.93(.40)	18.01(.48)	-0.09	-.09	.02
	mollification	14.85(.53)	14.89(.64)	-0.04	-.03	.00
	cut-off	12.56(.54)	12.46(.65)	0.10	.08	.02
	entitlement	14.28(.54)	14.19(.64)	0.09	.08	.01
	power orientation	13.32(.49)	13.08(.59)	0.24	.22	.10
	sentimentality	16.86(.62)	17.38(.75)	-0.52	-.35	.27
	Super-optimism	13.72(.55)	13.83(.66)	-0.11	-.09	.01
	cognitive indolence	14.50(.56)	14.96(.67)	-0.46	-.35	.26
	discontinuity	12.61(.56)	14.53(.67)	-1.92*	-.84	4.67*

		Recidivists N=56	Non-Recidivists N=70	Mean Difference M1-M2	Effect-size (Cohen's d)	F
LCSF	irresponsibility	2.26(.24)	2.43(.22)	-0.17	-.35	.25
	self-indulgence	1.69(.19)	1.09(.18)	0.60*	.85	4.97*
	interpersonal intrusiveness	1.87(.28)	1.69(.26)	0.18	.32	.20
	social rule break	2.02(.23)	1.30(.21)	0.72*	.85	5.07*
PICTS	confusion	16.94(.41)	16.68(.38)	0.26	.31	.20
	defensiveness	18.33(.46)	17.65(.42)	0.68	.61	1.11
	mollification	15.85(.63)	14.02(.58)	1.83*	.83	4.23*
	cut-off	12.95(.62)	12.15(.57)	0.80	.56	.83
	entitlement	15.60(.61)	13.08(.57)	2.52**	.91	8.42**
	power orientation	13.96(.57)	12.58(.52)	1.39	.78	3.04
	sentimentality	18.06(.73)	16.23(.68)	1.83	.79	3.12
	Super-optimism	14.94(.63)	12.75(.58)	2.19*	.88	6.12*
	cognitive indolence	15.83(.64)	13.70(.59)	2.13*	.87	5.59*
	discontinuity	14.37(.65)	12.58(.60)	1.79	.82	3.84

*p < .05 **p < .01

Bonferroni Test for subsequent comparisons found that younger convicts are more social rule-breakers than the older ones. The convicts who commit violent crimes have higher score in dimension of interpersonal intrusiveness, while the convicts who commit non-violent crimes have discontinuity as a criminal thinking style. Recidivists, unlike non-recidivists, have significantly higher scores in dimensions of self-indulgence and social rule break, and also have significantly more pronounced criminal styles of thinking - mollification, entitlement, super-optimism and discontinuity (see Table 2).

Based on the Cohen's d coefficient, it can be seen that all statistically significant differences in arithmetic mean show the effect of high intensity (see Table 2).

DISCUSSION

The results of the research conducted on a sample of prisoners of Banja Luka Correctional Facility show that there is a statistically significant difference in the depth of involvement in the criminal lifestyle of convicts with regard to the age, type of crime and recidivism, which is expected. Regarding the criminal thinking styles in this context, a statistically significant difference was identified with regard to the type of crime and recidivism.

This study showed that there was a statistically significant difference in the

depth of involvement in the criminal lifestyle with respect to age, meaning that younger respondents were more involved in the criminal lifestyle and violate social rules more than the older ones. Similar results came from Doležal (2009). In line with criminal career concepts and criminal lifestyle concepts (Walters, 1990), this is the result that has been expected. The depth of involvement in the criminal lifestyle declines over the years, which is understandable by itself, due to various internal (aging, maturation, fed-up with way of life) and external (conflicts with representatives of law, smaller possibility of employment due to criminal past, prison-time) factors since aging people become increasingly focused on seeking safety and stability in life rather than adventurism. This is supported by the fact that the existential fear in persons with a criminal lifestyle is getting bigger as people age (Walters, 1990: 116). The fact that this study shows that older convicts are less involved in the criminal lifestyle than younger convicts is also in line with the theory of criminal career and criminal lifestyle.

The older age represents a breaking point in many criminal careers and criminal lifestyles due to burn-out syndrome (Blumstein, Cohen & Hsieh, 1982; Blumstein, et al.; Blumstein, Cohen & Farrington, 1988). Also, the fear of going to jail, which is lost relatively quickly by younger population, replaces the fear of aging and ending a life within prison bars (Walters, 1990: 123), which should also be kept in mind. In addition, it should not be forgotten that majority of younger convicts have a motto "think fast, live fast" that reflects their irresponsibility to social rules and norms and put themselves and their goals and needs in the first place (Walters, 1990). Since the process of cessation of criminal career is not sufficiently researched one should be cautious in generalizing conclusions (Doležal, 2009).

In our research, the convicts statistically differ in the depth of their involvement in criminal lifestyle given the type of crime, which is expected. The perpetrators of violent crimes have higher scores in interpersonal intrusiveness. According to Yochelsona & Samenowa, 1976, the perpetrators of violent crimes, in contrast to the perpetrators of non-violent crimes, are more deeply involved in the criminal lifestyle and their main characteristic of the criminal lifestyle is interpersonal intrusiveness. These facts were elaborated in detail by these authors in their study and they came to the conclusion that the pattern of behaviour dominated by interpersonal intrusiveness is actually learned and is a result of the fact that these persons were not adequately punished by persons who were at certain moment in the position of their authority (parents, school, police ...) and thus received a "permission" for such behaviour. In this study (Yochelsona & Samenowa, 1976) it was found that precisely this characteristic is a generator that sets off and keeps going a criminal lifestyle, but keeps a criminal career active. Walters (1990: 76) agrees that the interpersonal intrusiveness is a characteristic the most difficult to change and if someone's criminal lifestyle is dominated by this characteristic, the person has the least chance to leave this criminal life style. Doležal (2009) came to the same findings.

Alongside with the recidivists, this group of criminals is capable of committing the gravest crimes, those against life and body. Therefore, it is no surprise that numerous criminal studies (Otašević, Jovanov and Oljača, 2014; Vukosa-

vljević Gvozden, Dražić, Tenjović, 2014; Dinić, Barna, Trifunović, Angelovski and Sadiković, 2016; Olsoni Stalans, 2001; DeLisi & Conis, 2008) are dealing with this group of convicted persons.

The respondents who are recidivists are more deeply involved in the criminal lifestyle than the respondents who did not recidivate. According to the results of our research, the criminal lifestyle of the recidivist is primarily described by a social rule breaking and self-indulgence. This finding is expected and in line with Doležal's (2009) findings. The main characteristic of recidivism is a continuous violation of law, but it should be emphasized that recidivists, apart from this violation, are characterized by extreme disrespect and violation of other social rules and norms (Walters, 1990: 78). The fact that self-indulgence is one of the important characteristics of the criminal lifestyle of the recidivist is not surprising given the fact that self-indulgence signifies the attitude towards things and people, whose characteristic is the satisfaction of personal desires and needs regardless of price, including violation of the law. This data is in favour of the results from the field of criminal career (Kyvsgaard, 2003, Kazemian, 2007) and criminal lifestyle (Walters, 1998b) (all according to Doležal, 2009a) which show that the higher rate of recidivism at criminal offenders implies a longer criminal career and deeper involvement in the criminal lifestyle. Such characteristics of the criminal lifestyle are important because they influence the development of a career criminal, a person who perceives criminal acts as a "job" he is perfecting by a constant violation of social rules (Doležal, 2009).

In our research, the respondents statistically differ in criminal thinking styles with regard to the violence of the criminal offense in a way that the convicts who commit non-violent crimes, unlike those who commit violent crimes, have higher score in the dimension of discontinuity. This error is one of the most important ones that keeps the criminal lifestyle going and prevents specific focusing on real problems that have led to criminal behaviour. This cognitive error leads to fluctuations both in thinking and in action itself (Walters & White, 1989). The mentioned authors point out that discontinuity is a "glue" that keeps cognitive errors together. More research is needed to determine how much this criminal thinking style is expressed between the two groups of convicts, and the result should be considered preliminary.

According to the obtained results, recidivists, unlike non-recidivists, statistically differ in criminal thinking styles so that they achieve higher scores in dimensions of mollification, entitlement, super-optimism, cognitive indolence as specific cognitive styles, which is in line with the theory of criminal lifestyle (Walters, 1990). A multiple criminal recidivist seeks to justify and rationalize his criminal offenses by pointing out the presence of unjustified or unjust relations in wider social environment (Walters, 1990). A cognitive error of mollification implies the desire of a person of a criminal lifestyle to alleviate, deny or reduce the responsibility for his crimes by highlighting external factors that have caused it, which may be correct or incorrect, but which may have nothing to do with his behaviour. Mollification as a cognitive process is related to the violation of social rules because a person justifies his or her tendencies for violation of rules by circumstances that are often

irrelevant to the current situation (Walters & White, 1989).

According to Walters (2007), persons with a criminal lifestyle have a strong sense of entitlement over their criminal offenses violating social laws and rights of others without any remorse. Similar to egoism this type of entitlement lies in the conviction that the world exists to satisfy their personal needs and benefits. The entitlement is therefore a prerequisite to any criminal offense because most people will refrain from activities characteristic for persons committing criminal offenses in the absence of the feeling of having right to something or in the absence of the need to possess certain things. As this feeling is quite strong in criminal offenders, such persons will rarely re-examine their "privileged status" when they receive new information. This kind of thinking brings them back to the commission of criminal offenses. According to the results of our research, recidivists, unlike non-recidivists, have a strong sense of entitlement.

In our research, recidivists, unlike non-recidivists, achieve higher scores in dimension of cognitive indolence. This cognitive style includes the entire process of criminal thinking: indiscipline, negligence, rapid loss of interest in the current activity (Walters & White, 1989). Cognitive indolence is a major obstacle to changing behaviour in the future, as it encourages the sense of reluctance of a person with a criminal lifestyle to deal with irresponsible and irrational thoughts.

According to Walters and White (1989), a criminal has been taught by the experience that he will not bear the consequences for most of his actions. Due to expressed super-optimism, most of them are convinced that they will never be caught and accused of their actions or that they will not be caught "this time" since they have not been caught and accused of their actions yet. Super-optimism is connected with a behavioural style of self-indulgence as it serves to raise the conviction that chances of negative consequences are at a minimum or even zero (Walters & White, 1989). In this study, recidivists, unlike non-recidivists, achieve higher scores in the super-optimism dimension (see Table 2).

It is quite possible that the results of our research were influenced by the tendency of the convicted persons to present themselves as socially desirable or to minimize their antisocial and delinquent behaviour because it is socially undesirable (Eysenck & Gundjonsson, 1989). Namely, the respondents in our research fulfilled the behavioural criteria, i.e. they showed criminogenic behaviour. The results obtained in our research could have been affected by certain confounding variables, which makes it impossible to apply them generally to the entire population of convicted persons. Being in a prison facility is an important confounding variable when it comes to testing personality traits since the score is modified by the institution's influence on the person. Prison conditions contribute to deprivation, including deprivation of liberty, deprivation of material goods and services, deprivation of autonomy, security and heterosexual contacts, which have significant psychological, physical, emotional and social consequences for the personality of prisoners (Sykes, 2007).

CONCLUSION

The basic starting points of criminal lifestyle are a behavioural component (irresponsibility, interpersonal intrusiveness, self-indulgence and social rule break) and a cognitive component, i.e. the patterns of thinking (mollification, cut-off, entitlement, power orientation, sentimentality, super-optimism, cognitive indolence, and discontinuity, which serve as a support for the behavioural component (Walters, 1990). With regard to the above mentioned, it made sense to assume that by combining both components one can fully understand the concept of crime in relation to age, recidivism and violence of a criminal offense. This study is partially explorative because for the first time it puts in relation the two criminological concepts that determine the criminal lifestyle - behaviour and thinking - a criminal career (the depth of involvement in the criminal lifestyle) and the criminal thinking style.

As noted earlier, the author of the criminal life theory, Walters (1990) has identified four stages of the development of a criminal lifestyle with regard to age. However, given the structure of the sample, the respondents were necessarily divided into two groups - younger convicts (19-35) and older convicts (35-70). In order to get a clearer picture of the criminal personality within the context of the depth of involvement in the criminal lifestyle and criminal cognitive styles, the idea for future researchers would be to collect data and to investigate criminal activity before the age of 18, which is of great importance for the area of prevention and penological treatment.

Given that the sample in our research is too small for additional goals, it would be useful to research criminal cognitive styles depending on the type of the committed crime in the future in order to obtain a fuller picture of the criminal personality. For example, the research found a difference in the depth of involvement in the criminal lifestyle with regard to the type of crime (Doležal, 2009a). The perpetrators of violent crimes as well as the perpetrators of aggravated robbery and robbery are characterized by a criminal lifestyle dominated by interpersonal intrusiveness, while the perpetrators of narcotic drugs abuse are characterized by self-indulgence (Doležal, 2009a). Furthermore, unlike other perpetrators, the perpetrators of property crime manifest a criminal lifestyle dominated by social rule-breaking and irresponsibility. These data are of particular importance to the treatment staff in the prison system because, unlike interpersonal intrusiveness, these behavioural characteristics can be corrected through the rehabilitation process, while interpersonal intrusiveness is more of a personality trait, much more difficult to influence and to correct (Doležal, 2009a). The same author (Doležal, 2009a) found that the perpetrators of aggravated robbery and robbery are the most involved in the criminal lifestyle, which makes them the riskiest category in terms of recidivism.

The results of our research can help experts who work in penological treatment to identify which convicts should be paid special attention to when developing individual treatment programs in order to avoid potential problematic situations, e.g. disagreements among prisoners. In this way, individual treatment programs could be developed that would be aimed at identifying and

reducing certain criminal thinking styles from the beginning of the imprisonment. Although thinking is developed in response to certain behaviour under specific conditions and in accordance with choices made under those conditions, cognitive factors should take precedence over other factors in any program aimed at changing behaviour (Walters, 1990). Recognizing the criminal thinking styles and the depth of involvement in the criminal lifestyle in the context of age, recidivism and the type of crime can certainly contribute to a faster and more efficient preventive practice, as well as to reducing the crime rate and raising the quality of work of all crime-related institutions (Doležal, 2009).

The differences in the expression of criminal thinking styles and the depth of involvement in the criminal lifestyle of convicts were most pronounced among recidivists and non-recidivists, indicating that the LCSF and PICTS questionnaires can identify these potentially the most dangerous categories of convicted persons. This information is important because of penological treatment that can be focused on the reduction of criminogenic styles of both behaviour and thinking.

REFERENCES

1. Andrews, D.A., & Bonta, J. (1995). *The Level of Service Inventory-Revised*. Toronto, Canada: Multi-Health Systems.
2. Blumstein, A., Cohen, J., & Hsieh, P. (1982). *The Duration of Adult Criminal Careers. Final report to the National Institute of Justice.* Pittsburgh: Carnegie-Mellon University, School of Urban and Public Affairs.
3. Blumstein, A., Cohen, J., Roth, J.A., & Visher, C.A. (1986). *Criminal Careers and "Career Criminals"*. Vol. I. Washington, D. C.: National Academy Press.
4. Blumstein, A., Cohen, J., & Farrington, D.P. (1988). Criminal Career Research: Its Value For Criminology. *Criminology*, *26*(1), 1–35.
5. Buđanovac, A., & Jandrić, A. (2007). Evaluation of Lifestyle Criminality Screening Form in Croatian Prison System. *Croatian review of rehabilitation research*, *43*(2), 17–27.
6. Clark, L.A., & Watson, D. (1995). Constructing Validity: Basic Issues in Objective Scale Development. *Psychological Assessment*, *7*(3), 309–319..
7. Criminal Code of Republic of Srpska. *Official Gazette of RS*, No. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12 and 67/13.
8. Criminal Code of Bosnia and Herzegovina. *Official Gazette of BiH*, No. 3/03, 32/03, 37/03 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15.
9. Delisi, M., & Conis, P.J. (2008). *Violent offenders: Theory, Research, Public Policy and Practice.* USA: Jones and Bartlett Publishers.
10. Dinić, B., Barna, J., Trifunović, B., Angelovski, A., & Sadiković, S. (2016). Two types of personality among offenders: the differences in psychopathy, aggressiveness and criminal acts. *Applied Psychology*, *9*(2),199–217.

11. Doležal, D. (2009). Differences between Involvement in Criminal Lifestyle among Prisoners Considering Age, Recidivism and Violent Behaviour. *Criminology and Social Integration*, 17(2), 35-47.
12. Doležal, D. (2009a). *Criminal career and criminal lifestyle (*doctoral thesis). Zagreb: Faculty of Education and Rehabilitation Sciences of the University.
13. Doležal, D., & Mikšaj-Todorović, Lj. (2008). Relation between the Psychological Inventory of Criminal Thinking Styles and Level of Service Inventory Revised. *Criminology and Social Integration*, 16(1), 25-32.
14. Eysenck, H.J., & Gudjonsson, G.H. (1989). *The causes and cures of criminality.* New York: Plenum.
15. Hirschi, T., & Gottfredson, M. (1983). Age and the explanation of crime. *American Journal of Sociology*, 89, 522-584.
16. Jandrić, Nišević, A. (2010). Differences in Criminal Thinking Styles Considering the Involvement in Criminal Lifestyle. *Croatian Review of Rehabilitation Research*, 46(1), 1-12.
17. Olson, D.E., & Stalans, L.J. (2001). Violent Offenders on Probation: Profile, Sentence, and Outcome Differences among Domestic Violence and Other Violent Probationers. V*iolence against Women*, 7(10), 1164-1185.
18. Otašević, B., Jovanov, M., & Oljača, M. (2014). Differences between violent and nonviolent offenders and members from general population. *Primenjena psihologija*, 7(4), 565-579.
19. Palmer, E.J., & Hollin, C.R. (2003). Using the Psychological Inventory of Criminal Thinking Styles with English prisoners. *Legal and Criminological Psychology*, 8, 175-187.
20. Perpetrators of thefts, perpetrators of robberies and persons with no criminal record: The differences in amorality and socio-economic characteristics. *Psychological research*, 17(2), 105-120.
21. Sykes, G.M. (2007). *The society of captives: A study of a maximum security prison.* New Jersey: Princeton University Press.
22. Walters, G.D., & White, T.W. (1989). Lifestyle criminality from a developmental standpoint. *American Journal of Criminal Justice*, 13(2), 257-278. doi:10.1007/bf02887513
23. Walters, G. (1990). *The Criminal Lifestyle: Patterns of Serious Criminal Conduct.* 2455 Teller Road, Thousand Oaks California 91320 United States: SAGE Publications. doi:10.4135/9781483325569
24. Walters, G.D., Revella, L., & Baltrusaitis, W.J. (1990). Predicting parole/probation outcome with the aid lifestyle criminality screening form. *Psychological Assessment*, 2, 313-316.
25. Walters, G.D., White, T.W., & Denney, D. (1991). The Lifestyle Criminality Screening Form: Preliminary data. *Criminal Justice and Behavior*, 18, 406-418.
26. Walters, G.D., & Chlumsky, M.L. (1993). The Lifestyle Criminality Screening Form and Antisocial Personality Disorder: predicting release outcome in a state prison sample. *Behavioral sciences and the law*, 11(1), 111-115.

27. Walters, G. (1995). The Psychological Inventory of Criminal Thinking Styles: Part I: Reliability and Preliminary Validity. *Criminal Justice and Behavior*, 22(3), 307-325. doi:10.1177/0093854895022003008
28. Walters, G.D. (1996). The Psychological Inventory of Criminal Thinking Styles: Part III. Predictive Validity. *International Journal of Offender Therapy and Comparative Criminology*, 40(2), 105-112. doi:10.1177/0306624x96402003
29. Walters, G.D. (1997). Predicting short-term release outcome using the LCSF and PICTS. *Journal of the Mental Health in Corrections Consortium*, 43(3-4), 18–25.
30. Walters, G.D., & Di Fazio, R. (2001). *Changes in the PICTS scales following participation in various psychological programs*. Unpublished raw data.
31. Walters, G.D. (2002). The Psychological Inventory of Criminal Thinking Styles (PICTS): A Review and Meta Analysis. *Assessment*, 9(3), 278-291. doi:10.1177/1073191102009003007
32. Walters, G.D. (2003). Predicting criminal justice outcomes with the Psychopathy Checklist and Lifestyle Criminality Screening Form: a meta-analytic comparison. *Behavioral Sciences and the Law*, 21(1), 89–102.
33. Walters, G.D. (2003). Changes in outcome expectancies and criminal thinking following a brief course of psycho-education. *Personality and Individual Differences*, 35(3), 691-701. doi:10.1016/s0191-8869(02)00246-5
34. Walters, G.D. (2005). Incremental Validity of the Psychological Inventory of Criminal Thinking Styles as a Predictor of Continuous and Dichotomous Measures of Recidivism. *Assessment*, 12(1), 19-27. doi:10.1177/1073191104270662
35. Walters, G.D. (2006). Use of the Psychological Inventory of Criminal Thinking Styles to Predict Disciplinary Adjustment in Male Inmate Program Participants. *International Journal of Offender Therapy and Comparative Criminology*, 50(2), 166-173. doi:10.1177/0306624x05281129
36. Walters, G.D. (2007). *Lifestyle Theory: Past, Present and Future*. New York: Nova Science Publishers.
37. Walters, G.D. (2007a). Predicting Institutional Adjustment with the Lifestyle Criminality Screening Form and the Antisocial Features and Aggression Scales of the PAI. *Journal of Personality Assessment*, 88(1), 99-105. doi:10.1080/00223890709336840
38. Walters, G.D. (2011). Predicting recidivism with the Psychological Inventory of Criminal Thinking Styles and Level of Service Inventory–Revised: Screening Version. *Law and Human Behavior*, 35(3), 211-220. doi:10.1007/s10979-010-9231-7
39. Yochelson, S., & Samenow, S. (1976). *The Criminal Personality: Profile for Change*. Vol. 1. New York: A Jason Aronson.
40. Yochelson, S., & Samenow, S. (1977). *The Criminal Personality: A Profile for Change*. Vol. 2. New York: A Jason Aronson.

NBP JOURNAL OF CRIMINALISTICS AND LAW ŽURNAL ZA KRIMINALISTIKU I PRAVO
NBP 2019, 24(2): 97–109

Submitted: 2018-09-25
Published: 2019-09-21

UDK: 343.983:657.632
343.53:657
doi:10.5937/nabepo24-18979

THE ROLE OF AUDITING PROFESSION IN DETECTING FRAUDS IN FINANCIAL STATEMENTS

Snežana Knežević[1]
University of Belgrade, Faculty of Organizational Sciences
Aleksandra Mitrović
University of Kragujevac, Faculty of Hotel Management and Tourism
Dragan Cvetković
Police Directorate for the City of Belgrade, Department of Criminal Police

Abstract: Bearing in mind the increasingly complex economic environment and the emergence of new types of fraud, it is important to see what role the audit profession plays in detecting fraud and providing reasonable persuasion about fraud. The aim of this paper is to explain how the process of auditing financial statements works. The paper distinguishes between an auditor, a fraud auditor and a forensic accountant. The similarities and differences between these professions and their interrelationships are specified. The methodology used in the paper is content analysis. The results of the analysis revealed that audit and forensic accounting are inextricably linked in detection of fraudulent actions.

Keywords: audit, frauds, forensic accounting, financial reporting, Republic of Serbia.

INTRODUCTORY REMARKS

Many users of auditor's reports are of the opinion that auditors are responsible for detecting frauds. However, an opinion that auditing profession is designated to detect frauds in financial statements is a wrong approach. Company management is the body which is responsible for accuracy and regularity of financial statements, and therefore they are responsible to prevent and detect frauds or mistakes. Auditors are primarily responsible to offer reasonable assurance to users regarding all materially important matters which might be related to detection of frauds or mistakes which are significant for company's financial reporting.

The primary aim of an auditor is not to detect fraud, unlike the professions of fraud auditor and forensic accountanant. There are certain similarities but also the differences between these two professi-

1 snezana.knezevic@fon.bg.ac.rs

ons. The relationship between auditing, fraud auditing and forensic accounting is dynamic and changes in relation to political, legal, social and cultural events (Atağan & Kavak 2017: 201). Depending on the objectives, it is pointed out that (external) auditors are focused on expressing professional, independent and expert opinion on the veracity and accuracy of financial statements, while the fraud auditor's objectives are directed at prevention, investigation and detection of frauds (Vukadinović et al., 2015: 204). According to the regulations, it is emphasized that the auditor's activity lies within legal and professional regulations, while the fraud auditor's activity is within professional regulations only. These are not the only differences, there are several more segments where these differences can be identified, as pointed out by Vukadinović et al. (2015). An auditor is responsible for planning and performing audit in order to achieve reasonable assurance on whether the financial statements contain the material data which are presented in a wrong manner, regardless of whether this was the result of a mistake or fraud. The motive or intention of an individual who made accounting entries are not the main focus of auditing procedures.

A forensic accountanant is hired in order to investigate suspicions that the fraud exists as well as to provide evidence of it, and therefore his task is to assess carefully the transactions in order to determine (in)existence of indications of fraud. If the existence of fraud has been established, it should certainly be investigated in more depth and a corresponding report made, the so called forensic report. According to the American Institute of Certified Public Accountants (AICPA) (White Paper, AICPA, 1993), "forensic accounting is application of accounting principles, theory and disciplines on facts or hypotheses on issues in legal dispute and includes all branches of accounting knowledge".

A financial statement auditor is responsible for detecting frauds due to the nature of audit evidence and characteristics of fraud, the auditor can have reasonable but not absolute certainty that considerable wrongful claims have been detected. The auditor's scope is a complete set of financial statements, while the fraud auditor is led by specific allegations of fraud which are directed at certain accounts included in predicting and its goal is to solve these allegations by finding evidence either to prove or to refute false activities. The auditor's work is affected considerably by the concept of material quality, but the scope of fraud auditor is not that limited. The fraud auditor is hired by an organization which is a potential fraud victim and the primary responsibility lies with the party which hired him, although external parties can see and use the report under certain circumstances, unlike the auditor who is usually hired by the party who was the subject of auditing but his main commitment is to the public investment.

Another significant difference between these professions is their relation towards material accuracy of data. Professions such as a fraud auditor and a forensic accountant are not limited by materiality (Singleton & Singleton, 2010: 14). "Materiality represents a threshold of significance for decision making about which matters are important enough to be included in the report" (Beke-Trivunac, 2015: 41). According to the Ministry of Finance, The Conceptual Framework for Financial Reporting (2010: 12), "information is material if omitting it or misstating it could influence decisions that users make on the basis of financial information about a specific reporting entity".

However, materiality is of great significance for auditors in financial statement auditing since omission or wrong presentation can influence the decisions of financial statement users. From historical aspect, many auditors focused on standard of 5% profit before taxing (loss) or profit after taxing (loss) in continuous business as benchmark for materiality (Mitrović & Radovanović, 2018). Based on the nature and circumstances of the company which is audited other elements of financial statement can be of great significance to financial statement users: business profit, gross profit, working capital, net working capital, total assets, total income, total capital, as well as money flows from business activities. The auditors are not expected not to put emphasis exclusively on some amounts, since wrong financial items are not irrelevant because they are below a numerical threshold.

It is already clear now that there are significant differences between these professions and further in the paper these differences will become even clearer through explanations of all important elements of auditing profession. After introduction, the first part of the paper will deal with actions and procedures which constitute the auditing process. After that, the second part of the paper will explain the types of frauds in companies and the auditor' role in their clearing. Namely, in recent years concerns about frauds and false financial reporting have increased and continue to rise. This is why standards of fraud have been defined which expanded the concept of fraud in comparison with what used to be meant by the term so far. However, this is not enough, and academic research studies suggest that additional efforts are required by audit regulators and external auditors (Kassem & Higson, 2012) to precisely define the concept of fraud. The situation with auditing profession in Serbia will be the subject of the third part of the paper. The conclusion will sum up the main results.

AUDITING PROCESS: ACTIONS AND PROCEDURES

In the beginning it is necessary to explain the types of auditors in relation to the activity they do so that later on we could get a better picture on the objectives of certain types of auditing. First of all, it should differentiate between internal and external audit. "Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes" ("Global IIA International Professional Practices Framework"). Internal auditors perform a wide spectrum of activities in the name of an organization, including financial statement auditing, inquiry of whether the activities are in conformity with organization's policies, examination of whether an organization meets its legal obligations, evaluation of operational efficiency, detecting frauds inside a company and performing IT auditing. Mechanisms of detecting and preventing frauds are various, and we will mention some of them: improving internal control and auditing, cash examination, policy of reporting a fraud and policy of rotation of employees, whi-

ch suggests the fact that internal auditors and accountants play a significant role in fraud prevention.

The tasks of external audit are very similar to the tasks of internal audit, the difference being only in their constituency. Namely, external auditors represent third-party outsiders, while internal auditors represent the interests of the management (Hall, 2011: 33). The process of external auditing of financial statements includes four stages: accepting to perform auditing, planning, executing and reporting. Commercial or external auditors mainly audit financial reports but they could also audit comformity and performance and they are at the first 'front line' of corporate management, since they are crucial for checking financial information which are offered to share holders by the CEO, CFO and board of directors. They are usually called independent or authorized auditors.

State auditors come from state auditing agencies or ministries of finance. They deal with financial statement auditing, auditing of regularity of operations and auditing of operational expediency. The objective of financial statment auditing is to express opinion on whether the financial statements of the subject of auditing are true and objectively present their financial condition, the results of business operations and money flows in accordance with the accepted accounting principles and standards; auditing of regularity of business operations means examination of financial transactions and decisions regarding earnings and costs in order to see if the said transactions have been completed according to the law, other regulations, authorisations, as well as for planned purposes; auditing of business operations expediency means examining how the assets coming from the budget and other public funds have been spent, in order to check if the subject of auditing has spent these assest according to the principles of economy, efficiency and effectiveness, as well as in accordance with the planned objectives.

When auditing financial statements the auditor checks the veracity and objectiveness of financial statements of a company. The quality of auditing improves the quality of financial reporting, which then increases the credibility of financial statements (DeFond & Zhang, 2014).

The objective of audit is to ensure to the user that the information contained in these financial statements represents an organization fairly and accurately. In order to form an opinion, an auditor collects appropriate and sufficient evidence and observes, tests, compares and confirms until he gets reasonable assurance. An auditor then forms an opinion on whether the financial statements contain materially significant faults, either because of fraud or mistake. The role of auditing is not only to protect the interest of the capital owner, but it is important from the aspect of protection of the interest of the state for identifying irregularities in calculation and payment of taxes, fees, and similar, as well as from the aspect of protection of the interest of banks and investors for monitoring their claims (based on crediting or investments).

"Legal persons which have a duty to audit the financial statements in accordance with the law governing audit, shall submit to the Business Registers Agency the original of the audit report, drawn up in accordance with the law and international audit standards, with the attached financial statements that were audited" (Article 34 of the Law on Accounting, *Official Gazette* of the Republic of Serbia, No. 62/2013 and 30/2018).

In the procedure of commercial auditing, the auditor gets a letter/statement of the management which gives credibility to financial statements made up by the management in terms of veracity and legality of presenting the financial standing, the business operations results, changes of capital and financial flows, as well as in terms of providing true accounting records based on which the financial statements were made (Knežević & Mitrović, 2017). The management of the company is responsible for drawing up and presenting annual reports on business operations in accordance with the requirements of the Law on Accounting (*Official Gazette* of the Republic of Serbia, No. 62/2013 and 30/2018) and Law on Capital Market (*Official Gazette* of the Republic of Serbia, no. 31/2011, 112/2015 and 108/2016).

Considering that the company management is responsible for efficient functioning of the company, internal control and financial reporting, it implicitly takes dominant position within the company structure and has a unique capability to make or approve fraud, since it is often in a position, either directly or indirectly, to manipulate the accounting entries and present false information, an auditor must be very interested in behavior of the management and business operating performance. In this context, the particularly important role of internal auditing and control is emphasized. Internal control in organizations of private and public sectors are particularly important for detecting the warning signs and protection from inefficient use of assets. The assessment of internal control system of an organization and formation of corresponding suggestions are within competence of internal auditing. Through monitoring of internal control system internal audit leads to more successful accomplishment of organizational objectives.

The main purpose of internal control is support to the entity in their risk management in order to achieve the objectives set by the entity and maintain the performance at the adqueate level. According to the Committee of Sponsoring Organizations (COSO, 2013) the system of internal control consists of five components which may be adopted by various types of companies, and they are: control environment, risk assessment, control activities, informing and communication and monitoring of activities. What is particularly important in order to prevent frauds in business transactions is that companies provide such a system of internal control which would lead to increase of work efficiency and responsibility in managing a company.

FRAUDULENT ACTIVITIES IN COMPANIES AND THEIR DETECTION

When it comes to fraud, or fraudulent activity, there are several various definitions in literature. One of them is that "a fraud, or a fraudulent activity in business environment is an intentional deception, misappropriation of a company's assets or manipulation of its financial data to the advantage of the perpetrator" (Hall, 2011: 116). Another definition is that fraud is "intentional act which results in material wrong presentation" or "a false representation of a material fact made by one party to another party with the intent to deceive and induce the ot-

her party to justifiably rely on the fact to his or her detriment" (Hall, 2011: 117).

Auditors face frauds at two levels: there are employee frauds and management frauds. Since every form of fraud has various implications for auditors, it is necessary to differentiate between these two types. It is particularly important to take this into account when creating system for identification, prevention and monitoring of frauds in an organization. "Fradulent activities in their nature carry the element of hiding and connection among several employees, the managerial and administrative structure should have systematic knowledge on the existence of specifically conceived control procedures aimed against manipulations" (Petković & Cvetković, 2018: 43).

"Red flags" or fraud indicators are not unavoidably or universally connected to frauds. Instead, their presence indicates the degree of risk of fraud (Duffield & Grabosky, 2001). Unlike this point of view, Singleton and Singleton (2010) emphasize that "red flags" are used as a synonym for fraud fingerprints. When a fraud is committed, there are traces of a person who committed a crime and the crime itself which were left at the crime scene, or in the life of a person who committed a fraud, just like the fingerprints which may be left on the crime scene. "Red flags" include the elelements such as accounting anomaly, an inexplicable transaction or event, unusual transaction elements, changes in behavior or characteristics of a person or just the characteristics which are normally linked to the known frauds, particularly certain individual schemes or groups of schemes.

According to Singleton and Singleton (2010: 99), "red flags" connected with frauds in financial statements can be:

- Accounting anomalies;
- Rapid growth;
- Unusual profits;
- Weaknesses of internal control;
- Various unusual activities of management.

Fraud characteristics include: (a) hiding through the pact between the management, the employees or a third party, (b) witheld, wrongfully presented or forged documentation, and (c) capability of the management to bypass effective controls. Because of fraud characteristics, a properly planned and carried out audit cannot always identify materially wrong presentation.

According to the Association of Certified Fraud Examiners (ACFE), frauds can be classified as: financial statement frauds, corruption and asset misappropriation frauds. Financial statement frauds can occur by decreasing property/income or increasing property/income. Decreasing of property/income in terms of fraud can occur based on timing difference, underestimating of income, overestimating of obligations and costs and incorrect evaluation of property. Increasing of property/income in terms of fraud can occur based on timing difference, fictitious (overestimated) income, underestimated obligations and costs, incorrect evaluation of property and incorrect disclosure (Mitrić, Stanković & Lakićević, 2012).

The ACFE research conducted by the analysis of 2,690 cases of occupational fraud in the period from January 2016 to October 2017 in 125 countries worldwide was published in 2018. This research, among other things, showed which departments within companies pose the greatest risk of fraud. In Figure 1, accounting department is at the first place as well as operations with 14%, while the smallest risk of fraud exists in human resources (1%).

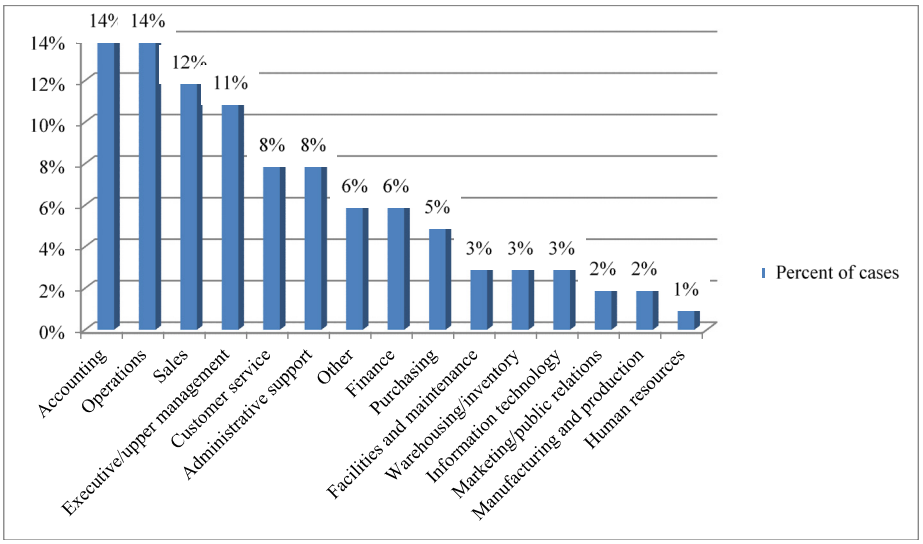

Figure 1: *Which department poses the greatest risk for fraud?*

Source: Association of Certified Fraud Examiners (ACFE), Report to the nations, 2018 Global study on occupational fraud and abuse, 2018.

Since the accounting department has been assessed as the highest risk department in terms of fraud in companies, it was further examined what the most common occupational fraud schemes in high-risk departments are. Figure 2 shows that the largest number of frauds, 30% even, in the accounting department occur during check and payment (which includes all e-payments), and this is followed immediately by billing with 29%, while the smallest possibility of fraud is with register disbursements – about 2%.

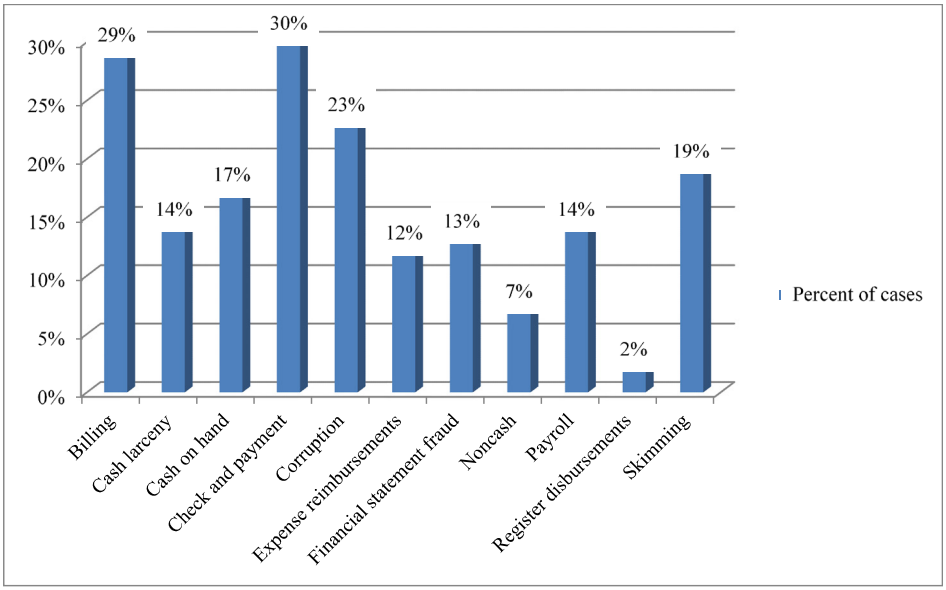

Figure 2: *What are the most common occupational fraud schemes in a high-risk department – accounting department in a company?*

Source: Association of Certified Fraud Examiners (ACFE), Report to the nations, 2018 Global study on occupational fraud and abuse, 2018.

The same research analysed what the most common forms of anti-fraud control are. The majority of examinees said it was the external audit of financial statements.

Fraudulent financial reporting means wrongful reporting in that financial statements contain materially and significantly wrong statements and are not in accord with generally accepted accounting principles. According to Soltani (2007:534), fraudulent financial reporting can manifest as follows:

- Manipulations, counterfeiting or changes of accounting records or accompanying documentation based on which the financial statements were prepared;
- False representation or intentional omissions in financial reports;
- Missing data on certain transactions;
- Intentional wrong application of accounting principles referring to the amount, classification, manner, presentation or disclosure of financial data.
- According to Singleton & Singleton (2010) financial statement frauds include:
- Timing difference (irregular sale treatment);
- Fictitious income;
- Hidden obligations (incorrect obligation entries);
- Incorrect disclosure;
- Incorrect asset evaluation.

Although the existence of the efficient accounting and internal control systems reduce the possibility of wrong representation of financial statements because of fraud and mistake, there is always a risk that internal control system would not recognize fraudulent financial reporting. In addition to this, every system of accounting and internal control can be inefficient in activities related to fraud detection if there is a permanent agreement among the employees or if the fraud was committed by the management. The managers of certain levels can "pressure" the control which should prevent other employees to commit a fraud, for instance by indications given by their subordinates on manipulation wtih accounting records, counterfeiting of accounting documents or hiding information on economic transactions.

AUDITOR'S PROFESSION IN SERBIA

In Serbia there are several important organizations which regulate auditor's profession:

1) State Audit Institution – SAI;
2) Chamber of Authorized Auditors;
3) Association of Internal Auditors of Serbia;
4) Auditing companies (domestic and foreign);
5) The Association of Accountant and Auditors of Serbia.

Contrary to commercial audit, public sector auditing performed by the State Audit Institution in Serbia is aimed at providing veracity of accounting reports independent of which public sector organization they refer to (Law on State Audit Institution, *Official Gazette* of RS, No. 101/2005, 54/2007 and 36/2010). It was founded in 2005 by the Law on State Audit Institution. The State Audit Institution of Serbia became a member of the International Organisation of Supre-

me Audit Institutions (ITOSAI) in 2008 (there are 192 members).

According to the Law on Auditing (Article 45) "the Chamber of Authorised Auditors is an independent professional organization of Licensed Certified Auditors employed in Audit Firms, Audit Firms and Independent Auditors that have a status of the legal person with rights, duties and responsibilities set forth in this law and the statute of the Chamber". It was founded by the Law on Accounting and Auditing (*Official Gazette* No. 46/2006). This institutions is in charge, among other things, of licensing of authorized auditors.

The Association of Internal Auditors of Serbia is an organization whose goal is to promote the profession of internal auditing in Serbia, to strengthen its capacities from the aspect of professional development of its members as well as to strengthen their influence in the environment. It was founded in Belgrade in 2008. This organization is the member of the Institute of Internal Auditors Global – IIA, as well as of the European Confederation of Institutes of Internal Auditing – ECIIA.

In the Republic of Serbia there are 64 audit companes which deal with auditing (Chamber of Commerce of Serbia, 2018). It is often said that audit companies in Serbia are divided into the so called 'big four' and other audit firms (according to their market share and financial power). Further in the text the audit firms which make the 'big four' are presented.

PricewaterhouseCoopers – PwC Audit Company is seated in Great Britain in London. PwC is the second largest world consulting-auditing company, right behind Deloitte. PwC offers services in various business domains: auditing, tax, human resources, business transaction, improving company business operations and risk management. PricewaterhouseCoopers Serbia was founded in 1996 with its seat in Belgrade. It was founded by PricewaterhouseCoopers Polska (51% share) and PricewaterhouseCoopers Eastern Europe BV Holland (49% share).

Deloitte d.o.o. Belgrade (Deloitte Ltd. Belgrade) is a member of Deloitte Central Europe Holdings Limited. Deloitte Central Europe Holdings Limited is a member of Deloitte Touche Tohmatsu Limited which operates in Great Britain. This company is focused on the following business activities: auditing, tax, business and financing consulting. Deloitte d.o.o. with the seat in Belgrade was founded in 1991 by several founders: Deloitte Central Europe Holdings Limited Cyprus (37% share) and another eight founders – natural persons. It has over 100 employees in Serbia.

KPMG International is a global network of companies offering services of auditing, tax and financial consulting. KPMG audit company was founded in 1987, and it offers services in 144 countries. The seat is in Switzerland (Zug). KPMG Serbia d.o.o. (KPMG Serbia Ltd.) was founded in 1996 by KPMG Cee Holdings Limited Cyprus (99.2% share) and four other founders – natural persons.

Ernst&Young (EY) was founded by merger of two companies, Arthur Young and Ernst&Whinney. EY refers to global organization of companies that are the members of Ernst&Young Global Limited, for which it is characteristics that each of them is a separate legal person. Today around the world they do business in 140 countries, offering services to the biggest world companies in various sectors: banking-financial, manufactu-

ring, and in a wider sense traffic, trade, technology and energy. Ernst&Young d.o.o. (Ernst&Young Ltd.) with the seat in Belgrade was founded in 1996 by Ernst&Young CEA (South) Services Limited Cyprus (100% share) and represents a part of the EY network in Central, East and Southeast Europe and Central Asia.

In the field of professional education in accounting, in the Republic of Serbia there is a particularly active organization – the Association of Accountants and Auditors of Serbia – which represents a non-government, non-profit association of professional accountants of Serbia. It was founded in 1955, and since then it has actively worked on the development of accounting profession, education of its members and harmonization of national professional regulations with the best experiences of the developled countries.

When it comes to legal regulations referring to auditing in Serbia, it is important to mention two laws: Law on Accounting (*Official Gazette* of RS, No. 62/2013 and 30/2018) and Law on Auditing (*Official Gazette* of RS, No. 62/2013 and 30/2018).

It is prescribed by the Law on Accounting (Article 28) that "an audit of annual and consolidated annual financial statements shall be performed in accordance with the regulations governing the audit, and further (Article 34) that "legal persons which have a duty to audit the financial statements in accordance with the law governing audit, shall submit to the Agency the original of the audit report, drawn up in accordance with the law and international audit standards, with the attached financial statements that were audited".

Law on Audit (Article 1, *Official Gazette* of RS, No. 62/2013 and 30/2018) has regulated several segments important for the profession: the conditions and manner of conducting audit of financial statements, mandatory nature of audit, qualifications and licenses of persons required to perform audit, issuance and revoking the operating permits from audit firms and independent auditors, supervision over performance of audit, and other important matters. Audit is performed by Licensed Certified Auditors, employees of the Audit Firm, or by an Independent Auditor, provided that they are the members of the Chamber. According to the manner of audit, as said in Article 23 of the Law, audit can be statutory and voluntary. "Statutory audit shall be performed in accordance with this law, other laws that govern the mandatory audit of the financial statements in certain legal entities, ISA and the Code of Professional Ethics of Auditors. Voluntary audit of financial statements shall be performed by mutatis mutandis application of laws and regulations referred to in paragraph 1 of this Article."

In our country audit is mandatory for large and medium-sized legal entities whose business activities are performed in order to gain profit, as well as micro and small legal entities and entrepreneurs whose business income earned in 2016 business year exceeds EUR 4.4 million, insurance companies, banks, public companies, political parties and other tax payers included in the Law on Audit (Article 21).

Audit report is a report on the conducted audit that is issued by an audit firm or an independent auditor in accordance with this law and International Standards on Auditing.

The Audit Report shall contain at least the following (*Official Gazette* of RS, No. 62/2013 and 30/2018):

- Introduction listing the financial statements being audited, together with accounting policies used for their making;
- Description of the purpose and scope of the audit, stating the auditing standards in accordance with which the Audit was performed;
- Opinion of a Licensed Certified Auditor that clearly expresses whether the financial statements give a true and fair view of the financial position of the legal entity in accordance with the relevant legal framework, as well as whether the annual financial statements are in accordance with special regulations governing the operations of the legal person, if that is provided in these regulations. The Auditor's opinion may be positive, reserved, negative, or the Certified Auditor may refrain from expressing an opinion if he is not able to express it;
- Special warnings and problems on which the Licensed Certified Auditor wishes to draw attention, but without expressing a reserved opinion;
- Opinion on the conformity of the business report with the financial statements for the same financial year.

With his report auditor increases the credibility of information contained in financial statements. Positive auditor's opinion is issued when auditors are assured that they truly and correctly present real condition of business and operations of a company and in accordance with accounting standards (Hodžić & Gregović, 2016). Reserved opinion refers to the situation when auditor concludes that it was not possible to collect sufficiently adequate audit evidence so that the opinion on financial statements of a company cannot be made. Opinion with reserve means that financial statements present real and objective condition of a company with the exception of concrete facts mentioned in the auditor's report. If the auditor gives negative opinion, meaning that the financial statements do not present real and objective condition of the company, this could be very harmful for reputation and financial standing of the company. The consequence of all this can be that a bad image of the company is created with investors, creditors and other interested parties.

In his reports the auditor increases the credibility of information contained in financial statements.

CONCLUDING REMARKS

Many corporate scandals and frauds initiated an important social question on the responsibility of auditor's profession and the role of auditors. Namely, there is a difference between what auditor does and what the public expectations from them are. Audit offers a reasonable guarantee and not the absolute insurance that financial statements do not have materially significant mistakes.

It is pointed out in this paper that the literature differentiates between an auditor, a fraud auditor and a forensic accountant. The audit which is performed by a fraud auditor has important preventive role in identifying potential frauds, but its possibilities are limited since auditors are not responsible for planning and carrying out audit in order to detect mistakes which are not of material significance for presenting financial statements

independent of whether the mistake was caused unintentionally or it represents a financial fraud or malversation. A forensic accountant's profession is also important for timely prevention and detection of fraudlent activities or irregularities in companies, and the set of knowledge and skills he must have is in any case multidisciplinary with the elements of expert and moral reliability.

The paper has presented only a part of possible frauds, the financial statement frauds and the role of fraud auditor in their prevention and detection. This does not mean that the number and types of examples are final, since from day to day with the increased use of sophisticated methods and with the development of information-communication technology there are new kinds of malversations, frauds or irregularities, and it should be pointed out once more that the management is responsible for the accuracy of financial statements and the role of external auditor in their prevention or detection. This is a crucial issue for further development of both accounting and auditing professions respectively.

REFERENCES

1. American Institute of Certified Public Accountants (AICPA). (1993). *White Paper,* AICPA, 1993, https://www.aicpa.org/, accessed on May 12, 2019
2. Association of Certified Fraud Examiners (ACFE). (2018). *Report to the nations, 2018 global study on occupational fraud and abuse*, http://www.acfe.com/, accessed on September 5, 2018
3. Atağan G. & Kavak A. (2017). Relationship between fraud auditing and forensic accounting. *International Journal of Contemporary Economics and Administrative Sciences*, 7(3-4), 194-223.
4. Beke-Trivunac J. (2015). Koncept materijalnosti sa stanovišta finansijskog i nefinansijskog izveštavanja, *FINIZ 2015 - Contemporary Financial Management* (pp. 41-44). Belgrade: Singidunum University.
5. *Committee of Sponsoring Organizations* (COSO), (2013).
6. DeFond, M., & Zhang, J. (2014). A review of archival auditing research. *Journal of Accounting and Economics*, 58(2-3), 275-326. doi:10.1016/j.jacceco.2014.09.002
7. Duffield, G. & Grabosky, P. (2001). *The psychology of fraud Trends and Issues in Crime and Criminal Justice*. Australian Institute of Criminology, Canberra Google Scholar.
8. *Global IIA, International Professional Practices Framework*, http://www.eciia.eu/what-we-do/what-is-internal-auditing/, accessed on November 12, 2018
9. Hall, A. J. (2011). *Accounting information systems*. South-Western Cengage Learning, USA.
10. Hodžić, N., & Gregović, N. (2016). Značaj revizorskog mišljenja za ekonomske odluke eksternih korisnika finansijskih i revizorskih izvještaja korporacije. *Ekonomski izazovi*, 5(9), 114-125. doi:10.5937/ekoizavov1609114h

11. Kassem R. & Higson A. (2012). Financial Reporting Fraud: Are Standards' Setters and External Auditors Doing Enough?. *International Journal of Business and Social Science*, 3(19), SSRN: https://ssrn.com/abstract=2343625, accessed on May 25, 2019
12. Knežević, S. & Mitrović, A. (2017). Analysis of the opinions in the audit reports of companies in the hospitality sector: accommodation and catering service, The Second International Scientific Conference - Tourism in function of development of the Republic of Serbia, *Tourism product as a factor of competitiveness of the Serbian economy and experiences of other countries* (324-340), Thematic Proceedings II, Vrnjačka Banja: Faculty of Hotel Management and Tourism in Vrnjačka Banja.
13. Ministarstvo finansija. (2010). *Konceptualni okvir za finansijsko izveštavanje*, mfin.gov.rs, accessed on May 19, 2019
14. Mitrić, M., Stanković, A. & Lakićević, A. (2012). Forenzičko računovodstvo – karika koja nedostaje u obrazovanju i praksi. *Menadžment – Časopis za teoriju i praksu menadžmenta*, 65, 41-50.
15. Mitrović, A. & Radovanović, A. (2018). Audit Reports on Serbian Hospitality Companies: Expressed Opinions and Lexical Borrowings, *Economic Insights – Trend and Challenges,* VII(LXX), 1/2018, 33-40.
16. Petković, A., & Cvetković, D. (2018). Interne kontrole protiv kriminalnih radnji u funkciji pouzdanog finansijskog izveštavanja. *Revizor,* 21(83), 33-44. doi:10.5937/rev1882033p
17. *Spisak revizorskih firmi*, Privredna komora Srbije, 2018. https://www.pks.rs/.
18. Singleton, T. W. & Singleton, A. J. (2010). *Fraud auditing and forensic accounting*. John Wiley & Sons.
19. Soltani, B. (2007). *Auditing: An international approach*. Pearson education.-
20. Vukadinović, P., Knežević, G. & Mizdraković, V. (2015). The characteristics of forensic audit and differences in relation to external audit. *FINIZ 2015 - Contemporary Financial Management* (pp. 202-205). Belgrade: Singidunum University.
21. Zakon o državnoj revizorskoj instituciji. *Službeni glasnik RS,* br. 101/2005, 54/2007 i 36/2010.
22. Zakono o računovodstvu i reviziji. *Službeni glasnik RS*, br. 46/2006.
23. Zakon o računovodstvu. *Službeni glasnik RS*, br. 62/2013 i 30/2018.
24. Zakon o reviziji. *Službeni glasnik RS,* br. 62/2013 i 30/2018.
25. Zakona o tržištu kapitala. *Službeni glasnik RS,* br. 31/2011, 112/2015 i 108/2016.

HISTORY OF POLICING

БРОЈ 1. У БЕОГРАДУ, НЕДЕЉА 8. ЈАНУАРА 1912. ГОДИНА VIII

ПОЛИЦИЈСКИ ГЛАСНИК

СЛУЖБЕНИ ЛИСТ МИНИСТАРСТВА УНУТРАШЊИХ ДЕЛА

„ПОЛИЦИЈСКИ ГЛАСНИК" ИЗЛАЗИ ЈЕДАНПУТ, А ПРЕМА ПОТРЕБИ И ВИШЕ ПУТА НЕДЕЉНО. ПРЕТПЛАТА СЕ ПОЛАЖЕ У НАПРЕД, И ТО НАЈМАЊЕ ЗА ПОЛА ГОДИНЕ, КОД СВИЈУ ПОЛИЦИЈСКИХ ВЛАСТИ, И ИЗНОСИ: 20 ДИНАРА НА ГОДИНУ ЗА ДРЖАВНА И ОПШТИНСКА НАДЛЕШТВА, А ЗА СВЕ ДРУГЕ ПРЕТПЛАТНИКЕ У ОПШТЕ 12 ДИНАРА ГОДИШЊЕ. ЗА ИНОСТРАНСТВО: ГОДИШЊЕ 24, ПОЛУГОДИШЊЕ 12 ДИНАРА У ЗЛАТУ. ПОЈЕДИНИ БРОЈЕВИ „ПОЛИЦИЈСКОГ ГЛАСНИКА" НЕ ПРОДАЈУ СЕ. РУКОПИСИ СЕ НЕ ВРАЋАЈУ.

POLICE GAZETTE No. 2, January 15, 1912

POLICE REORGANIZATION
(Continued)

D. Đ. Alimpić

3. Neither in Switzerland nor in Belgium the municipal mayors are elected directly, but in Switzerland they are elected by a local community committee, and in Belgium they are appointed by the government, or the King, from among the selected councillors. At least this is the practice, although the executive branch can, according to the law, appoint any person they want for the municipal mayor, in other words even a person who is not a municipal councillor.

A few years ago we had a similar situation, the difference being that the municipal mayors were not appointed from among the councillors but independently of them and usually from among the people who were not the expression of the municipal majority will. After what we said about Belgium, the following question is imposed: wouldn't it be appropriate, considering the present state of our municipal authorities, to implement through our municipal legislation the Belgian system of appointing the municipal mayors? This would, in our opinion, in no way encroach upon the right of the people to elect their leaders and administrators on their own, since they will elect them according to this system as well, not *directly* but *indirectly* through municipal councillors. This small change in the *form* of elections of municipal mayors would be, however, of unassessed benefit to proper functioning of our entire national administration.

4. Both in Switzerland and in Belgium there is *rural police*, which includes gendarmes and field rangers. In each municipality there is at least one municipal constable paid by the municipality and appointed by the state authority. Gendarmerie is dispersed in the heartland and they constantly patrol their respective areas. In addition to this, in larger municipalities there are forest and road guardians, who are also police authorities to a certain extent.

5. Both in Switzerland and Belgium there are *police – justices of the peace* who prosecute misdemeanours, investigate crimes and felonies in the absence of investigative judges and decide in small civil disputes. In addition to the justices of the peace there are also investigative judges, as well as the state prosecution office and the judiciary police, the duty of all these bodies being to take care of repression of crimes.

6. In both countries there are special bodies to execute court decisions in civil disputes, and the executive procedure is much faster and simpler than in our country, and

7. Field police force is much more dominant than administration both in Switzerland and Belgium. Administration is made simpler in both police and municipal authorities, and there are printed forms for almost all administrative acts.

These several notes will be sufficient, we hope, to provide general picture of police forces in Switzerland and Belgium. Their police organizations are very similar to the police organization in France, but in the latter the supervision of the state authorities over the municipal authorities is much stronger, at least with a view of police, and the police in large towns are in the hands of the state. This tendency of replacing municipal police with the state police in towns is growing both in the Parliament and in the public opinion.

***

1. Since our police, after coming into force of laws on district and town courts, will become what they actually should be, and that is the *institution* for *keeping* order and *providing personal and property security*, their future reorganization should mainly go in that direction.

In order to keep order in the first place the good will is required, and in the second stronger *and more energetic* authorities. As for the personal and property security, in our debate "*Crime in Serbia*" we have proved by statistical data that our crime is not professional but local and special and therefore it is not difficult to supress and cure.

In order to supress crime, in addition to other measures, in this debate of ours, we have suggested the following:

a) The special *public security department* should be established within the Ministry of

Internal Affairs which would take care, free from any influence, of everything related to public security in the country and whose subordinates would be permanent and regional gendarmerie forces and anthropometric departments. Such a department has existed in France since 1871 under the name of *Public Safety Department*.

If there are not enough reasons for a new department to be established within the Ministry, then the scope of work of its Anthropometric Police Department should be expanded. This would be appropriate even more since it is already the duty of the Anthropometric Department to gather date on crime trends in the country, as well as to keep records on the convicts;

b) The best police officers, particularly the senior officers, should be posted in those counties and districts where the situation is bad in respect of crime;

c) Necessary amendments to the criminal code should be adopted as soon as possible according to which the pro-

fessional vagrants and gamblers would be punished by court. Oddly enough, there is not a single provision regarding these matters in the new draft of the criminal code, and

d) It should prevent alcohol abuse by legislation, as well as limit the selling and carrying of weapons.

Still keeping to these suggestions, we are of the opinion that with a view of the most successful fight against juvenile crimes it should regulate by laws the issue of morally abandoned children.

The category of these measures for crime suppression includes also gendarmerie with field police, about whom we speak in particular.

2. Our *gendarmerie* should be organized on a different basis, and the gendarmes should be better rewarded and secured by pensions. We do not share the opinion with those who find that gendarmerie should be purely civil institution – since in this case we would have simple coppers instead of disciplined soldiers – but we also find that it should be more of a *civil than military* institution, and that the police superiors should have gendarmes who are delegated for the service at unlimited disposal, naturally within the limits of law. Even the promotion of gendarmes to non-commissioned officers ranks should be left to police superiors, and commissioning of gendarmerie officers to the Ministry of Internal Affairs, since the future gendarmerie officers must have much more professional, police qualifications than today's gendarmerie officers or better to say the officers of permanent staff, who are temporarily sent to serve in the gendarmerie. *In any case the gendarmerie should still be governed by military discipline and military judiciary*.

3. For local security in municipalities it is necessary to have *rural police*, which exist in almost all countries. There are two ways and manners to accomplish this: either to organize them as a completely new police force, or to enlarge the number of today's gendarmes and then detach from thus increased number a required number for the service in municipalities (at least one in each municipality). In our opinion, this second manner would be much better, more practical and safer. It would be precisely laid down by the law how much the municipalities would pay to the state for thus detached gendarmes, who would help the municipal authorities in local policing and they would be supervised by district or county commissioners.

At the remark that such organized field police would be very expensive we reply in advance that in other countries, in addition to field rangers – appointed by the state authorities in each municipality – there is also gendarmerie, which is deployed all around the country, and who constantly patrol in the given area. The number of low-positioned police bodies in these countries, who take care of order and personal and property security is generally rather large. For instance, we mention the canton of Geneva, with not more than 150,000 residents, (with Geneva) but they have: 200 gendarmes, 80 field rangers and up to 50 security agents. One small part of gendarmes is in Geneva, and the rest are deployed around the canton. Field rangers are deployed in municipalities, but they are organized as a separate body and are subordinate to the director of the central police. Security agents are in Geneva all the time, and they go to the canton if and when required. We have already said earlier that the police in the canton of Geneva are organized well and cen-

tralized. Thanks to this, both personal and property security in it is excellent – in the last 5 years there has been just one murder for profit.

In Belgium there are also both gendarmes and field rangers, and in France there is also *mobile gendarmerie* (brigades mobiles).

Four years ago there was a discussion in the well-known Parisian association "*Sociétè Général des Prison*" on police reorganization both administrative and judicial, and as the basis for the former the following principle was set:

"Keeping order and public peace in the entire territory is the duty of the state. According to this, it has the right, considering the importance and character of each place, to perform directly, fully or partially, police tasks provided by paragraphs 2 and 3 of Article 97 of the Law dated April 5, 1884,[1] or to delegate them to the municipal mayors under the specifically set reservations and conditions."

In addition to this basic principle for administrative police, the following desires are also expressed:

a) For the number of gendarmerie brigades to increase, and

b) For the Parliament to adopt as soon as possible the legislative proposal on creation of mobile gendarmerie,[2] and that in the future the permanent gendarmerie brigades do not leave their respective places of residence.

The following text is formulated for field rangers:

"Every village municipality must have at least one field ranger, who will be appointed by the municipal mayor following the approval of the county commissioner and whose salary cannot be less than 500 dinars a year.

Only those persons can be appointed the field rangers who served in the army and are healthy, well built, literate and younger than 65.

In addition to this it can be allowed for two or more municipalities with a small number of residents and small territory jointly support one field ranger.

If a municipality is not able to support a field ranger without a special surtax, it will be given subsidy from the regional budget on conditions determined by the law. This task will be mandatory for the county. If the county must resort to special surtax to that effect, it will be given the subsidy from the state budget, again on conditions determined by the law.

As it can be seen from the above said, in order to maintain security in inland France there are: *permanent gendarmerie* deployed in brigades all over the country, *mobile gendarmerie* and *field rangers*. Since we do not have gendarmerie brigades in the heartland, and it would be much for us to create both them and field rangers, we have given advantage to the field police consisting of *gendarmes* to the one consisting of *field rangers*.

4. The provisions on police authorities and bodies, on their duties and jurisdictions, are dispersed over various laws (the Law on County and District Governance, Law on Municipalities, Law on Public Security, Organization of the Belgrade City Administration, Police Ordinance, etc.). Since the amendments of all these laws will have to be addressed anyway, we find that it would be good and practical if all these provisions will be gathered in one law – *the law on police authorities and bodies* – and then submitted to serious revision. This revision is particularly necessary for the

1 Law on Municipalities
2 Law on Mobile Gendarmerie was adopted three years ago.

Organization of the Belgrade City Administration, which dates from the time when Belgrade did not have more than 15 to 20 thousand inhabitants.

It goes without saying of course that it is indisputably necessary for the new law to regulate the issue of police officers on the principles of *true qualifications, integrity, continuity in service and raise of today's salaries.*

In our opinion it would be best if the candidates for police officers would be submitted to *professional qualification examination* (the exception could be made only for graduate lawyers), as well as the candidates for district commissioners and council secretaries. (In these cases not even the lawyers should be exceptions).

Also it would be very good and useful for the service if all the tasks related to appointments, transfers, promotions and suspensions of police officers would be conveyed to one *committee*, which would consist of: the police chief and the inspectors of the Ministry of Internal Affairs, the administrator of Belgrade, and the Belgrade county commissioner. In this way Mr Minister would be relieved of a boring and unthankful job, and police officers – which is about time – of dishonest party prosecutions.

5. Municipal authorities should be reorganised from the foundations, in order to create healthy and strong municipalities, which would always be capable of offering their inhabitants the first and necessary help in personal and property protection.

a) We have already expressed our opinion on the appointment of municipal mayors on the model of Belgium legislation. Ultimately it could be laid down by the law: *that the municipal committee elects from among their environment and proposes two or three candidates for the municipal mayor, among which the Government or the Minister of Internal Affairs would verify one.*

In his work "*De l'organisation communal et municipal*", the French writer *Henri Pascaud* says regarding the Belgium legislation:

– Organization of municipalities in Belgium is very similar to that in France. Modern Belgium is characterised with broadminded legislation to this effect. If, therefore, in this country, which offers today so much proof of political wisdom (this work was written in 1877), we find the laws which give the right to executive power to appoint municipal mayors, *it means that this is where the real administrative truth is, which conquered old and powerful traditions*.According to the present law, in every municipality there is one municipal body, which consists of: the president, his assistants (the village elders) and councilmen. The councilmen are elected directly among municipal inhabitants, under prescribed conditions, and their term of office is 6 years. Half of them drop out every third year. The tasks of the municipal committee are numerous. It takes care of all municipal interests, as well as of other things awarded to it by the higher authorities.

– The mayors and their assistants are appointed by the King from among the councilmen (but the mayor can be appointed from outside the group of councilmen, according to the opinion of the regional committee). The mayor is the Government body, and as such, he takes care of police laws and orders. There is no autonomous municipality. Everywhere, absolutely everywhere, it is organized and administered pursuant to state laws regulations, which are more or less, depending on the country, liberal. The

spirit of municipal legislation is influenced by tradition, level of domestic culture and most of all politics. The political influence is particularly high in the countries where there is tendency to make municipal presidents the election agents. Both the government and the opposition would like to get hold of them, and in this way they are diverted from their mission. They uld be agents of the state and municipality, but never the instruments of the parties

(To be continued)

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

343.98

NBP : Nauka-Bezbednost-Policija : journal of criminalistics and law = žurnal za kriminalistiku i pravo / editor-in-chief Stevo Jaćimovski. - Vol. 1, no. 1 (1996)-. - Belgrade : University of Criminal Investigation and Police Studies, 1996- (Belgrade : Službeni glasnik). - 24 cm

Tri puta godišnje. - Drugo izdanje na drugom medijumu: NBP. Nauka, bezbednost, policija (Online) = ISSN 2620-0406
ISSN 0354-8872 = НБП. Наука, безбедност, полиција
COBISS.SR-ID 125217799