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O reviji

Varstvoslovje je znanstvena revija, ki spodbuja interdisciplinarno razpravo in izmenjavo ugotovitev s področja proučevanja varnosti. Prizadeva si osvetliti pravne, organizacijske, kriminološke, kriminalitetnopolitične, politološke, sociološke, psihološke in druge vidike varnostno relevantnih pojavov in konceptov. Revija prispeva h globljemu razumevanju vloge in delovanja skupnosti, organizacij in posameznikov, ki sodelujejo pri zagotavljanju varnosti.

Primeri tematskih sklopov, ki jih revija pokriva, so:

- *teoretične osnove varnosti,*
- *organizacija in upravljanje varnostnih mehanizmov,*
- *zatiranje kriminalitete,*
- *policijska dejavnost,*
- *zasebnovarnostna dejavnost,*
- *obveščevalno-varnostna dejavnost in*
- *informacijska varnost.*

About the Journal

The Journal of Criminal Justice and Security is a scientific magazine fostering interdisciplinary discussion and exchange of findings in the field of safety and security studies. In its effort to shed light on legal, organisational, criminological, politological, sociological, psychological, and criminal-policy aspects of security-relevant concepts and phenomena, it facilitates a deeper understanding of the roles and the functioning of society, organisations, and individuals cooperating in the provision of security.

As such, the Journal of Criminal Justice and Security covers the following thematic areas:

- *theoretical foundations of safety and security,*
- *organisation and management of security mechanisms,*
- *combating criminality,*
- *policing,*
- *private security,*
- *intelligence and security, and*
- *information security.*

ARTICLES

REPORT

Editorial

Dear readers!

Present issue of the Journal of Criminal Justice and Security includes four papers and a seminar report, covering an interesting range of topics and once again showing the diversity of possible research areas within criminal justice and security.

In the first paper, **Janez Juvan and Andrej Sotlar** discuss a possible model for the reform of the political and social architecture that will ensure the peace, stability and security of Bosnia and Herzegovina. Bearing in mind the complex situation in the country, the model relies on technical assistance to the country for fundamental reforms provided by highly qualified international experts using a modular reform implementation strategy. **Vesna Stefanovska** focuses on the controversies, which surround the state secret privileges in several cases as well as comparison between different courts' decisions, which have in common the issue of invoking secret state privileges in the name of national security. Based on the analysis of several court cases, she concludes that on some occasions secret state privileges have been used to provide impunity and/or avoid further investigation, which can point to acts of torture or acts that are contrary to international human rights law and international criminal law. In his study on the (un)constitutionality of the financial investigation **Benjamin Flander** presents the regulation of financial investigations under the Financial Administration Act and the manner of implementing the regulatory framework of this instrument in Slovenia. Based on the in-depth analysis of the regulation of financial investigations and a case study, the author argues that either the existing regulatory framework, or the manner in which the regulatory framework of financial investigation is implemented, is unconstitutional. **Andrzej Uhl and Andrzej Porębski** examine how educational backgrounds shape opinions on cybercrime and cybercrime policy. Based on the literature review and a survey among students of law and computer science, they conclude that there is a distinction between various narratives about cybercrime by showing the impact of professional socialization on the expressed opinions. In her seminar summary **Teja Primc** reports on the seminar *Radicalisation – The Societal Response to Radicalisation and the Role of the Security Environment*, an international event, co-organised by the Faculty of Social Sciences of the University of Ljubljana, Faculty of Criminal Justice and Security of the University of Maribor and Slovenian Intelligence and Security Agency, under the framework of *The Intelligence College in Europe*. Participants concluded that along with engaging all radicalisation community stakeholders, monitoring radicalised groups and their movement is of extreme importance for the prevention of radicalisation into extremism or terrorism.

Our respected authors have done their share of studying and research in order to gain as well as present new knowledge. May their efforts and interesting findings spark your research ideas. We wish you a pleasant and informative reading.

Maja Modic, PhD
Editor of English Issues

Uvodnik

Spoštovani bralke in bralci!

Tokratna izdaja revije Varstvoslovje vsebuje prispevke, ki pokrivajo zanimive teme in znova dokazujejo, kako raznoliko je raziskovalno področje varstvoslovja.

V prvem prispevku **Janez Juvan in Andrej Sotlar** predstavita možni model za reformo politične in družbene arhitekture, ki bo ob novi vlogi mednarodne skupnosti zagotavljal mir, stabilnost in varnost Bosne in Hercegovine. Upoštevaje kompleksno situacijo v državi se model opira na tehnično pomoč državi za temeljne reforme, ki jo zagotavljajo visoko usposobljeni mednarodni strokovnjaki z uporabo strategije izvedbe reform po modulih. **Vesna Stefanovska** se ukvarja z aktualno tematiko in polemikami glede privilegijev državnih tajnosti v več primerih ter primerjavo med odločitvami različnih sodišč, ki jim je skupno vprašanje sklicevanja na tajnost v imenu nacionalne varnosti. Na podlagi analize različnih sodnih primerov ugotavlja, da so bili v določenih primerih privilegiji državnih tajnosti uporabljeni, da bi se izognili nekaznovanju ali nadaljnjim preiskavam, ki bi lahko pokazale na dejanja mučenja ali dejanja, ki so v nasprotju z mednarodnim pravom človekovih pravic in mednarodnim kazenskim pravom. V svoji študiji o (ne)ustavnosti finančne preiskave po Zakonu o finančni upravi **Benjamin Flander** predstavlja poglobljeno analizo ureditve finančnih preiskav po Zakonu o finančni upravi in način izvajanja regulativnega okvira tega instrumenta v Sloveniji. Na podlagi poglobljene normativne analize in študije primera avtor ugotavlja, da je bodisi obstoječi regulativni okvir bodisi način izvajanja regulativnega okvira finančne preiskave protiustaven. **Andrzej Uhl in Andrzej Porębski** proučujeta, kako vrsta izobrazbe vpliva na mnenje o kibernetski kriminaliteti in kriminalitetni politiki. Po opravljenem pregledu literature in izvedeni anketi med študenti prava in računalništva ugotavljata, da obstajajo razlike v odgovorih na večino vprašanj, na kar različno pomembno vplivajo nekatere spremenljivke, kot so tip izobrazbe, letnik študija in spol. **Teja Primc** poroča o seminarju *Radikalizacija – družbeni odziv na radikalizacijo in vloga varnostnega okolja*, mednarodnem dogodku, ki so ga soorganizirali Fakulteta za družbene vede Univerze v Ljubljani, Fakulteta za varnostne vede Univerze v Mariboru in Slovenska obveščevalno-varnostna agencija (SOVA) v okviru *The Intelligence College in Europe*. Udeleženci so ugotovili, da je poleg vključevanja vseh deležnikov radikalizacijske skupnosti izrednega pomena za preprečevanje radikalizacije v ekstremizem ali terorizem spremljanje radikaliziranih skupin in njihovega gibanja.

Avtorji pričujočih prispevkov so z namenom odkrivanja in publiciranja svojih ugotovitev opravili veliko delo vsak na svojem področju proučevanja in raziskovanja. Naj njihov trud in zanimiva dognanja spodbudijo vaše raziskovalne zamisli. Želimo vam prijetno in poučno branje.

doc. dr. Maja Modic
Urednica številk v angleškem jeziku

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The Role of the International Community in a New Model of Reforming the Political and Social Architecture of Bosnia and Herzegovina

Janez Juvan, Andrej Sotlar

Purpose:

For decades, the international community has been trying to contribute to long-term peace and stability in Bosnia and Herzegovina (BiH), but it has been only partially successful. The purpose of the paper is to present a new model for the reform of the political and social architecture, which, along with the new role of the international community, will ensure the peace, stability and security of BiH, and at the same time will be applicable in other areas of the world.

Design/Methods/Approach:

The article brings insights in the mentioned processes by using combinations of theoretical and empirical methods, of which the most important are in-depth interviews with experts who know the region in detail, as well as the measures already implemented in (post)conflict areas in some other parts of the world.

Findings:

The article discusses a possible model for the future role of the international community in this country as developed by the Working Group on BiH. The model relies on technical assistance to the country for fundamental reforms provided by highly qualified international experts using a modular reform implementation strategy. It is a modular implementation of the reforms, which increases the efficiency and at the same time checks the suitability of the proposed solutions.

Research Limitations/Implications:

The situation in BiH is very complex due to the complicated political system, the ethnic map, the political situation, the economic and social situation, therefore, generalizing the findings is difficult.

Practical Implications:

Reforms must strengthen the rule of law, modernize public administration, harmonize the business environment through fiscal policy and control institutions, open and protect labour competitiveness, establish functioning social, health, and pension systems, and open up space for civil society.

Originality /Value:

Article is presenting the new model as a regional integration programme for infrastructure, economy, education, inter-institutional cooperation, culture, and sports.

Keywords: Bosnia and Herzegovina, international community, new reforms model, EU accession

UDC: 327

Vloga mednarodne skupnosti v novem modelu reforme politične in družbene arhitekture Bosne in Hercegovine

Namen prispevka:

Mednarodna skupnost si že desetletja prizadeva prispevati k dolgoročnemu miru in stabilnosti v Bosni in Hercegovini (BiH), vendar je pri tem le delno uspešna. Namen prispevka je predstavitev novega modela za reformo politične in družbene arhitekture, ki bo ob novi vlogi mednarodne skupnosti zagotavljal mir, stabilnost in varnost BiH, hkrati pa bo uporaben tudi na drugih območjih po svetu.

Metode:

V članku je uporabljena kombinacija teoretičnih in empiričnih raziskovalnih metod. Med slednjimi so ključni poglobljeni intervjuji s strokovnjaki, ki regijo podrobno poznajo, ter ukrepi, ki so bili že uporabljeni v preteklosti na konfliktnih območjih v nekaterih drugih delih sveta.

Ugotovitve:

Članek opisuje možni model prihodnje vloge mednarodne skupnosti v tej državi, kot ga je razvila Delovna skupina za BiH. Model se opira na tehnično pomoč državi za temeljne reforme, ki jo zagotavljajo visoko usposobljeni mednarodni strokovnjaki z uporabo strategije izvedbe reform po modulih. Gre za modularno izvedbo implementacije reform, s čimer se poveča učinkovitost in hkrati preveri primernost predlaganih rešitev.

Omejitve/uporabnost raziskave:

Razmere v BiH so zaradi zapletenega političnega sistema, etničnega zemljevida, politične situacije, gospodarskega in socialnega položaja zelo kompleksne, zato je posploševanje ugotovitev oteženo.

Praktična uporabnost:

Reforme morajo okrepiti pravno državo, posodobiti javno upravo, uskladiti poslovno okolje s fiskalno politiko in nadzornimi institucijami, odpreti in zaščititi konkurenčnost dela, vzpostaviti delujoče socialne, zdravstvene in pokojninske sisteme ter odpreti prostor za civilno družbo.

Izvirnost/pomembnost prispevka:

Članek predstavlja nov model kot regionalni integracijski program reform za infrastrukturo, gospodarstvo, izobraževanje, medinstitucionalno sodelovanje, kulturo in šport.

Ključne besede: Bosna in Hercegovina, mednarodna skupnost, nov model reform, priključitev EU

UDK: 327

1 INTRODUCTION

Bosnia and Herzegovina was established after WWII as part (republic) of a Socialist Federative Republic of Yugoslavia. In practice, BiH was a multinational conception of coexistence and economic progress, a project of Yugoslav communist authorities, who on the one hand introduced authoritarian rule, also through the use of repressive institutions, and on the other liberalized access of all national groups to local social positions. However, the peoples of BiH have never lived with each other, but have lived side by side. As such, BiH was not a melting pot of nations, religions, and cultures. Every time the brutal violence that erupts with the escalation of the accumulated problems confirms such a view on the society and state. Outside the capital and major cities in BiH, towns and villages were separated by ethnicity (Z. Živković, personal communication, November 11, 2016). Economic progress was largely based on industrialization associated with the military and basic raw material processing industries. Revenues of expatriates working in Western Europe also played an important role in economic development. After break-up of Yugoslavia in 1991, BiH became internationally recognized in 1992, but was drawn into war triggered and led by nationalistic politicians with plans of partition of the country (Petrović, 2019). The cause of such severe violence was the conquest of the territory. With armed violence they wanted to change the demographic image of the country, which was created in 45 years after the WWII. In contrast to, for example, the Czech Republic and Slovakia, where there were no mutual territorial claims, there was a strong tendency of some ethnic groups in BiH to increase their ethnic territory at the expense of other nations. This was probably done also with the calculability that first Serbs and Croats come to nationally homogeneous entities, which in the second phase unite with Serbia or Croatia respectively.

In 1995 the war ended with Dayton Agreement, which was a result of intervention of international community (IC) in the conflict. In the past, the IC tackled political, ethnical, and social problems caused by war with prejudice to the BiH and thought patterns that did not correspond to the actual situation (Holbrooke, 1999). As concerns thought patterns, we aim to consider primarily the difference in understanding the circumstances before the wars in former Yugoslavia, namely how experts and politicians from societies with much longer democratic tradition viewed the problems and how the people of BiH experienced their own difficulties. Namely, it is impossible to succeed in introducing reforms

in BiH with attempts that have never passed practical tests. Determination to create a successful multi-ethnic state that would be according to the wishes of the citizens make a good sense. No one can ignore the violence, crimes and genocidal acts of the past in finding solutions to the problems of the future. Respect for human, ethnic and minority rights must be the cornerstone of the new reform model in BiH. Democratic decision-making must be ensured at the all levels of governance of state institutions.

In 19th and 20th century, BiH has been already a subject of experiments by IC (major countries from the region and wider). Hence, its constitutional, political and economic system was often regulated outside the country without the participation of the citizens or with the pronounced unilateral participation of some national or political factor (political party, social movement, religious community) from the region. In this article, the present IC is understood as heterogeneous group of representatives and institutions from various countries, including the most active ones like, Germany, Austria, France, Italy, United Kingdom, USA, Croatia, and Slovenia. This group sometimes works together, but often its representatives or institutions act individually. Depending on the problem or interest, Russia (Reljić, 2017) and Turkey also join this group, as well as Saudi Arabia and the United Arab Emirates in some cases. While China is an investor in BiH, it is not [yet] active as a political interlocutor (Bastian, 2020). However, only the European Union (EU) institutions act as a single bloc in BiH. The individual interests that influence the situations are significant and come from outside. Neighbouring countries, Serbia and Croatia, are even more involved, while Turkey and Russia also want to have an impact in BiH. Meanwhile, the so-called "Western" policy toward BiH is more a collection of different partial interests rather than a common strategic policy. Turkey shows interest for larger diplomatic engagement in BiH and readiness for dialogue, both within the region and with the IC. Perhaps its willingness to seek peace solutions in BiH is sometimes overlooked by Western diplomacy and should be taken into account in the future (Önsoy & Koç, 2019).

The IC has realized that some of the past political experiments carried out in the region have reached less reform progress than they desired and is aware that new mechanisms for resolving conflict situations must be found (Power, 2013). These attempts were to change the political architecture of the state and at the same time to adopt new legislation regarding elections. Both initiatives were watered down and not accepted by mayor national dominant parties. The general policy of closing borders and a reluctance to accept new members in the EU do not contribute to stability in the region. The European Commission has a strategy for enlargement to the Western Balkans, but the reality and reaction of individual EU member states show the undeniable fact that they do not see EU enlargement within the same time frame as the candidates for membership. Such approach definitively does not help reforms in BiH.

The time period of our research also includes active participation throughout. Methodology period is from the research a few years ago and later to today, our activity in the concrete implementation of the new model. The article brings insights in the mentioned processes by using combinations of theoretical and empirical methods, of which the most important are in-depth deep interviews

with experts who know the region in detail, as well as the measures already implemented in (post)conflict areas in some other parts of the world. Thus, we conducted (personally, via Skype, via e-mail) twelve interviews with experts from Austria, BiH, Croatia, France, Germany, the USA, Italy, Russia, Serbia and the UK. Interviewed experts come from different background, but mostly are academics, political analysts, journalists and politicians. In addition, most relevant other sources were used and/or consulted.

2 BOSNIA AND HERZEGOVINA: IDENTIFYING MAJOR PROBLEMS

2.1 Internal Problems

Bosnia and Herzegovina is situated in the western Balkan Peninsula of Europe, occupying the territory of 51,209 km^2. The larger region of Bosnia occupies the northern and central parts of the country, and Herzegovina occupies the south and southwest. These historical regions do not correspond with the two autonomous political entities that were established by Dayton Accords of 1995: the Republic of Srpska (Bosnian Serb Republic), located in the north and east, and the Federation of Bosnia and Herzegovina (decentralized federation of Bosniaks and Croats), occupying the western and central areas. Country has 3,443,000 inhabitants (est. 2022). The three largest ethnic groups are the Bosniaks (48.4% (2013)), the Serbs (32.7% (2013)), and the Croats 14.6 % (2013)), while the free largest religious group are Islam, Orthodox and Roman Catholic. The capital of the country is Sarajevo. The central institutions of BiH are weak, with the bulk of governmental competencies residing in the two entities. Internationally led efforts to replace the unwieldy and costly constitutional structure of BiH with a more functional one, capable of integrating into the EU, have been opposed by the country's nationalist leaders (Lampe et al., 2023).

As already mentioned, the present BiH, with two entities, the Federation of BiH and Republic of Srpska (Serbs), was created by the Dayton Agreement in 1995 (Dayton Peace Agreement, 1995; Holbrooke, 1999). According to the content of the conflict, it could be said that rule of law in BiH is completely absent due to the political abuse of an awkward architecture of the political system adopted in Dayton and realized in the post-war period. Frozen military conflicts and the status quo are the conditions most Bosnian political actors are comfortable with. Any introduction of reforms is almost completely superfluous to them, and there is really no political will for reforms. The motivation for joining the EU and NATO could initiate changes, but impulses so far came from outside and not from inside (Budway & Busek, 2006). The use of the "carrot and stick" method is very inappropriate in the case of BiH, although it is often seen in the media of Western countries as a recommendation for action. For the political elites of BiH, membership in the EU is seen above all as a threat to their privileges. The key problems in BiH are the complete absence of the rule of law, state held hostage by a political oligarchy abusing national criteria as a form of separation of powers, poor health care systems, under-funded pension schemes, school

programs segregated according to pupils' ethnicity, deliberate ignorance and negligence of citizens' initiatives, and predatory economics tied directly to the state budgets. Identifying conflicts shows that they are linked to the problems of the functioning of the state and to the ethnic struggles in BiH. Cumbersome "top-down" political decision-making systems result in an endlessly inefficient and costly administration (Cohen & Lampe, 2011). The public services are poor and citizens are deprived of the basic rights or benefits they would enjoy if the system worked better.

BiH is nowadays an captured state where institutions exist but do not work, where civil society is persecuted or even criminalized, and the rule of law is under the domain of political figures, where assassinations of representatives of local authorities or business people who are in favour of compromises are often carried out, where there is an absence of any kind of democracy (Kurtović & Hromadžić, 2017). There are some dangerous demographic trends in BiH, with more than 250,000 people having left the country between 2015 and 2020. Most went to developed EU countries. This outflow of population may lead to the country's even greater backwardness and is counterproductive to its integration into the EU. Reforms cannot be carried out without professionally active people (Pejanović, 2020).

The conflicts are not religious, although some would like to portray them as such. They are also not distinctly nationalist. It is mainly about the collapse of the functioning of state and the local community institutions. The political architecture of BiH itself is one major nationwide conflict, and attempts to change the Dayton constitution have always been accompanied and opposed by strong campaigns and nationalist rhetoric with considerable media support (M. Pejanović, personal communication, February 13, 2017). This is always a field of bare knuckle fighting and cross-national accusations of the worst kind. When experts mention new amendments to the constitution for breaking up political and social blockades, Serbs immediately threaten with secession, Croats refer to getting their own entity, whereas Bosniaks want to centralize the country to the extent they consider necessary for their security in a multinational community, and some of them would even abolish the other entities (Perry, 2019).

2.2 The Disputable and Diversified Role of the International Community in Bosnia and Herzegovina

Another notable conflict, but not publicly mentioned, is the biased interest of the IC (Glenny, 2012). Policy of Serbia has great influence in BiH, but this policy in itself is under a great question of legitimacy regarding the rule of law and respect for human rights. Therefore, there is serious doubt as to how much Belgrade can be a constructive partner in agreements on the future of BiH and accession to the EU (Bonomi, 2020). Russian activity in the region and in BiH is ambiguous (P. Sokolova, personal communication, November 28, 2016). Russian experts believe that the reason may also lie in the organization of foreign policy departments at the Russian Foreign Ministry. Support for the Serbian side is always public and loud, but Russian policy itself does not corroborate this support in practice.

Russia cooperates with all the countries of former Yugoslavia. Therefore, its participation in the IC is also an opportunity for Russia to redefine constructive policy in the region and help adopt reforms in BiH. Not all necessary changes in BiH will be realized in the desired form without the equal and constructive cooperation of Russia within the policy of the wider IC (Entina & Pivovarenko, 2019). In doing so, a demanding negotiating position on the Russian side can be expected. A new generation of Bosnian politicians see constitutional changes as a prerequisite for meeting the EU's membership requirements, because they consider this the only way they can build institutions that will function and fulfil the conditions for EU membership. The past British-German attempt to update BiH's constitution of BiH has been met with a great deal of unresponsiveness in the EU, and despite the significant efforts made, unfortunately not much has moved in the direction of change (E. Busek, personal communication, October 13, 2016). The Western Balkans, and thus BiH itself, have to be part of a broader European security concept. This would cover the area from the Atlantic (Iceland and the UK) to partner countries at the external borders such as Turkey, Russia, and Ukraine, where particularly an all-European security concept is really not to be seen. Organization for Security and Co-operation in Europe is such a concept but it seems that it does not (always) work. Stability and security have to be seen as a democratic solution to existing problems with very clear goals and commitment to the rule of law, the use of soft power in open diplomacy, and clear messages that will communicate the IC's common commitment to conflict resolution (Ó Tuathail & Dahlman, 2011).

The different members of the IC do not have the same views and interests on BiH, this means that they do not reach agreement on common objectives. The IC has been coming up with various ideas and initiatives ever since Dayton on how to take a step forward in building a more effective constitutional framework for BiH. These reforms have completely become deadlocked. The US administration supports individual expert groups in BiH, assisting them in organizing plenums and promoting their initiatives outside BiH, within the IC. The EU is making similar proposals for BiH's rapprochement initiatives, and thus looks forward to effecting reforms for EU enlargement. Reforms move more or less very slowly. It turns out that expectations of a big bang, where change would come straight from door and dramatically turn citizens' lives for the better, are just an illusion. The invisible but essential problem is actually the passivity of the IC itself (Ioannides, 2018). The IC has invested many resources in the past, including specialized institutions and individual experts, but today when it needs top and capable people in more important, other areas of conflicts, especially on the EU borders and in the close neighbourhood it seems that BiH is not a top priority for the IC in this moment.

After the recent wars, the entire population of the BiH has often served as a "guinea pig" for the ideologies of "peace and coexistence among nations". Experts who know the situation in the region point out that the IC often negotiates and makes agreements with regional individuals who fail to even approximate democratic standards, and who do not give any assurances that they will also reach agreement on behalf of the community they represent (Hayden, 2013). The

question is why? For the sake of alleged stability? Today, the essential problem is the transition in BiH's politics; it is not so important who will lead the government, but it is more important to preserve the structure and the right successors in the parties organized by national census that are controlled by local elites. As a result, many international funds have been recklessly used or simply misused for the personal interests of individual political elites, resembling more organized crime than state building. Thus, it is becoming increasingly difficult for the IC to justify funding for the BiH (Sebastián, 2014). Having only a few individuals with true knowledge of the situation, the IC should find more competent people on its side. By introducing a new model, we could acquire suitable experts who are ready to check the new way of introducing reforms and contribute knowledge and operational skills so that the proposals can be implemented in reality.

BiH is influenced by global and regional forces, individual EU member states, the United States and Russia, and more recently by Turkey (Yalçınkaya et al., 2018). The presence of China and some Arab countries is strengthening. The EU's military responses to the conflicts in the areas beyond EU borders have been quite consistent with NATO and the US strategy during the last quarter of the 20th century. The US has withdrawn much of its potential from the Western Balkans, and the EU is still searching for appropriate solutions to continue the region's stabilization processes (J. Rupnik, personal communication, April 22, 2017).

The International Criminal Tribunal for the former Yugoslavia in The Hague finished its work, but there is still no catharsis in the region and no one (nation, individual) admits their guilt – they all acknowledge only their own victims (Del Ponte, 2009). The EU has programs in place for the exchange and socializing of young people. This is a positive and bright prospect for the future since social gatherings help overcome ethnic differences. Regardless of the recent transformations that NATO is experiencing, a large part of the BiH population sees membership in this association as a step towards collective security, a guarantee of respect for human rights, the country's visibility in joint decision-making, and proof of foreign investment security (Plenta & Preljević, 2016). However, there is still strong blockade from the Serbian part of BiH (Republika Srbska), which deliberately refuses to join NATO and the EU (European Commission, 2018), without any substantive reason, mainly because of the policy of certain Serbian circles, which are aware of the loss of their interests, benefits, positions, and privileges that EU membership would surely entail. And, we still have to take into account the strong Russian influence trying to keep BiH out of transatlantic and EU security structures.

The Dayton Agreement is currently a minimal platform (Hays & Crosby, 2006), but it does not in itself guarantee BiH's development and progress, making it perfectly clear that BiH has remained an unfinished project (S. Mesić, personal communication, November 22, 2016). BiH is neither Serbian, nor Croat, nor Bosniak, but the vast majority of voters still choose national parties. An example is the attempt to amend the BiH Constitution in 2006, where the IC was engaged extensively, but no parties involved in BiH showed willingness to accept proposals in the form of compromises that would satisfy all three key parties when viewed as national monoliths. An attempt to change the electoral legislation in January

2022, where the USA and EU experts were very involved, also failed. This internal opposition in BiH ultimately culminated in a considerable divergence of opinions within the IC itself, especially in the search for ways to achieve minimal changes at all (N. Arbatova, personal communication, December 24, 2017). However, the main culprits for the failed attempt are Bosnian politicians, not the IC.

The IC operates in the region on the principle of the distribution of power, both between the interests of individual EU members within the region and among the key actors outside the EU (the USA, Russia, Turkey, China and the Arab States) and their partial interests. *Stability* in BiH is set as a priority before *democracy* (S. Bianchini, personal communication, April 28, 2017). Technically and operationally, the IC is ready to push democracy aside for as long as the region remains and works in its favour, meaning the absence of mutual violence, the restraint of migrants, the prevention of terrorism, and the control of organized crime, which is often a special form of political elite activity in the region to satisfy its own economic interests (M. Pejanović, personal communication, February 13, 2017).

3 NEW PARADIGM OF INTERNATIONAL COMMUNITY IN BOSNIA AND HERZEGOVINA?

Not every action of IC in BiH is unsuccessful. An example of good practice could be the Working Group on BiH (WG on BiH). This project includes international experts, who follow the efforts of the IC in the BiH and the processes that take place through its engagement in the region in concrete reform cases. WG on BiH describes the causes of conflicts in the region and the factors that influenced the development of solutions for approaching EU membership. In order to help create a new model/approach to stability and security in BiH, the WG on BiH conducted a study comparing already existing data and new findings, relying inter alia on examples of good (and bad) practices in similar conflicts. This, as an example of good practice in managing post-war conflicts, could serve eastern Belgium, specifically Wallonia, where certain autonomy of the German-speaking community is regulated within the country. The Basque community in south France is also an example of how it is possible to regulate national and ethnic relations at a very high institutional level. Similar is the situation of the Sorb community in Saxony. The disunion of Czechoslovakia also shows a positive course of events in contrast to the bloody disintegration of Yugoslavia. Examples of bad practice with a lot of instability and armed conflicts can be found in some countries of the former Soviet Union (Ukraine, Moldova, Georgia, and Armenia).

As a result, the WG on BiH is presenting the new model as a regional integration programme for infrastructure, economy, education, inter-institutional cooperation, culture, and sports. Reforms must strengthen the rule of law, modernize public administration, harmonize the business environment through fiscal policy and control institutions, open and protect labour competitiveness, establish functioning social, health, and pension systems, and open up space for civil society. Measures from the new model that could support necessary reforms are outlined later in the article as a recommendation to the IC for joint action. The

model also emphasizes those elements of security that are significant to stability and the prevention of further conflicts in the region and in BiH. Therefore, an active understanding of security is expanding beyond the current framework, where only the relationship between peace and war has been established. In this way, we understand security in the country much more comprehensively than as the simple absence of war.

The WG on BiH experts involved in the development of the new model highlighted the following areas that could serve as a starting point for more coordinated activity of the IC in BiH (J. Rupnik, personal communication, April 22, 2017):

- assistance in establishing/reorganizing/improving the state's and NGO's institutions and the effective functioning of the rule of law,
- strengthening the legal status of state institutions for effective activity in Bosnian society,
- a system for monitoring the use of public and international funds allocated to BiH,
- the impact of non-EU external actors (Russia, Turkey, China, and United Arab Emirates) on governance structures in BiH.

What does this mean for BiH? Constitutional changes in BiH are a recurring request, variously from politicians and citizens, from NGOs and individual political programmes, and as proposals by the IC (E. Busek, personal communication, October 13, 2016). Unfulfilled expectations have often been triggered by the IC itself with its promises and unrealistic expectations. Instead of trying to find great solutions, it turned out to be better to implement reform models in small steps (Belloni, 2006).

The citizens of BiH, whose life has been regulated by the Dayton Agreement, are very reluctant to accept and implement foreign initiatives (Chandler, 2000). This does not mean a critique of the agreement – it has certainly brought an armistice. What we want to emphasize is that circumstances have shown that the agreement must be upgraded and improved. A significant part of the population lacks access to proper health services, respect for labour rights, regulation of a healthy environment, protection of personal rights, and many other civil liberties, despite being regulated by Dayton agreement (Juncos, 2013).

Furthermore, drawing up a consistent plan for what to do in the Western Balkans is an unfinished project. It is quite understandable, given all the hot spots in the EU interest area, but the past has shown that underestimating the basic elements of stability of this region can be very problematic. Illegal migrants, the activities of criminal and terrorist groups, and individuals who are threats to security across the region and into the EU further provide warning that neglecting a constructive attitude towards the security of the BiH can be a risky endeavour for the whole of Europe. Thus, EU security is directly linked to the situation in the Western Balkans and the ability of countries in the region to deal with the considerable problems at EU borders (Tocci, 2019).

Alternatively, the transfer of internationally recognized good practices to the level of enterprises and civil society can contribute significantly to more effective

unification of a very discordant society in carrying out the planned changes. In the WG on BiH project, we identified what could be done to improve and make regional cooperation more effective. The region received considerable funding after the end of the wars in the 1990s, with subsequent detailed analysis showing considerable recklessness in spending and even worse control and influence over the resources spent (Altmann, 2018). An analysis by the WG on BiH showed that there is sufficient potential in the region to introduce reforms, but it makes sense to coordinate this better with all actors in the IC and those institutions directly involved in these changes. The WG on BiH is trying to find ways to bring the reforms underway back to the region, with a very serious and clear warning from the IC to the regional elites that a lot of new initiatives, as a back-up plan, are not available as they were in the past, and good professional human potential is no longer so easily available for and in the region. Truly capable professionals in the BiH do not view the process as a career challenge because of all the local pointless blockages and obstacles that end with no tangible progress (V. Bojičić-Đelilović, personal communication, April 21, 2017).

4 THE INHIBITORY ROLE OF THE POLITICAL ELITE IN BOSNIA AND HERZEGOVINA AS THE MAJOR OBSTACLE TO REFORMS

Analysing the IC's activities in the region may also point to some false-founded starting points. These later cause various problems that manifest themselves in several forms in individual countries. The first most crucial misconception is that, at the cost of stability, they do not commit themselves to the necessary amount to legal and legitimate democracy in BiH. Everybody in the region who is well familiar with the situation in BiH calls this factual situation "fictitious stability", which only means the absence of war. Some form of violence exists, and it is common that local politicians use it for everyday political purposes. At the cost of this fictitious stability, the IC is ready to accept the alleged existence of democracy and the democratic development of the newly created state. The IC supports the election of leaders, who, on the pretext of being elected by the people, carry out completely authoritarian takeovers of all institutions of power. They subordinate parliaments, appoint judges and replace disobedient ones as they please, harass the state media and disable the independent ones through financial extortion or punishment, directly interfere with the state's financial structure and seize state resources and international credit, misuse international aid, and violate and truncate basic human rights. These are classic examples of captured states in their worst form. Experts in our survey use different terms for such a situation in BiH, such as "hybrid peace", "derogated constitution", and "hybrid democracy" (F.-L. Altmann, personal communication, January 13, 2017; V. Bojičić-Đelilović, personal communication, April 21, 2017).

Another common characteristic of these authoritarian elites is presented in the WG on BiH analysis. All the ruling political elites are publicly declaratively committed to fulfilling the conditions of entry into the EU. Privately they are clearly aware that, with entry into the EU, they should at least conditionally lose power. For this reason, Milorad Dodik and allies in Republika Srpska are big opponents

to EU membership. Dodik's initiative to withdraw the Republika Srpska from all federal bodies of BiH, in December 2021, is directly related to his corrupt leadership of the state. Due to the serious economic and financial problems he personally and his family have, he took the entire Serbian entity and consequently the entire country as a hostage. Therefore, the US correctly identified the cause and imposed personal financial sanctions against it and relatives. At the same time, the EU does not acknowledge any unilateral moves by Dodik, but is again lagging behind in taking action against him. However, younger Serbian politicians see that there is no alternative to the EU. They know that in a normal parliamentary democracy it is no longer possible to practice the form of authoritarian rule as it is currently practised (Lavrič & Bieber, 2021). Replacing the authorities would deprive them of all political and material resources, while at the same time their inviolability or immunity from prosecution would automatically disappear. The most obvious example of such deliberate impediment is the very slow adoption of regulations and standards according to EU values and principles. This delay shows a huge discrepancy between loudly stating their European orientation and at the same time undertaking covert action to delay it. Quite possibly, the biggest motive of the ruling elites in BiH is to protect and at the same time legitimize any stolen and plundered goods. Thus, the democratization process has been set aside. When authoritarian elites perceive the slightest threat to their interests, they begin to threaten to change territorial (interstate) borders or blackmail other parties or national groups with demands that interfere with the rights of the neighbouring national community. The provocations are deliberate and planned, their aim being to divert attention from the internal problems.

The IC has completely neglected the importance of BiH for its common security and sustainability, so at least this time it will have to improve its operations and cooperation with the region. The EU feels tired as far as enlargement ambitions are concerned and its people are not in favour of enlarging. At the same time, the EU is not fully aware of how, with the ambiguity at its borders, it is creating problems that Member States certainly do not want and cannot handle in the future (V. Perry, personal communication, January 23, 2017). Up-to-date international mechanisms of action need to enhance cooperation and communication with the region. The new model of action would encourage domestic, local actors in democratic reform processes. Without their involvement, every effort is doomed to failure. They need to set development goals.

Given that an EU of different developmental speeds is becoming almost a given fact, updated international cooperation programs in the form of technical assistance are a prerequisite for security in the region. In order to eliminate all these anomalies and gradually change the functioning of the IC, we have, through our research work, outlined concrete starting points for a new model.

5 THE NEW MODEL FOR THE ROLE OF THE INTERNATIONAL COMMUNITY IN BOSNIA AND HERZEGOVINA

5.1 International Technical Assistance

The WG on BiH analysis emphasizes the importance of technical assistance, which is certainly one of the smartest ways to start changes step by step.

From this starting point, technical assistance should be aimed at three key pillars in the country, i.e. institutions of the rule of law, institutions of civil society and assistance in economic reforms with the goals of the welfare state. Technical assistance should be aimed at infrastructure, the development of entrepreneurship and, above all, the development of education, which is said to be in serious decline due to wrong policies. Very important technical assistance is cooperation with international financial institutions, not only for receiving aid or money, but for creating conditions and the functioning of state institutions that could implement such cooperation and be an equal professional partner in this cooperation. Training people to work in institutions must become an important goal and means, and technical assistance is the most appropriate method for this. Functioning institutions throughout the country are a guarantor of the reduction of national conflicts. Technical assistance, within the framework of the new model, can be a test of the IC for the operation of similar measures in other countries with which similar negotiations are underway.

Only in this way can the IC achieve its goals and objectives in BiH, which will thus seek the assistance of qualified experts. Funds raised in international environment and given for the purpose of providing technical assistance for reforms will be used more efficiently for their intended commitments. The BiH must show serious interest and willingness to accept technical assistance. In the absence of directly demonstrated political will the IC cannot develop cooperation to provide technical assistance (S. Šelo Šabić, personal communication, January 26, 2017). Oversight over the implementation and use of technical assistance funds must remain in the hands of donors. Technical assistance is thus the right way to go in the future.

WG on BiH experts are common in the opinion that, as part of technical assistance, project proposals and plans must first be drafted with appropriate conclusions and recommendations for operational work. Once the proposal documents for technical assistance are ready, they should be submitted to the relevant people and institutions from the wider IC. After the IC has adopted a common strategy, a methodology for introducing reforms in the region must be drawn up and the proposals should be sent to the BiH, to local politicians, institutions, and civil society, to provide them the opportunity to participate in implementing technical assistance projects for reforms. Civil society activities have to be integrated with key state institutions, those that provide day-to-day services to citizens (Budway & Busek, 2006; Džihić & Weiser, 2011).

Arising from the WG on BiH project and based on the research we conducted, we estimate that key reforms in BiH are those that we believe can be realistically implemented in the near future. The individual elements of the new model

also indicate the options that should be implemented in the practice. National and international political institutions, including all possible advisory bodies and intelligence services, have sufficient information on what is happening in BiH. Therefore, the next concrete step should be to devise comprehensive and appropriate solutions that must be linked to effective plans to implementing reforms. The Office of the High Representative (OHR) and the Regional Cooperation Council (RCC) may be the initiators and architects of the operational work. The first one has broad operational powers under the Dayton Agreement, and the second one acts as a consultative body and can develop coordination of reform efforts. With both institutions, the IC has laid the foundations for its operations in BiH – now their mission remains to be defined in operational terms so that they will serve their purpose.

Furthermore, it is necessary to look for possibilities to rationalize the functioning of the entire administrative system in the state, which can be attempted in the first phase by pragmatic and updated cooperation in the specific case of the Federation of BiH. More objective views and realistic interpretations of what the leadership of the Republika Srpska is doing and how it directly affects the overall situation in BiH could certainly prevent frequent senseless complications in relation to the state's common institutions. Few years ago, there was a lot of discussion about updating the operational efficiency of the institutions in BiH, and very little concrete happened. Today, due to BiH's inactivity of the Federation of BiH, there are objective demands from Croatian politicians for the creation of a third state entity, a new Croatian entity. The EU's experience with Croatia's accession has shown that the EU will be more cautious in the future and will try to resolve the unsettled relations in BiH during the association negotiations. Despite a number of unresolved outstanding issues with all its neighbours, Croatia is an outspoken supporter of EU enlargement to the Western Balkans. Its policy is strategically committed to partnerships in the Western Balkans, and it has yet to demonstrate this commitment with activities that will confirm this in practice. In any case, there are quite a few concrete problems in BiH to which Croatia will have to give very clear answers. At the same time, Croatia must stop playing hide-and-seek behind the vague nationalist agendas of the Croat community in BiH, which are far from contributing to unified politics in Sarajevo for the common governance of the state (Šelo Šabić, 2019).

The transfer of much of the governance to the institutions of a common state is necessary for the functioning of the whole entity, not for the prestige of an individual faction or for a reflection on who was more powerful in negotiations and more right than other. At this point, in favour of the common state, the IC should speak with one voice, although there is one rather big problem here: these desired unities are not consistently exercised by the institutions of the IC (Armakolas & Triantafyllou, 2017). The systematic degradation of BiH as a unified state by nationalist politicians has increased the danger of the country's collapse and should be stopped as soon as possible. Their persistent denial of BiH as a unified and efficient state should be taken as a serious reminder that this is a systematic plan to remove BiH from the map of sovereign states.

There is something very important to understand when introducing reforms in BiH; over 100,000 people were killed and nearly 2 million displaced during the war between 1992 and 1995. This is a very large proportion of the country's population, people who are still struggling to make new lives for themselves today. These are the dreadful consequences of war and the inability of the community to take more rapid and concrete steps to adapt to the situation, at least as expected by the international environment (Pejanović, 2007). Bosnia is still healing its deep wounds. Compared to other countries, BiH is like a tree hit by grenade and will need special attention and care to be able to develop successfully. There are simply one and a half generation of individuals missing. Even today, tens of thousands of (mostly young) people leave the country every year due to poor living and working conditions. As such BiH will need long-term support, not only from the general IC but also from neighbouring countries specifically. It is strategically and technically very necessary to draw up a plan for assisting BiH in the future. The regional institutions of the EU, the European Bank for Reconstruction and Development, World Bank, and the Council of Europe Development Bank must be involved. The entire operation must be coordinated by the European Commission. The European Investment Bank should be an important element of technical assistance to the state for concrete reform projects (Babuna, 2014).

The model can be implemented in the form of technical assistance from the IC, which should be tied to well-defined objectives for the development of individual institutional areas necessary for the effective functioning of society. This assistance should be designed in such a way that rule of law and the protection of all inhabitants' human rights are established in the region and in individual countries. Citizens' social, work, pension, legal, and health security are very critical points in the region. People lack basic health services and there is deficiency of medical supplies and medicines. Pension systems do not work, budgets and funds are empty, and there are no new resources because no new jobs are being created to provide sources for pensions. Education and school systems are subject to politicization (Perry, 2013), nationalism, and the falsification of history, and at the same time are the cause of transnational friction, instead of acting as a systematic long-term solution of establishing a competitive society based on knowledge and ability. Economic development is weak, which is not only a consequence of the global crisis, but also of the abuse of political elites in determining the relevant priorities of the economy (V. Bojičić-Đelilović, personal communication, April 21, 2017).

5.2 Upgrading the Dayton Agreement

Dayton Agreement marked the end of the brutal war in BiH. However, the agreement must be understood as a peace-building process and it must be further developed. The agreement contributed to the citizenry's ultimate physical separation as a result of ethnic cleansing and the country's territorial division by national pattern, which at the same time led to considerable difficulties in governing the state. This was certainly not the aim of the agreement, but it was a consequence. As an example, in the Finci-Sejdić case, the European Court

of Human Rights ruled that BiH's existing political architecture constitutes a violation of Article 14 of the European Convention on Human Rights and is clearly contrary to what the Dayton Agreement sought to achieve. Despite the verdict, and broad public debate on changes to the constitution, no key agreement has yet been reached on this issue. Today, BiH is acting as a completely unfinished political project with very unclear future. Replacing or abolishing the Office of the High Representative without a detailed plan for what to do next would be extremely dangerous for BiH. It is therefore necessary to start a new process with the active roles of the institutions set up by the IC to support the state (OHR, RCC).

The group of experts will have to outline the starting points for the changes to the Dayton Agreement, and the agreement on this must first be reached at the level of the IC and in agreement with all stakeholders in BiH. International experts can be selected and appointed through coordination within IC, but should be managed through OHR and RCC as technical assistance in BiH. Both have the ability to engage with BiH's institutions and citizens so that they participate in a common dialogue, as well as to introduce beneficial reforms. The WG on BiH project may propose an operational plan that will include the active participation of experts and civil society in upgrading and amending the Dayton Agreement The WG on BiH project can be a catalyst within the IC for synchronizing international activities in the preparation of an agreement upgrade.

5.3 Rebuilding the Constitutional Structure

A partial amendment to the constitution would be appropriate because of the proven violations of human rights and for the simplification of the functioning of the joint bodies of the state. The state and its citizens are not only in an inter-ethnic conflict, but the entire community is completely administratively blocked due to the constitutional stalemates. Implementing the constitutional changes will certainly require external technical assistance, based on the principle of jointly assessing which constitutional changes are necessary. In doing so, all three nations should reach a consensus and together outline changes, together with international institutions, that can fundamentally guarantee the correctness and honesty of the revision to the country's basic document. The situation created by the current political architecture does not even meet the minimum conditions for joining the EU, and this is a point where a compromise must be sought between the three nations and their citizens.

Due to the complex political situation in BiH, the IC should also ensure that citizens are more active in enforcing constitutional changes and seeking consensual agreements as the only possible solutions. It will be impossible to enact all the necessary changes without external encouragement, efforts, and assistance from the IC. Disagreements within the IC are often the core and cause of poor cooperation in joint action. Local politicians exploit such disagreements for their own interests, which ultimately led to today's situation in BiH, where prominent experts say that the situation is much worse than it was years ago. A deeply

polarized BiH society needs synchronized action from external, international actors.

5.4 Rearrangement of Political and Administrative Architecture as a Part of the Constitutional Rebuilding

The Federation of BiH has 11 constitutions, one for the Federation and ten for the Cantons. The result is that the entire Federation has about 155 ministers. Together with the Republika Srpska and the Federal State, BiH has 13 constitutions! Taking into account the fragmentation of municipalities, which interpret existing laws in their own right and adapt them to their own needs at the local level, everyone can conclude that the failure of the existing political, and thus state and administrative architecture, in BiH is indeed perfect. The structure of the state itself has bureaucratized all decision-making processes and led to a system where non-cooperation is the inevitable outcome.

The establishment of a Croatian entity should no longer be a taboo in thinking and acting about future connections within BiH. In fact, one of the most realistic ways for the state to exist and function is to establish a third, Croatian entity. The union of all three entities into a federal state is reasonable solution, which should operate on the principle of equality of all citizens and not as a share or percentage of individual national affiliation. Therefore, federal institutions should be formed as a constitutional foundation on the basis of citizenship and not nationality. National entities should be the basis for the formation of needs and interests in a common federation. International treaties and guarantors could also set up a security mechanism against the disintegration of the common state, and these mechanisms and forms already exist in the world.

Along with upgrading the Dayton Agreement and thus amending the constitution, an international technical assistance expert group could also seek to propose significant changes to modernize the country's existing political architecture. If this structure does not change, BiH will functionally become a dead state. Civil society plenums, in conjunction with academic institutions and as part of a policy that is not nationally related, have already made such proposals. They represent a modern plan for how to sort out the confusion within the existing political and administrative system in an acceptable and lasting way. At the same time, citizens would be able to access the services of a country that is now and has long been inaccessible or impeded by excessive bureaucratic obstacles.

5.5 Civil Society Involvement

The WG on BiH project is basically designed to integrate as much of the civil society, academic, and intellectual circles and experts into the operating network as possible, in order to work together to create useful recommendations for finding solutions to existing problems in BiH. The OHR and the RCC have daily contacts in the region and, within their respective powers and tasks, can integrate into reforms all of the state's essentials and civil society's creative potential, which have been deliberately excluded by BiH politicians and ignored almost entirely due to their own self-interest. All BiH societies have been extremely radicalized,

so the involvement of the civil society through international, state and local institutions is actually a necessary measure if the state is to fulfil the conditions for EU membership in the future.

6 CONCLUSIONS

It is difficult to introduce reforms in an environment where great resistance to change have prevailed over many years since the last wars. There are also a number of recommendations and pieces of advice from various centres of political power. Often, these recommendations and instructions for what to do are very abstract. However, our research has identified some of the levers that could lead to step-by-step reforms. We have divided them into several areas of work within the new model of action for the Western Balkans and especially for BiH. The first step is undoubtedly regional integration with some priorities. These are transport and energy, entrepreneurship and the economy, sport, culture, social assistance programs, institutional integration, cooperation in meeting EU legislative alignment requirements, constructive resolution of cross-border issues, and the resolution of conflicts resulting from wars.

Reforms in BiH will not be easy, so it is necessary to target the most difficult and at first sight seemingly unsolvable ones. This is the only way to address and resolve the essential and urgent problems. With this knowledge and hands-on approach, solutions should be closer than they seem today. Technical assistance from the EU and other countries is needed at every level of pre-accession assistance, and is described in detail in justifying the new model. First, however, a more serious and professional attitude to the problems is to engage the IC. It is necessary to raise the competences of international officials and politicians in charge of the region, especially in regard to their capability and knowledge of the specific requirements of the region. The new model also places greater emphasis on civil society, because it has simply turned out that politicians alone cannot and do not activate the potential of the population to such an extent that they can create more normal living conditions for themselves and fulfil their own potentials. Citizens stand in front of senseless bureaucratic, social, political, and ethnic barriers. Developed countries have always gained a lot from the release of creative energy from civil society, and BiH still needs this experience. Therefore, connecting citizens and professional institutions still requires experience and good practice from abroad.

At the level of the IC, a minimum common denominator should be reached that will enable reforms in the region, without this basic mechanism any good initiatives are doomed to difficult life. This has also been demonstrated by current practice. It is not easy to come up with a watertight plan for how to get the right structural reforms out of the internationally prevailing paternalistic relationship with the region. The Berlin Process continues to give the region a lot of attention, and the meetings under this initiative send a clear message that reforms are necessary. However, this momentum has dried up, and the countries in the region have shown their complete inability to draw up even minimal positive cooperation programs. The region has failed to submit programs and projects that

are even credible and would be ready to be supported by the IC with financial and human resources. Therefore, broader supportive cooperation is possible only to the extent where national interests lie. In such changed positions, BiH is losing importance. Stability is just plain surface and strength of the state is becoming even more fragile. For acceptance by the wider IC, the project name of the Berlin Process may be changed to avoid geographical or political definition. At the same time, new pledges are being defined within the IC and the participants who will be really committed to the implementation of reforms through their actions will be verified.

The region's expectations from international institutions are considerable and it is questionable how realistic they are in terms of the situation. The problem is with defining what the IC is and who represents it, whether it is the EU, individual countries of interest from Europe, the USA, Russia, Turkey, China or the Arab States, coalitions or bilateral links between those most involved in the region. The essence of the new model in the BiH is to achieve the functioning of the rule of law, the modernization of public administration, and the unification of the business environment with a tax policy and supervisory institutions. This will open up and protect the competitiveness of the workforce, establish functioning social, health, and pension systems, and create conditions for a functioning civil society. Here we emphasize that some of the necessary reforms must be adopted within the wider region of that part of the Western Balkans which is not yet a member of the EU. Wider adoption of measures would have a positive impact on BiH, which would be a satisfactory result in the introduction of reforms. The influence of Croatia and Serbia on BiH is important and the regulation of these relations is therefore important to consider within BiH's reforms from a broader perspective. The proactive and dynamic development of relations at the level of the IC must be encouraged. The security concept for BiH must become a plan for Europe as a whole and of the wider IC as part of stability within the wider region (F. L. Altmann, personal communication, January 13, 2017). Conflict management, functioning institutions within the rule of law, and a free civil society must be used as a preventive tool against any kind of violence. Considering local specifications, the new model can also be implemented in other regional conflict areas. For security in the Western Balkans, where Slovenia belongs, this article can make a concrete contribution to easier and more effective decision-making by the IC. The research showed institutions from the EU, USA, UK, Russia, Turkey, China and other participating well as how to manage funds and at the same time exercise control over their consumption. For security studies, the article is an important specialized substance as an aid to maintain contact with the development of peace processes in the region, in which it has regular experts and close academic contacts.

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State Secrets Privilege Vis-à-Vis Protection of Human Rights: Controversies in the Case of Abu Zubaydah

Vesna Stefanovska

Purpose:

This paper analyses the dilemma regarding secret state privilege and the necessity to protect human rights. The purpose of the paper is to emphasize that in some occasion's secret state privileges have been used to provide impunity and/or avoid further investigation which can point to acts of torture or acts that are contrary to international human rights law and international criminal law.

Design/Methods/Approach:

The descriptive method has been used for reviewing primary and secondary sources accompanied with the comparative method in order to make retrospective between different cases.

Findings:

The results show that human rights are often sacrificed by invoking secret state privilege. Extraordinary renditions have been used to transfer detainees from one state to another without any legal reason for purpose of interrogations which often end with torture. The main question is: should human rights be violated in the name of national security and fighting terrorism? The logical answer is no - the respect for human rights should be the top of the iceberg and no sacrifice can be done when the right to life and prohibition of torture are in question. Indeed, the Zubaydah case triggers the issue related to impunity for acts of torture and oversight on the government and security and intelligence agencies acts. Moreover, it raises questions about the very nature and purpose of secret state privilege by elaborating that even an information that has entered the public domain falls within the secret state privilege.

Originality/Value:

The content of the article deals with current topic and the controversies which surround the state secret privileges in several cases as well as comparison between different courts' decisions which have in common the issue of invoking secret state privileges in the name of national security.

Keywords: state secrets privilege, human rights, extraordinary rendition, torture

UDC: 342.7

Privilegij državne tajnosti v zvezi z varstvom človekovih pravic: polemike v primeru Abu Zubaydah

Namen prispevka:

Prispevek analizira dilemo glede državnih privilegijev tajnosti in nujnosti varovanja človekovih pravic. Namen prispevka je poudariti, da so bili včasih državni privilegiji tajnosti uporabljeni, da bi se izognili nekaznovanju ali nadaljnjim preiskavam, ki bi lahko pokazale na dejanja mučenja ali dejanja, ki so v nasprotju z mednarodnim pravom človekovih pravic in mednarodnim kazenskim pravom.

Metode:

Deskriptivna metoda je bila uporabljena za pregled primarnih in sekundarnih virov skupaj s primerjalno metodo, da bi naredili retrospektivo med različnimi primeri.

Ugotovitve:

Rezultati kažejo, da so človekove pravice (pre)pogosto žrtvovane s sklicevanjem na tajnost. Izredne izročitve so bile uporabljene za premeščanje pripornikov iz ene države v drugo brez kakršnega koli pravnega razloga zaradi zasliševanj, ki se pogosto končajo z mučenjem. Glavno vprašanje je: Ali naj se človekove pravice kršijo v imenu nacionalne varnosti in boja proti terorizmu? Logičen odgovor je ne – spoštovanje človekovih pravic bi moralo biti vrh ledene gore in pri pravici do življenja in prepovedi mučenja ni dovoljeno žrtvovanje. Zadeva Zubaydah dejansko sproža vprašanje, povezano z nekaznovanjem dejanj mučenja in nadzorom nad dejanji vlade in agencij. Poleg tega odpira vprašanja o sami naravi in namenu državne tajnosti, saj pojasnjuje, da celo informacija, ki je prišla v javno domeno, spada v domeno privilegija državne tajnosti.

Izvirnost/pomembnost prispevka:

Vsebina prispevka se ukvarja z aktualno tematiko in polemikami okoli državnih privilegijev tajnosti v več primerih ter primerjavo med odločitvami različnih sodišč, ki jim je skupno vprašanje sklicevanja na tajnost v imenu nacionalne varnosti.

Ključne besede: privilegij državne tajnosti, človekove pravice, izredne izročitve, mučenje

UDK: 342.7

1 INTRODUCTION

Terrorism is one of the main concerns over the past decades. The terrorist attacks of September 11, 2001 just triggered the fact that terrorism became one of the greatest fears for democratic states. However, in the same time, it gave 'carte blanche' to States to use different and sometimes unauthorized programmes and torture techniques which constitute violation of the fundamental human rights

and standards established in the criminal justice systems worldwide. In those hard times, fighting terrorism has become a priority for many governments and extraordinary renditions excellent tool to achieve 'victory' in the name of national security. Undoubtedly, in their restless efforts to fight terrorism, governments have often used disproportionate force and acted arbitrarily in the name of national security and preserving state's sovereignty. In those attempts, states often crossed lines of 'what is right and what is necessarily' in order to fulfill their plans. The 'war on terror' just accelerated the use of extraordinary rendition programmes for detaining and interrogating high value detainees who were suspected of committing acts of terrorism or their affiliation to some terrorist groups.

This paper is aimed at addressing the issue that often human rights are sacrificed by invoking state secrets privilege. Refusal of the courts to fully analyze the cases is justified under the state secrets privilege, a claim used by governments in order to have the judiciary stop ruling in the issues which, according to them, must remain secret in order to protect national security (Borenstein, 2019). To preserve secrecy, legal doctrines were created and practiced in several states.

State secrecy provides an interesting viewpoint on national and supranational standards over counterterrorism measures since it has been invoked in many occasions with a purpose to protect state agents from prosecution being aware that they violated international criminal law norms as well as international human rights standards. Moreover, the paper raises questions about the very nature and purpose of state secret privilege by elaborating that even an information that has entered the public domain falls within the secret state privilege. The obvious result is that a compromise should not be done between allegedly protecting national security when the obvious reason is to protect agencies and state agents who acted arbitrarily and contrary to the international conventions and violated fundamental human rights. The Zubaydah case triggers the issue related to impunity for acts of torture and oversight on the government and agencies acts. Moreover, it raises questions about the very nature and purpose of secret state privilege: is it the protection of national security or protection of illegal acts?

Extraordinary renditions and state secret privileges are often connected due to the fact that the notion of the state secrecy is strictly interlinked by the concept of protection of national security and state's sovereignty. However, it is evident that these prerogatives especially when accompanied by the lack of effective scrutiny on the national authorities make the resort to state secrecy at attractive means to hide the truth about serious violations of fundamental rights.

2 EXTRAORDINARY RENDITIONS AND STATE SECRETS PRIVILEGE

State secrets can be defined as an authorization of a State not to disclose information that can cause harm to its national security or to defend the State's sovereignty or national community. If we carefully analyze this definition, we can notice two types of interests involved. The interest which justify the invocation of state secrets in order to protect national interests vis-à-vis interests of the public to know the reasons for the secrecy or the interests of individuals concerned by the secrecy. Therefore, the practical articulation of the dialectic relationship between secrecy

and publicity impacts on the level of democracy of certain government. State secrecy being a structural character of any exercise of political authority where the more information is made public and the more the reasons for secrecy are to be found in the community's interests, the more the system could be regarded as inherently democratic (Carpanelli, 2016). Undoubtedly, the state secrecy is linked to state sovereignty and protection of thereof, but this protection can be also considered as a double-edged sword which has good and bad consequences. The first one implies to the protection of the state sovereignty and the state itself from threats which can cause harm, and the second one is granting immunity from either criminal or civil proceedings in cases of human rights abuses. Thus, the price is too high when human rights are at stake especially those inviolable and non-derogable.

States resort to extraordinary renditions when they have no legal base for arrest of the person suspected for crime or terrorism, when they cannot wait for the judicial proceeding of extradition and when the fight against terrorism emerges. The last one is the most dangerous excuse for using extraordinary renditions for obtaining information, conducting interrogation or unlawful detentions. All these acts constitute violations of the guaranteed human rights when the person is held incommunicado and often tortured or subject to other forms of ill-treatment. Although protection of state secrecy has become an emerging legal issue in the war against terrorism, respect of human rights should be the 'top of the iceberg', not contrary. No circumstances such as war, public emergency or terrorist threat can justify the use of torture or other form of ill- treatment. The prohibition is universally accepted as a fundamental principle of customary international law and therefore is binding upon all states regardless of whether they have ratified any of the international treaties. Melzer (2021) argues that the prohibition of torture and ill-treatment requires States to adopt a holistic approach to eradicate, prevent, investigate and prosecute any abuse and to ensure adequate and effective reparation to victims and their families. This includes a duty to integrate all these elements into national legislation and policies. Even in states of emergency when derogations are allowed in accordance with the international laws as well as the national law of the concerned state, still the state must fulfill its obligations *inter alia* including the right to life, prohibition of torture, the right not to be deprived of liberty unless for reasons prescribed by the law, right to be informed, right to a fair trial etc. Some states have tried to justify torture or ill-treatment based on the treaty exception of lawful sanctions. However, jeopardizing the right to life and prohibition of torture cannot be considered as an attempt of exception especially when *jus cogens* and peremptory norms are in question.

States have measures of discretion in cases of evaluation threats to national security and when deciding how to combat these threats. This liberty has been provided after the 9/11 attacks when the war on terror begun and fighting terrorism has become a priority for many governments and different sorts of measure and mutual cooperation was developed. However, this liberty does not mean that every threat can be considered as a breach to national security. The threat must have a reasonable basis in presented facts and evidence that will support the claim that national security is at stake and those actions must be undertaken in order to

prevent bigger problems which could harm the national security of the concerned State. In the framework of the fight against terrorism, restrictive measures have been often taken against suspected terrorists on the basis of secret evidence. In several countries, for instance, preventive detention and deportation measures have been warranted against individuals suspected of being involved in terrorist activities solely or partially based on information never disclosed to them. Such closed proceedings have indeed become a common feature in cases involving national security (Carpanelli, 2016).

It is widely known that in their restless effort to fight terrorism governments have often used disproportionate force and acted arbitrarily, continuously breaching their obligations under international human rights law. One of the most controversial measures is the extraordinary rendition by which states transfer without any legal process, a person to the custody of another state in order for them to be detained and interrogated (Borenstein, 2019). Very often these extraordinary renditions were performed by the Central Intelligence Agency (CIA) where the program was surrounded by a high level of secrecy and occasionally states from Europe also helped the CIA in detaining and black sites and capturing a person who was of interest for the CIA program. Due to the controversies surrounding the extraordinary renditions as well as breaching several human rights instruments especially in cases where the CIA tortured persons for whom afterwards was proved that they have none connection to terrorism, in 2006, the Military Commission Act was passed by the Congress and approved by the US President, although the secret detention or extraordinary rendition programme was not authorized by any law (Satterthwaite, 2009). Consequently, in 2007, the US President issued an executive order stating that the CIA carries out a program of detention and interrogation and in 2008 the Supreme Court ruled that the Military Commissions Act from 2006 was unconstitutional.

The fear from terrorism in many countries had an effect in broadening the powers given to the executive branch under the premise that it would fight against terrorism successfully. However, this unlimited power can be devastating when human rights are in question and when there is a debate whether the activity of the intelligence agencies is of constitutional relevance and whether the state secrets privilege as a doctrine is an evidentiary rule not provided by law (a discretion of the judiciary). Executive branch of the government when commits abuse and becomes arbitrary, in that case, upon the system of checks and balances and the principle of separation of powers, the executive must be subject to oversight. Having too much power often leads to abuses and misuse of that power for 'some greater good' enshrined in the name of national security. However, state secrets privilege cannot be above all instances of law. For that reason exists the judicial (or constitutional) review.

According to Giupponi and Fabbrini (2010), the activity of the intelligence agencies raises several issues of constitutional relevance. On the one hand, the functions, the organization and the responsibilities of the intelligence agencies are peculiar and quite distinct from those of other regular administrative bodies. On the other hand, intelligence agencies operate within a constitutional system based on the rule of law and must be subject to forms of overview (Giupponi

& Fabbrini, 2010). Undoubtedly, the activity of intelligence agencies aims at gathering information which is useful for the safeguarding of the independence and the integrity of the State externally and for the protection of the State and its democratic institutions internally.

2.1 Overview of Related Cases where State Secret Privileges were Invoked in The United States and Similar Practice Developed by the European Court of Human Rights

The doctrine of secret state privilege is well known in the United States judicial system. According to the developed practice, there are two major cases which distinguish the use of secret state privilege as a way of protection of sensitive national security information from being disclosed in civil litigation. The first case is the 1876 case of *Totten v. United States*, where the Court held that the judiciary lacks jurisdiction to hear a suit in which the underlying subject matter is a state secret if the suit would inevitably lead to the disclosure of matters which the law itself regards as confidential, The second one, is based on the Court's 1953 decision in *United States v. Reynolds*, where the Court has permitted the government to invoke the state secrets privilege more narrowly to protect only certain pieces of sensitive evidence if there is a reasonable danger that disclosure during litigation will expose military matters which, in the interest of national security, should not be divulged (Elsea & Liu, 2022).

Many questions arise from the above-mentioned cases regarding the applicability of the state secret privilege. Some questions refer to the issue how far courts should scrutinize the government's assertions of the risk of disclosure once the privilege has been formally invoked. Another worrying issue is the doubt what is the real purpose of the secret state privilege in certain cases? Whether the goal is to protect the national security or to protect agencies and state agents which culpability may be determined in appropriate procedure if that sort of information is disclosed? If we analyze the cases of *El-Masri* and *Aby Zubaydah* it seems more than certain that the purpose is the second issue to protect state agents and to defend the 'extraordinary renditions' as a necessary asset in the fight against terrorism. This so-called adopted policy is contrary to extradition which is legal procedure for transferring of a person accused or convicted of a crime. In extraordinary renditions, these elements lack, there is no legal ground for prosecution, and there is no due process of law and access to court. In many cases, the person is held incommunicado and subject to torture while interrogation with a purpose to obtain information.

In the case of *El Masri,* he claimed that CIA unlawfully detained, interrogated him and held incommunicado. Due to this reason, on December 6, 2005, El-Masri filled a civil case in the US Federal District Court for the Eastern District of Virginia, suing the former Director of the CIA (United States District Court, E.D. Virginia, 2006). The Court held that the case threatened the disclosure of relevant state secrets, thus it was dismissed. Consequently, El-Masri managed to obtain justice and the right to truth. The European Court of Human Rights (ECHR) on December 13, 2012 delivered its landmark decision declaring violation under

Article 3, 5, 8 and 13 ECHR. In the submitted application, El-Masri alleged that in the period from December 31,2003 to May 23, 2004 he had been subjected to a secret rendition operation in which agents from Macedonia had arrested him, held him incommunicado, questioned and ill-treated him. He was held 23 days in a hotel in Skopje where El-Masri started his first hunger strike. Afterwards they handed him over at Skopje Airport to CIA agents who then transferred him to Afghanistan in a secret interrogation facility called Salt Pit where he had been detained and ill-treated for over four months (EHCR, 2012). The El-Masri pre-flight treatment as Skopje Airport where he was beaten, sodomized and forcibly tranquiled when he was handed over to the CIA agents was described at the CIA protocol so-called "capture shock treatment". The rendition was based on the determination by officers in the CIA's ALEC Station that "El-Masri knows key information that could assist in the capture of other al-Qaida operatives that pose a serious threat of violence or death to US persons and interests and who may be planning terrorist activities" (Stefanovska, 2021). On July 16, 2007, the CIA inspector general issued a Report of investigation on the rendition and detention of Khaled El-Masri, concluding that available intelligence information did not provide a sufficient basis to render and detain El-Masri and that the Agency's prolonged detention of El-Masri was unjustified (Senate Select Committee 2014). When it was established that El-Masri has no relevant information and is not the person of interest for the CIA, they left him in Albania near the border with Macedonia.

The second case, *Mohamed v. Jeppesen Dataplan, Inc*. (United States Court of Appeals for the Ninth Circuit, 2010) involved a claim by five plaintiffs against Jeppesen Dataplan, Inc. for violation of the Alien Tort Statute stemming from the company's role in providing transportation services for the extraordinary rendition program. The plaintiffs alleged that Jeppesen Dataplan, Inc. "provided flight planning and logistical support services to the aircraft and crew on all of the flights transporting the five plaintiffs among their various locations of detention and torture (United States Court of Appeals for the Ninth Circuit, 2010). In both *El-Masri* and *Jeppesen*, the government asserted the state secrets privilege and argued that the suits should be dismissed because the issues involved in the lawsuits could not be litigated without risking disclosure of privileged information.

At the end of 2021, the Supreme Court of the United States decided in another important case involving the state secrets privilege. In *United States v. Zubaydah* (Supreme Court of the United States, 2022), the Court determined that a court cannot declare that classified information apparently in the public domain is not subject to the state secrets privilege when the United States has not officially confirmed or denied such information. The overview of the case, as well as dilemmas which aroused regarding the invocation of state secret privilege will be a matter of elaboration below in this paper in order to discuss about justification and different opinions among judges.

While domestic courts were unable or unwilling to review the invocation of the state secret privilege, the ECHR created a substantive practice of human rights violations due to the use of state secret privilege in order to justify the extraordinary renditions as a base of obtaining information or protecting national

security. The ECHR has accepted this quite provoking challenge and managed to determine violations of the Convention's rights in the cases of Abu Omar, El-Masri and Al Nashiri as the most intriguing and landmark cases concerning extraordinary rendition and invocation of state secret privileges.

In the case of *El-Masri v. the F.Y.R Macedonia* (ECHR, 2012), the Grand Chamber of the ECHR determined violations of the Convention's rights and the most important segments of the judgment reflect to: (a) lack of effective investigation by Macedonian authorities and the right to the truth which points to the possibility of abuse of the concept of state secret privilege when systematic politics and secret prisons are in stake; (b) responsibility about detention; (c) lack of requesting diplomatic assurances that El-Masri would endure no ill-treatment; (d) no legitimate request for extradition by CIA agents; (e) interference with the right to private and family life and (f) denial of the right to an effective remedy (Stefanovska, 2021). Besides establishing torture 'beyond reasonable doubt', the Court could not address the culpability of CIA agents, but however this judgment is of extreme importance because it tackles the CIA for the first time as an agency that conducts extraordinary renditions in contrary to the international law standards.

The second case concerned the extraordinary rendition of Abd Al Rahim Hussayn Muhammad Al Nashiri who has been suspected of the terrorist attack on the US Navy ship USS Cole in the harbor of Aden Yemen in October 2000. He has also been suspected of playing a role in the attack on the French oil tanker in the Gulf of Aden in 2002. At the time of his capture, Al Nashiri was considered by the US authorities to be one of the key operations including planning the September 11, 2001 attacks. Since his capture in March 2002, he has not been charged with any criminal offense and remained in indefinite detention in Guantanamo. Al Nashiri claimed that he was a victim of extraordinary rendition by the CIA and he was transferred to secret detention site in Poland with the knowledge of Polish authorities for the propose of interrogation during which he was tortured. He was subject to unauthorized interrogation methods. The application of Al Nashiri before the Strasbourg Court was based on the US documents which were released in 2009 where Al Nashiri fell into the category of high-value detainee. Al Nashiri complained before the ECHR for torture, ill-treatment and incommunicado detention in Poland while in US custody, his transfer from Poland and the Poland's failure to conduct an effective investigation (ECHR, 2015). The Court found violation of Articles 3, 5, 6, 8 and 13 ECHR. The Court held that the criminal investigation in Poland had failed to meet the requirements of a prompt, thorough and effective investigation for the purposes of Article 3 ECHR where Poland had been required to take measures to ensure that individuals within its jurisdiction were not subjected to torture or inhuman and degrading treatment or punishment.

The last case concerned Nasr Osama Mustafa Hassan (also known as Abu Omar), an Egyptian imam and refugee in Italy who was subject to the US extraordinary rendition in cooperation with the SISMI (Italian Intelligence and Security Service). Abu Omar in the application submitted to the ECHR together with his wife Nabila Ghali explained that he was stopped by Italian authorities and handed over to CIA, when afterwards he was transferred to a secret

detention in Egypt, tortured and interrogated in 2004. After his first release, he was imprisoned again and then, since 2007, forced to house detention. Before initiation a procedure before the ECHR, the Tribunal of Milan convicted twenty-three American authorities, but was forced to dismiss the charges against five Italian agents because the state secret privilege was invoked and confirmed by the Italian Prime Minister. However, invoking a secret state privilege by SISMI agents was a controversial issue due to the fact that the trial was already ongoing. The state secret was claimed on information already in the public domain, due to the inquires of the European Parliament and the Council of Europe (the Fava Report and Marty Reports). According to the Constitutional Court, a belated assertion of secrecy should not be disregarded by ordinary courts, irrespective of public knowledge on facts and information (Vedaschi, 2018). Although critical evidence was obtained before the secrecy's assertion, the late invocation of state secret would prevent ordinary courts from using such pieces of evidence.

On February 23, 2016, the ECHR delivered the judgment where it ruled that the Italy's cooperation with the CIA extraordinary rendition programme violated Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the ECHR (European Court of Human Rights, 2016). Regarding the state secret privilege, the ECHR went on note that the information implicating the SISMI agents had been widely circulated in the press and therefore found it difficult to imagine how invoking state secrecy had been apt to preserve the confidentiality of the events once the information in question has been disclosed. Thus, in Court's view, the executive decision to apply state secrecy when the information was known to the public was with a purpose to protect those SISMI agents from prosecution and grant them impunity. The Court noted that in spite of the efforts of the Italian investigators and judges to identify the persons responsible and secure convictions, the latter remained ineffective owing to the attitude of the executive (ECHR, 2016). Therefore, the Court as previously stated in El-Masri, Al Nashiri and Abu Zubaydah that similar treatment of "high-value detainess" for the pruposes of the CIA's extraordinary rendition programme was to be classified as torture within the meaning of Article 3 ECHR. Moreover, the cooperation of the Italian authorities and by allowing the US authorities to abduct Abu Omar, they had knowingly exposed him to real risk of treatment contrary to Article 3 ECHR.

The case of Abu Omar, once again proves the validity of the hypothesis raised in this paper and the valid assumption that the real reason for invocation of state secrecy is not to protect a sensitive information from being disclosed or to protect national security, the real reason behind the state secret privilege is to protect those agents and authorities who are aware that they committed acts which are contrary to international criminal law and international human rights law and to grant them impunity from prosecution.

3 HUMAN RIGHTS IMPLICATIONS IN EXTRAORDINARY RENDITIONS

In many occasions, state secrecy has been observed as a mean to hide the truth concerning serious violations of human rights and grant de facto impunity to perpetrators. The war on terror has paved the way to the increased use of extraordinary renditions although they existed and were practiced many years before the 9/11 attacks and the trend for gathering secret intelligence information as evidence in proceedings against suspected terrorists. The problems lies in the fact that agencies tend towards extraordinary renditions when they have legal procedures such as extradition and deportation. On this way they are violating the guaranteed human rights norms and in the same time create an impression that suspected terrorists are detained without evidence and without clear prosecution act. Undoubtedly, when state secrecies are used as a shield to protect agencies from criminal liability, it is obvious that violation of peremptory norms is at question and as well as the right to the truth when extraordinary renditions involve torture or other forms of cruel and ill-treatment. Thus, according to Amato (2019), the apposition of the state secret privilege not only constitutes a tool for governments to avoid any investigation, but also becomes a violation of the right to the truth. The right does concern both the right for the victim, the family and the community in general to access information, and also States' obligation to take all the necessary positive measures to protect the entitlement to know in particular through effective investigations (Amato, 2019). Instruments of international human rights law and rulings demonstrate that the state secrets privilege cannot eliminate the right of the victims, their relatives or society to know the truth about these violations and that states cannot, on behalf of national security, breach their obligations under customary international law and human rights law toward the right to truth, to an effective investigation, to an effective remedy, and to judicial protection (Borenstein, 2019). Victims have the right to justice, and this means that their claims must be herd, that they have the right to know about the facts and people who victimized them, to see them punished, to receive proper redress, and this rights cannot be arbitrarily taken from them.

The International Convention for the Protection of All Persons from Enforced Disappearance prescribes that every victim has the right to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information. The Strasbourg court practice in respect to the right to the truth has reiterated in several cases (such as El-Masri v. the F.Y.R Macedonia) that deprivation of the person of being informed of what had happened, including getting on accurate account of the suffering he had allegedly endured and the role of those responsible is entitled to him and guaranteed with several human rights instruments. Therefore, as far as the right to the truth is concerned, it is the victim, and not the general public, who is entitled to this right as resulting from Article 3 ECHR.

Finally, the right to the truth can be observed as a closure for the suffering of the victim and path towards his healing and of his family. Moreover, it can be considered as a final step towards ending the ill-treatment and long-term consequences from torture. In this connotation, state secrecy appears as a 'villain'

with an objective to stop the search for the truth and acquiring the right which belongs to the person by all means prescribed with the international conventions.

4 THE CASE OF ABU ZUBAYDAH

In the case of *United States v. Zubaydah* (Supreme Court of the United States, 2022), the Supreme Court ruled that the U.S. Government could invoke state secret privilege to bar two former government officials from testifying in a foreign judicial proceeding (in Poland). The decision was quite controversial due to the fact that most of the testimony the government contractors would render was already known to the public, thus the first question imposed was: What will be protected by invoking state secret privilege, when the purpose of the secrecy is to protect from disclosure an information which could harm the national security of the state? How this protection will work when the information is known to the public?

In order to analyze the judgment of the Supreme Court, we must start from the beginning with the facts of the case and its procedural background. In 2002, Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) was captured by Pakistani authorities who believed he was a high-level member of Al-Qaida. Afterwards he was detained at the CIA site, allegedly in Poland, where he was subject of enhanced interrogation techniques. Two independent contractors working for the CIA allegedly proposed, developed and supervised the torture techniques applied on Abu Zubaydah (Mattei, 2022). Eventually he was transferred from the CIA cite to Guantanamo Bay.

In 2014 the ECHR delivered a judgment against Poland finding that Abu Zubaydah has been held by the CIA in Poland and that the Polish authorities failed to conduct investigation. Afterwards, for the purposes of ongoing investigation in Poland, Abu Zubaydah initiated proceedings in the U.S and filled an application in the District court where he sought subpoenas for discovery from the former CIA contractors who allegedly played a major role in Abu Zubaydah torture. The District court granted the application and subpoenas were served on the former CIA contractors (United States Court of Appeals for the Ninth Circuit 2019). Upon appeal the Ninth Circuit rejected the government's blanket assertion of state secrets privileges over everything in the discovery request. The Court applied the three-step Reynolds analysis for determination of the need for state secret privilege. First, the Court confirmed that there has been a formal claim of privilege. The second step referred to determination whether the information was really privileges and in the third step the Court had to decide how the matter should proceed in the light of successful claim of privilege (U.S. Supreme Court, 1953). The Court ruled that the fact that CIA operated in Poland could not be considered as a state secret privilege, while the identity of the contractors should remain secrecy. Regarding the step three, the Court held that because the district court failed to make a meaningful attempt to separate the information, the dismissal was inappropriate because the contractors in another case already provided non-privileged information. Moreover, the panel majority ruled that three categories of information were not covered by the state secrets privileges such as: (a) the

fact that the CIA operated a detention facility in Poland in the early 2000s; (b) information about the use of interrogation techniques and (c) conditions of confinement in the detention facility and details of the Abu Zubaydah's treatment there. Additionally, the panel majority concluded that because the CIA contractors were private parties and not Government agents, they could not confirm or deny anything on the Government's behalf.

The majority of the judges in the Supreme Court do not deny that some of the information and related details appeared in publicly available documents, but still decided to reverse the judgement of the Ninth Circuit and to remand the case. In the response by the Government, the CIA director said that the contractor's response whether they deny or confirm that Poland had cooperated with the CIA would significantly harm the U.S national security interests. It is quite controversial the opinion of the majority of judges in the Supreme Court that sometimes information that has entered the public domain may nonetheless fall within the scope of the state secrets privilege (Supreme Court of the United States, 2022). According to them, the Government has provided a reasonable explanation why the contractors' confirmation or denial could harm national security interests mainly due to the 'clandestine' relationships with foreign intelligence services. For those reasons the majority concludes that state secrets privilege applies to the existence or nonexistence of a CIA facility in Poland.

There are many controversies and contradictory facts in the judgment delivered by the Supreme Court. First of all, the Government previously concluded that the treatment of Abu Zubaydah constituted torture where the CIA used enhanced interrogation techniques including water boarding, stress positions, cramped conferment and sleep deprivation (Office of the Press Secretary, 2014). Second, the ECHR determined in its judgment that CIA operated a detention facility in Poland and that Poland failed adequately to investigate the human rights violations. Third, the Government has failed to meet its burden of showing that a reasonable danger of harm to national security would follow if sharing the information sought due to the fact that many information were already publicly known such as: (a) the Executive Summary of a Senate Select Committee on Intelligence Reporting concerning the CIA use of enhanced interrogation techniques; (b) the judgment of the ECHR in Abu Zubaydah case; (c) testimonies from the CIA former contractors and (d) and one of the CIA contractor's memoir of his involvement with the CIA's enhanced interrogation techniques (Supreme Court of the United States, 2022).

From a legal point of view, the judgment of the Supreme Court presents a dangerous precedent because it allows the Government by invoking state secret privilege to suppress operational details concerning the specifics of cooperation with a foreign government although that cooperation is well known to the general public because it has been condemned by an international court (the ECHR in several cases) due to human rights violations. How in certain circumstances the Government may assert the state secret privilege to bar the confirmation or denial of information that has entered the public domain through unofficial sources? What is the justification for this reasoning? What is the purpose to protect information that is widely known, when the step two in Reynolds analysis is not confirmed – whether the information was privileged? How the national security

may be harmed when the information is publicly available? This is in correlation with the fact that in several cases including the above mentioned and the case of *Matko v. Slovenia*, the impunity of the agents is *per se*, considered, albeit not explicitly and openly as the interest of the state i.e. of the state nomenclature. It seems that the authorities adhere to this pattern of reasoning in many occasions. The logical answer leads only to impunity of those involved in torture and application of enhanced interrogation techniques.

From intelligence point of view, with this reasoning, the Supreme Court makes selective enforcement of the privilege and posts a standard which dangerously empowers the executive and allows agencies like CIA to commit human rights violations without a possibility to take responsibility for those acts. In this concrete case, it is not the question whether Abu Zubaydah is a terrorist and has committed terrorist acts and other acts which threatens the national security – the criminal justice systems has resources to investigate and prove those allegations, but human rights cannot be and must not be violated in the name of national security. Contrary, it gives the agencies 'carte blanche' to operate, use torture in procedures contrary to the law in order to achieve something that will be questionable by the judiciary, but at the end the state secret privilege will rescue them from impunity. On this way the executive promotes lack of transparency and accountability which can greatly affect the rule of law and the respect for fundamental human rights.

5 CONCLUDING OBSERVATIONS

In fighting the war on terror, it was believed that the extraordinary rendition programmes will have success in combatting terrorism, while the results show the contrary where these extraordinary renditions were surrounded by controversies in several publicly known cases. Governments worldwide successfully prevented the courts from litigating claims involving these programmes by asserting the state secrets privileges. One of them is the U.S. Government which after the 9/11 attacks used extraordinary renditions around the world in fighting acts of terrorism.

It would be understandably justified if the purpose of the governments was to protect the national security from potential threats, but in Abu Zubaydah case, there were several controversies which point that the goal of the Executive branch is achieving impunity for acts committed mainly by CIA agents which include extraordinary renditions, torture and implementation of enhanced interrogation techniques which became publicly acknowledged.

The debate about the use of state secrets privilege after the Abu Zubaydah case will continue whether the assertion of the secrecy is justified and necessary especially when the information has entered the public domain. How the information will be protected when it is already known to the public? What is the ultimate goal of state secrets privileges – protection of national security or protection of agencies and agents which committed crimes under the international criminal law and international human rights law? Is it acceptable to sacrifice fundamental human rights in order to avoid accountability? After the judgment of the Supreme Court in the case of Abu Zubaydah it is more than obvious that these issues will be raised in future dilemmas regarding the state secrecy. However, at

this point it is obvious that the governments need to fight terrorism, but the very threat has shown that derives from state secrecies because they jeopardize the fundamental human rights. In order to preserve the very essence of state secrets privileges when an information will be necessary to be prevented from disclosure in order to protect the national security, the oversight upon agencies like the CIA must be enhanced in order to prevent future gross human rights violations. The democratic oversight should be conducted jointly by the branches of power (Legislature, Executive and Judiciary) each in the own sphere regarding the legal, operational and financial aspect of the oversight. On this way the democracy will be preserved, the rule of law will be maintained and the human rights will be protected.

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The (Un)Constitutionality of the Financial Investigation as Provided by the Financial Administration Act – A Case Study[1]

Benjamin Flander

Purpose:

The article provides an in-depth analysis of the regulation of financial investigations under the Financial Administration Act ("Zakon o finančni upravi (ZFU)", 2014) and the manner of implementing the regulatory framework of this instrument in Slovenia. It presents the conditions for the initiation of a financial investigation, along with the competence and authorisations of investigators, the status of a person under investigation, and the procedure and conclusion of a financial investigation. In the article we take the position that either the existing regulatory framework or the manner in which the regulatory framework of financial investigation is implemented is unconstitutional.

Design/Methods/Approach:

We applied the normative method, the analysis and synthesis method, and a case study.

Findings:

We claim that Article 100 of the "ZFU" (2014), which governs financial investigations, is not compliant with the Constitution or the manner in which this provision is implemented by the Financial Administration of the Republic of Slovenia, which also has support in courts' decisions. The Financial Administration, the Administrative Court and courts of general jurisdiction interpret and implement Article 100 of the "ZFU", in the section relating to the moment in which a financial investigation is completed and tax inspection proceedings begin, in a way that is not compliant with the explanation by the Constitutional Court of the Republic of Slovenia in decision No. U-I-69/22-4.

Research Limitations/Implications:

The research does not include a comparative analysis, i.e., an analysis of the regulation and practice of conducting financial investigations pertaining to

1 *The article presents findings of the author's research activities in the Central European Professors' Network and the research group on the Interpretation of Fundamental Rights in Europe, coordinated by the Ferenc Mádl Institute of Comparative Law, Budapest, Hungary.*

infringements of tax regulations in other countries.

Keywords: Financial Administration Act, financial investigation, financial administration, constitution

UDC: 336.1.07

(Ne)ustavnost finančne preiskave po Zakonu o finančni upravi – študija primera

Namen prispevka:

Prispevek podaja poglobljeno analizo ureditve finančnih preiskav po Zakonu o finančni upravi ("ZFU", 2014) in način izvajanja regulativnega okvira tega instrumenta v Sloveniji. Predstavlja pogoje za uvedbo finančne preiskave, pristojnosti in pooblastila preiskovalcev, status preiskovanca ter postopek in zaključek finančne preiskave. V prispevku zagovarjamo stališče, da je bodisi obstoječi regulativni okvir bodisi način izvajanja regulativnega okvira finančne preiskave protiustaven.

Metode:

Uporabili smo normativno metodo, metodo analize in sinteze ter študijo primera.

Ugotovitve:

Trdimo, da 100. člen "ZFU" (2014), ki ureja finančne preiskave, ni v skladu z Ustavo oziroma načinom izvajanja te določbe s strani Finančne uprave RS, ki ima oporo tudi v odločbah sodišč. Finančna uprava, Upravno sodišče in sodišča splošne pristojnosti razlagajo in izvajajo 100. člen "ZFU" v delu, ki se nanaša na trenutek, ko je končana finančna preiskava in začet postopek davčnega inšpekcijskega nadzora, na način, ki ni skladen z obrazložitvijo Ustavnega sodišča Republike Slovenije v odločbi št. U-I-69/22-4.

Omejitve/uporabnost raziskave:

Raziskava ne vključuje primerjalne analize, to je analize ureditve in prakse izvajanja finančnih preiskav v zvezi s kršitvami davčnih predpisov v drugih državah.

Ključne besede: Zakon o finančni upravi, finančna preiskava, finančna uprava, ustava

UDK: 336.1.07

1 INTRODUCTION

According to the Financial Administration Act ("ZFU", 2014), a financial investigation is an instrument in the legal system of the Republic of Slovenia intended to prevent, investigate and detect the most serious infringements of regulations pertaining to the areas of taxation and organising games of chance.

This type of financial investigation involves implementing acts, measures and procedures when there are grounds for suspecting that an act was committed that constitutes an infringement of the aforementioned regulations. According to the "ZFU" (2014), a financial investigation may lead to tax inspection proceedings and sanctions for infringers. The article presents the conditions for and manner of initiating a financial investigation, along with the competence and authorisations of investigators, the status of the person under investigation, and the procedure and conclusion of a financial investigation. The attention is drawn to the fact that the regulatory framework of financial investigations is insufficient and that the persons under investigation have no right to make a statement or view the file during the financial investigation procedure, nor do they have judicial or any other legal protection, and after the investigation is completed, they have no right to view the final report and/or become familiar with the data gathered if no tax inspection proceedings are initiated. In the financial investigation under the "ZFU" (2014), persons under investigation are *de facto* objects of the proceedings until tax inspection proceedings possibly begin. In the article we take the position that the regulation of financial investigations according to the "ZFU" (2014), although amended in the spring of 2022, is not compliant with the Constitution of the Republic of Slovenia ("Ustava Republike Slovenije (URS)", 1991), or, alternatively, that the way the regulatory framework is interpreted and implemented is unconstitutional and unlawful. The alleged unconstitutionality of the existing regulatory framework of financial investigations or of the established manner of implementing this instrument in practice, will be substantiated, *inter alia*, by means of a case study.

2 FINANCIAL INVESTIGATION PROCEEDINGS AND INVESTIGATORS' AUTHORISATIONS

Financial investigations are governed by Article 100 of the "ZFU" (2014). According to this provision, a financial investigation means the performance of acts, measures and procedures in accordance with the "ZFU" and the Tax Procedure Act ("Zakon o davčnem postopku (ZDavP-2-UPB4)", 2011) if there are grounds for suspecting that acts have been committed by which taxation regulations or regulations pertaining to the area of organising games of chance have been infringed. The acts and measures of financial investigations are performed with a view to preventing, investigating and detecting the most serious infringements of taxation regulations.[2] Pursuant to Article 100 of the "ZFU" (2014), the most serious infringements of taxation regulations or other regulations falling within the field of competence of the Financial Administration are actions or acts of persons liable for tax and other persons or institutions, whereby the financial interests or the protection and safety interests of the Republic of Slovenia or the EU may be seriously jeopardised. The most serious infringements of taxation regulations mainly include minor offences that are defined as severe infringements given their importance in the tax regulation.

2 *A financial investigation may also be initiated due to acts and actions under the "ZFU" (2014) and "ZDavP-2-UPB4" (2011) in order to provide mutual assistance to the authorities within the EU, the EU Member States and third countries.*

Under the "ZFU" (2014), financial investigations are initiated by the issuance of an investigation order in which the circumstances are stated from which arise the grounds for suspicion, the acts and measures to be taken, and the circumstances to be investigated in a financial investigation, as well as the entities subject to a financial investigation. The investigation order is issued by the head of the competent financial administration. If there are grounds for suspecting that compulsory duties have been charged in an insufficient amount or that other irregularities falling within the field of competence of the Financial Administration exist, inspections may be carried out after the financial investigation is completed, which begin by serving the decision on inspection proceedings. If the inspection proceedings were threatened, the inspection is initiated when inspectors perform any acts with a view to performing inspections and when the person liable for tax is informed about this. It is deemed that the purpose of tax inspection proceedings is threatened if an inspector, based on the data from official records or other data obtained about the person liable for tax, or depending on the purpose of the inspection, justifiably expects that the obtaining of evidence or fulfilment of tax liability will be made difficult or prevented, or if it is necessary that a tax inspection is carried out immediately and unexpectedly, or if further infringements need to be prevented. Upon the completion of a financial investigation, the officials shall draw up a final investigation report in which the findings of the financial investigation are described.

In accordance with Article 14 of the "ZFU" (2014), in performing the duties of the Financial Administration officials may establish the personal identity and status of persons liable for tax, collect and obtain notifications and information, require the submission of data and documents, use technical devices for photography and recording, confiscate documents, data support media of databases and other items, enter property, premises and facilities and examine them, examine equipment, goods and other items, take and examine samples of goods, stop vehicles, examine and investigate vehicles and movable assets, carry out security searches, examine persons, use means of compulsion, prohibit the pursuit of a business and seal business premises, books of account and other documentation, use technical equipment, service dogs, and service vehicles with priority, detain infringers, and carry out other acts in accordance with the purpose of performing the duties of the Financial Administration. An extensive part of the "ZFU" (2014) regulates the authorisations listed in greater detail.

3 ASSESSMENT OF THE REGULATORY FRAMEWORK OF FINANCIAL INVESTIGATIONS

As financial investigations are initiated to prevent, investigate and detect the most serious infringements of taxation regulations,[3] it is unusual that the legal system regulates this important instrument to a very modest (in two articles of the "ZFU" if the provision pertaining to record-keeping is taken into account) and vague

3 *In practice, in most cases financial investigations are initiated in relation to undeclared income, international tax carousels, business operations with tax oases, non-payment of social security contributions, excise and environmental duties, undeclared employment and investigations pertaining to international data exchange (Finančna uprava Republike Slovenije, 2021).*

extent. It is not clear, for example, which of the above-mentioned authorisations as set forth under Article 14 of the "ZFU" (2014) are included in the "acts, measures and procedures", which, as stipulated under Article 100, are carried out within financial investigations. The "ZFU" (2014) includes investigators amongst the officials of the Financial Administration of the Republic of Slovenia (hereinafter the Financial Administration), in addition to inspectors, customs officers, controllers and debt collectors, but does not further stipulate which of the authorisations listed are supposed to be implemented by the investigators (this is stipulated for each type of official listed except for the investigator). It is even less clear which "acts, measures and procedures" are supposed to be implemented in the course of an investigation from the range of authorisations, acts, measures and procedures under the "ZDavP-2-UPB4" (2011), as this law makes no mention of financial investigations.

As already mentioned, an investigation begins when an investigation order is issued by the head of the competent financial administration. In said order, the head of the competent financial administration states the circumstances from which arise the grounds for suspicion, the acts and measures to be taken, and the circumstances to be investigated and the circle of entities subject to a financial investigation. The "ZFU" (2014) does not stipulate that the financial investigation should be initiated and implemented in secrecy. Furthermore, it is not clear from the "ZFU" as to how long an investigation can take. In addition, it does not stipulate any restrictions of rights and (procedural) legal guarantees which duty holders have in a tax procedure and in the tax inspection proceedings. Last but not least, the "ZFU" (2014) does not stipulate that, unlike tax proceedings and tax inspection proceedings, a financial investigation is not a (special) administrative procedure by its legal nature. If the legislators wanted to strip financial investigations of the nature of a (special) administrative procedure (see below), we believe they should specify this and regulate such a procedure in a way that is compliant with the Constitution. We believe the same applies to any restrictions of constitutional and legal rights and procedural guarantees of persons under investigation (Flander, 2019).

In accordance with the fifth paragraph of Article 100 of the "ZFU" (2014), tax inspection proceedings may be conducted after the completion of the financial investigation. Both for the financial investigation and tax inspection, the "ZFU" (2014) determines the same standard of proof based on which the proceedings are then initiated, i.e. grounds for suspicion that other irregularities and infringements of regulations were committed that fall under the competence of the Financial Administration. Here, we believe a question needs to be posed as to why we need both if the financial investigation and tax inspection are initiated for the same or at least similar reasons and subject to the same standard of proof (Flander, 2019). This, along with other deficiencies we pointed out, indicate that the applicable regulatory framework of ordering and implementing financial investigations is ambiguous and inconsistent.

In the spring of 2022, the National Assembly of the Republic of Slovenia adopted the Act Amending the Financial Administration Act ("Zakon o spremembah in dopolnitvah Zakona o finančni upravi (ZFU-A)", 2022). The

amendment formally narrows the area of implementing financial investigations (the ambiguous formulation that financial investigations are also conducted to prevent, investigate and detect "other regulations falling within the field of competence of the Financial Administration", not just serious infringements of taxation regulations, was removed from the first paragraph of Article 100). The amendments determined who issues the order on initiating a financial investigation (the original text of the "ZFU" was silent on that). Another welcome change is that the amended version of the "ZFU" (2014) stipulates that tax inspection may be carried out "after the completion of the financial investigation", not "as part of financial investigations", as the original version of the Act stated.

Regardless of the above, our analysis of amendments to the "ZFU" showed that Financial Administration directed changes at itself and not to the legal status of the person undergoing the investigation, and we allege in this article that it is not regulated in line with the Constitution or, to put it more precisely, is not regulated at all. Both the original text of the "ZFU" (2014) and the "ZFU-A" (2022) provide the person under investigation with no right to make a statement or view the file. If, after the completed financial investigation, tax inspection proceedings are not even initiated, the person liable for tax has no right to view the final report or at even become familiar with the findings of the investigation. Last but not least, even after introducing the "ZFU-A" (2022), the duration of the financial investigation is still not time-limited.

4 CASE STUDY

4.1 The Circumstances of the Case and Procedures

In the case we had the opportunity to become familiar with in greater detail, the financial investigation against a taxable person took around two and a half years. The tax inspection proceedings, however, were never initiated. In 2016, Financial Administration officials knocked on T.'s door and informed him that he was suspected of infringing regulations that fell under the competence of the Financial Administration and that he was under a financial investigation. On several occasions, the investigators collected notifications and statements directly from T. by visiting him at home or at his business premises, or via telephone. While they required him to submit documents several times, he provided all of the required explanations and submitted all of the required data and documents. As stated by T. himself, he was misled and subjected to threats in his direct (personal) communication with the investigators (he even recorded part of this communication).[4] They then stopped all contact with him. The legal and general uncertainty he found himself in led him to seek legal help, and he submitted a request to the Financial Administration asking to view the related file and calling on them to conclude the procedure. The Financial Administration issued a decision rejecting this request (meaning that it made no substantive decision

4 *For example, when he expressed his intention of seeking legal assistance in an interview with the investigators who collected notifications from him they said this was not necessary, as it would complicate and prolong the procedure.*

on it). The decision was issued nearly two years after T. learned about the first official act in the proceedings. T. brought an action against the decision at the Administrative Court of the Republic of Slovenia. In this action, he asked to view the file and that the proceedings be concluded. The Administrative Court rejected the appeal and took the position that T. had judicial protection provided under the provisions of the Obligations Code ("Obligacijski zakonik (OZ-UPB1)", 2007). In accordance with this, he brought an action to the ordinary court of law on the grounds of infringement of his personal rights. In the meantime, he received no document or information about whether the investigation conducted against him was still ongoing or had been concluded, or whether tax inspection proceedings were initiated against him. The ordinary court of first instance partly rejected and partly dismissed his action. It was evident from the reasoning of the judgment that on March 6, 2019 the Financial Administration issued a final investigation repor, and that the tax inspection proceedings were not initiated because the financial investigation did not confirm suspicions of infringements of regulations. T. filed an appeal against the judgment brought by the court of first instance, which the higher court rejected as unfounded. T. then filed a request for a revision with the Supreme Court. He requested that he be allowed to view the final report or at least be given the chance to become familiar with the findings of the financial investigation, receive an apology and financial compensation. The Supreme Court of the Republic of Slovenia rejected the revision request as inadmissible. T. eventually filed a constitutional complaint at the Constitutional Court, together with a petition for the review of constitutionality of Article 100 of the "ZFU" (2014), which has yet to be decided on.

4.2 Financial Investigation as a "Pre-procedural" Phase

In the decision rejecting T.'s application, the Financial Administration took the position that the financial investigation is *"a pre-procedural (investigative) phase, in which the tax inspection proceedings have not yet begun"*. In the Financial Administration's opinion, *"the rights, obligations and legal benefits of the person liable for tax were not yet decided on in this phase"*, and therefore the investigation does not have the nature of administrative or tax proceedings, and the documents issued by the authority in this phase of conduct are not yet administrative legal acts. As a result, the person under investigation does not have the right to view these documents and, following this logic of explanation, no other constitutional and administrative procedural rights and guarantees – until tax inspection proceedings possibly begin. In short, it is the position of the Financial Administration that, in the financial investigation phase, the person under investigation is not yet a party to an administrative procedure, and thus the file kept by the authority in this phase of the procedure is not a file of an administrative legal nature. The person under financial investigation is the object (not the subject) of the proceedings (Flander, 2019).

The Administrative Court agreed with the Financial Administration. It dismissed the action which T. brought to it because the Financial Administration had rejected his request to view the file, thus denying him the right to be informed

in the procedure. In its decision, the Administrative Court repeated the opinion of the Financial Administration that *"temporally speaking, the financial investigation falls in the pre-procedural phase, i.e., in the time preceding any formal beginning of tax inspection"*. In the court's opinion, the authority does not yet issue a decision based on the investigation findings, deciding on the rights, obligations and legal benefits of the person under investigation; instead, it decides whether or not to carry out a tax inspection. It follows from the court's judgment that the duty holder has no right prior to tax inspection proceedings to view the file and be informed in the procedure pursuant to the "ZFU" (2014) and the General Administrative Procedures Act ("Zakon o splošnem upravnem postopku (ZUP-UPB2)", 2006), neither as a party nor as a third party. According to the Administrative Court, the Financial Administration's acts issued in a financial investigation proceedings are not administrative acts which may be contested in an administrative dispute in the sense of Article 2 of the Administrative Disputes Act ("Zakon o upravnem sporu (ZUS-1)", 2006), therefore the Court dismissed the action (Upravno sodišče Republike Slovenije, 2020).

On the grounds of infringing his personal rights, T. also filed an action at the court of general jurisdiction under Articles 178 and 179 of the Obligations Code ("OZ-UPB1", 2007). He alleged the unlawfulness of the way the financial investigation was conducted, requested the chance to view the final investigation report or become familiar with the findings arrived at in the financial investigation, a publication of an apology and payment of compensation. The court of first instance reasoned its rejection and dismissal of the action with similar arguments as the Administrative Court. It took the position that, according to the "ZFU" (2014), a financial investigation constitutes a pre-procedural phase, which, in terms of time, takes place before the formal beginning of tax inspection proceedings. In this pre-phase of tax inspection proceedings, decisions are not yet made about the rights, obligations and legal benefits of a person liable for tax. In the opinion of the court, the appellant was not sufficiently concrete regarding the unlawful conduct of the Financial Administration during the investigation procedure. The court ruled that a level of "qualified unlawfulness or wrongness" is required to determine the unlawfulness of conduct by the state authorities. The fact that the financial investigation took a long time and concluded without any consequences for the appellant does not, in itself, adequately correspond to this standard in the court's estimation (Okrožno sodišče v Ljubljani, 2020). The stance of the court of first instance was confirmed by the appeals court, and the Supreme Court of the Republic of Slovenia did not follow T.'s proposal to permit a revision.

4.3 Counter-Arguments

In the applications addressed to the courts, T. assessed that the interpretation of Article 100 of the "ZFU« (2014) by the Financial Administration, by means of which, in the absence of an appropriate legal basis, it stripped the financial investigation proceedings of the legal nature of a (special) administrative procedure and during its course deprived persons under investigation of their legal personality, is arbitrary, unlawful and non-compliant with the Constitution.

T. asserted that, by arbitrarily interpreting Article 100 of the "ZFU" and the way it implemented said Article, the body that conducted the financial investigation violated the general constitutional principles the rule of law and the legality as well as the constitutional and legal (procedural) rights and guarantees of persons liable for tax (e.g., the right to participation and information). It also violated the principles of the operation of the Financial Administration (the principles of providing clarifications to persons liable for tax and of foreseeable and public operations), which are determined by Articles 4, 5 and 6 of the "ZFU" (2014).

In his applications, T. expressed the opinion that due to its vagueness and inconsistency, despite the amendments brought by the "ZFU-A" (2022), the regulatory framework of financial investigations, i.e., Article 100 of the "ZFU" (2014), is non-compliant with the Constitution. In his opinion, the Financial Administration should change the interpretation and manner of implementing Article 100 of the "ZFU", or the legislators should amend this provision. If the legislators intended to regulate financial investigations as a sui generis procedure, this should have been written in the Act and appropriate safeguards should have been foreseen so that a person under financial investigation could be protected against any unlawful interference with his or her privacy and other fundamental rights during and after the investigation. T. pointed out that, in 2016, the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije, 2016) stated its opinion several times on the legal nature of proceedings in which the relevant body does not decide on the rights, obligations and legal benefits of a person, but does ascertain whether a person respects or violates the regulations (the Supreme Court of the Republic of Slovenia stated this opinion in relation to the proceedings before the Commission for the prevention of Corruption). If an act regulating such a procedure lacks provisions that would limit or even eliminate certain procedural guarantees, the Supreme Court of the Republic of Slovenia judges that the procedural guarantees provided by the General Administrative Procedure Act ("ZUP-UPB2", 2006) should be respected.[5]

It should be added to this that the »ZFU« (2014) imposes no time limit on the duration of financial investigations, and that in practice some of them take disproportionately long. Any unjustified and unlawful financial investigation or even just individual unlawful acts and/or measures of an official body can ruin a good name of a person under investigation and cause him/her/it enormous and irreparable economic and business damage and, if this is a natural person, even personal damage. These are the consequences that can also result from a disproportionately long investigation, which would ultimately – as in the T.'s case – not even lead to tax inspection proceedings. In such a case, a person under financial investigation would find themselves in circumstances marked by great legal uncertainty and lack of security, which could only be sanctioned legally if the investigated person had a legal personality and at least the minimal administrative law and constitutional guarantees and rights during the investigation, by means of which he/she/it could effectively contest and prevent irregularities or instances of misuse within the investigation, or if they had – similarly as in the regulation of financial investigations under the Confiscation of Assets of Illicit Origin Act

5 *See judgement No. I Up 73/2016, dated September 14, 2016.*

("Zakon o odvzemu premoženja nezakonitega izvora (ZOPNI)", 2011) – the right to be made familiar with the data gathered and the financial investigation's findings.

5 CONCLUDING REMARKS (ON CONSTITUTIONAL COURT DECISION NO. U-I-69/22-4)

On April 28, 2022, the Constitutional Court of the Republic of Slovenia issued Decision No. U-I-69/22-4 (Ustavno sodišče Republike Slovenije, 2022), the first ever decision made by the Constitutional Court regarding the instrument of financial investigation under the "ZFU" (2014). In a matter unrelated to T's case, the Constitutional Court dismissed the petition for the review of the constitutionality of Article 100 of the "ZFU". In its reasoning, it took the position that upon the formal requests by the Financial Administration that the person under investigation should provide data and documents as part of his duty to cooperate, it should be deemed pursuant to Article 100 that tax inspection was initiated against such person. According to the wording of Article 100 of the "ZFU", tax inspection is initiated when inspectors perform any acts with a view to performing inspections and when the person liable for tax is informed about this. When the tax authority includes the person under financial investigation in the investigation proceedings, the Constitutional Court believes the secrecy of investigation as the key characteristic of a financial investigation is no longer present. As stated by the Constitutional Court in the explanation of its decision, after the initiation of a tax inspection, in line with his or her right to a legal remedy the person liable for tax has the option of filing an appeal to the Ministry of Finance against the decisions issued by the Financial Administration. The person liable for tax is also provided with judicial protection before the Administrative Court and the Supreme Court of the Republic of Slovenia (Ustavno sodišče Republike Slovenije, 2022).

On the one hand, the position presented by the Constitutional Court partly compromises the arguments of the person under investigation in the case analysed in this paper. On the other, it additionally strengthens T.'s fundamental allegation that the Financial Administration conducted the proceedings in an unlawful and unconstitutional manner in his case. The Constitutional Court designated financial investigations as a procedure where the investigation should be conducted in secrecy (which Article 100 of the "ZFU" does not stipulate explicitly). It also seems that the Court has agreed that a financial investigation is a "pre-procedural phase" in which the person under investigation does not have the same status as during a tax inspection (the Constitutional Court has not stated its opinion on whether the person under investigation is also without any legal personality or constitutional procedural rights in this proceedings), although the "ZFU" (2014) does not say anything about this. However, the explanation of the decision by the Constitutional Court reasonably suggests that in the case presented in this article the Financial Administration's order about the dismissal of the application of the person under investigation was incorrect and unlawful, and that this also applies to the decision by the Administrative Court, by means of which this

Court dismissed his action. This arises from the explanation of the Constitutional Court's decision that the application and the lawsuit should have been considered based on their content. After having asked the person under investigation to submit data and documents, the Financial Administration maintained throughout that the person under investigation was not party to procedures, that he had no right to be informed or to view the file, that the file was not an administrative file, etc., which is diametrically opposed to what the explanation of decision No. U-I-69/22-4 actually suggests. In the case presented in this article, based on the referral by the Financial Administration and the Administrative Court, the person under investigation also filed legal remedies with ordinary courts of law and these, too, were dismissed or rejected on the same grounds. From the moment the tax inspection was initiated (when the person under investigation received the formal request from the Financial Administration to submit data and documents) in line with the explanation of the Constitutional Court from the above-mentioned decision, at least two constitutional rights of the person under investigation were infringed: the right to equal protection of rights in any proceeding before a court and before other state authorities and bearers of public authority that decide on his rights, duties or legal interests, and the right to legal remedies. He was also deprived of the rights and procedural guarantees parties have under the provisions of the "ZDavP-2-UPB4" (2011) and "ZUP-UPB2" (2006).

Hence, it follows from the decision of the Constitutional Court that with the current interpretation and implementation of Article 100 of the "ZFU" (2014), the constitutional rights of persons under financial investigation (i.e. the parties in the tax inspection procedure as a special administrative procedure) are violated.[6] Since in these procedures the Financial Administration also violates the principles of its own operation according to the "ZFU" (2014), it should change the way it interprets and implements the law in the coming years. If this does not happen, the legislator should adopt a new amendment to the "ZFU" (2014) and regulate the procedure of financial investigation and tax inspection in accordance with the decision of the Constitutional Court.

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6 *In the past five years, the Financial Administration initiated and completed around 100 financial investigations each year (Finančna uprava Republike Slovenije, 2018, 2019, 2020, 2021, 2022).*

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How does Educational Background Shape the Perception of Cybercrime? A Survey of Computer Science and Law Students on Selected Controversial Issues

Andrzej Uhl, Andrzej Porębski

Purpose:

The technical dimensions of cybercrime and its control have rendered it an inconvenient subject for many criminologists. Adopting either semantic (legal) or syntactic (technical) perspectives on cyber criminality, as theorised by McGuire, can lead to disparate conclusions. The aim of this paper is to examine how these perspectives and corresponding educational backgrounds shape opinions on cybercrime and cybercrime policy.

Design/Methods/Approach:

To address this research question, we first provide a non-exhaustive review of existing critical literature on a few selected controversial issues in the field, including cyber vigilantism, file sharing websites, and political hacking. Based on these areas, we developed an online survey that we then distributed among students of law and computer science, as well as to a 'non-cyber contrast group' including mainly students of philology and philosophy.

Findings:

Statistical analysis revealed differences in the way respondents approached most of the issues) to most of the issues, which were sometimes moderated by the year of studies and gender. In general, the respondents were highly supportive of internet vigilantism, prioritised the cybercrimes of the powerful, and encouraged open access to cybersecurity. The computer science students expressed a lower fear of cybercrime and approved of hacktivism more frequently, while the law students affirmed a conservative vision of copyrights and demonstrated higher punitiveness towards cyber offenders. Interestingly, the computer science students were least likely to translate their fear of cybercrime into punitive demands.

Research Limitations/Implications:

The findings support the distinction between various narratives about cybercrime by showing the impact of professional socialization on the expressed opinions. They call for a consciously interdisciplinary approach to the subject and could be complemented by a comprehensive qualitative inquiry in the perception of cyber threats.

Originality/Value:

The authors wish to contribute to the understanding of the construction of cybercrime on the border of criminal law and computer science. Additionally, we present original data which reveal different views on related issues held by potential future professionals in both areas.

Keywords: cybercrime, cyber victimisation, cyber punitiveness, internet crime

UDC: 343.3/.7 :004

Kako izobrazba oblikuje dojemanje kibernetske kriminalitete? Anketa med študenti računalništva in prava o izbranih spornih vprašanjih

Namen prispevka:

Zaradi tehničnih razsežnosti kibernetske kriminalitete in njenega nadzora je ta za mnoge kriminologe neprijetna tema. Sprejemanje semantičnega (pravnega) ali sintaktičnega (tehničnega) pogleda na kibernetsko kriminaliteto, kot ga je oblikoval McGuire, lahko privede do različnih zaključkov. Namen članka je preučiti, kako vidiki in ustrezna izobrazba oblikujejo mnenja o kibernetski kriminaliteti in politiki kibernetske kriminalitete.

Metode:

Da bi odgovorili na raziskovalno vprašanje, smo najprej pripravili neizčrpen pregled obstoječe kritične literature o nekaj izbranih spornih vprašanjih na tem področju, vključno s kibernetskim vigilantizmom, spletnimi stranmi za izmenjavo datotek in političnimi hekerskimi napadi. Na podlagi teh področij smo razvili spletno anketo, ki smo jo pozneje razdelili med študente prava in računalništva ter v "nekibernetsko kontrastno skupino", ki je vključevala predvsem študente filologije in filozofije.

Ugotovitve:

Statistična analiza je razkrila razlike v pristopu k večini vprašanj, ki so včasih odvisne od letnika študija in spola. Na splošno so anketiranci zelo podpirali internetno vigilanco, osredotočanje na kibernetske zločine močnih in odprt dostop do kibernetske varnosti. Študenti računalništva so izrazili manjši strah pred kibernetsko kriminaliteto in pogosteje odobravali hektivizem, medtem ko so študenti prava potrdili konservativno vizijo avtorskih pravic in pokazali večjo kaznovalnost do kibernetskih prestopnikov. Zanimivo je, da so študenti računalništva svoj strah pred kibernetsko kriminaliteto najredkeje prenesli v

kazenske zahteve.

Praktična uporabnost:

Ugotovitve podpirajo razlikovanje različnih pripovedi o kibernetski kriminaliteti, saj kažejo vpliv poklicne socializacije na izražena mnenja. Pozivajo k zavestnemu interdisciplinarnemu pristopu k tej temi in bi jih lahko dopolnili s celovito kvalitativno raziskavo dojemanja kibernetskih groženj.

Izvirnost/pomembnost prispevka:

Avtorji želijo prispevati k razumevanju konstrukcije kibernetske kriminalitete na meji kazenskega prava in računalništva. Poleg tega predstavljamo izvirne podatke, ki razkrivajo različne poglede prihodnjih strokovnjakov na obeh področjih na sorodna vprašanja.

Ključne besede: kibernetska kriminaliteta, kibernetska viktimizacija, kibernetska kaznovanost, internetna kriminaliteta

UDK: 343.3/.7:004

1 INTRODUCTION

The social construction of cybercrime takes place on the border between criminal law and computer science. Inevitably, interdisciplinarity lies at the heart of the newly established cyber criminological field of research. The nature of cybercrime as a technological problem, a crime problem, a business concern, and a social issue calls for its exploration from various academic perspectives (Payne & Hadzhidimova, 2020). As in the case of economic crime, the understanding of that complex phenomenon often requires consideration of technical nuances mostly unknown to criminal lawyers. McGuire (2018) has used the linguistic terms of syntax and semantics to illustrate that duality; the criminal justice is mainly concerned with the socially constructed (legal) meaning of online actions, whereas information technology delineates the conditions under which these actions are technically feasible within the digital setting. Existing discourses on cybercrime distinguished by Wall (2008) include legislative, expert, academic, and popular. While the law provides the normative structure that underpins the state's reaction to deviance in cyberspace, IT experts can offer a practical understanding of the domain wherein cybercrime and its control occurs (Holt, 2016).

Informed by those voices in scholarship, we conclude that the study of cybercrime cannot be complete without consideration of two different frames of reference: the normative and the technological view. It is still more important concerning controversial issues since the diversity of professional backgrounds could deliver valuable perspectives on e.g. cyber-surveillance, hacktivism, and other widely discussed topics. Crime control has, furthermore, long ceased to be an area of unconstrained professional discretion, and the sentiments of the general public ought to be reckoned with (Garland, 2002). The learned opinions of legislators and computer specialists should be at least compared against the background of the popular discourse, as mentioned by Wall (2008). To this end,

the study at hand draws upon themes from academic literature and consults representatives of popular, legal, and IT viewpoints.

Most of the existing discourse on cybercrime is written in a highly practical tone, often amounting to the study of effective prevention. Many writings are produced by state agencies professionals who have rare cross-branch knowledge, but also a clear affiliation with the criminal justice system. On the contrary, remarkably little has been written on cybercrime from a critical perspective. Delinquency in cyberspace, as anywhere else, offers a subject for the study of state control, political conflict, and moral entrepreneurship (McCarthy & Steinmetz, 2020). The next section summarizes a few selected focal points of the critical literature on cybercrime. The list is by no means exhaustive but attempts to encompass the issues of high interest to academic scholarship as well as controversial topics present in the public debate on cyberspace and its offenders. Although the survey is not meant to side with any party to the outlined debates, the literature review is focused on critically oriented authors who raise these controversies by challenging the widespread beliefs and existing status quo. The opposite views could be partly inferred from their critical writings, but the entire disputes are not available for reasonable study in this single research article.

2 CONTROVERSIAL ISSUES IN CYBERCRIME

2.1 ‚Cyber' Terminology

The controversies over cybercrime began as early as the term was introduced. Cybercrime lacks a universally accepted definition (Gordon & Ford, 2006). Many authors challenge the idea that a category of crime can be distinguished by the sole virtue of being committed with the use of an electronic device. Grabosky (2001) has dubbed cybercrime "old wine in the new bottles"; meaning that it is, to all intents and purposes, the same as traditional criminality and different only in terms of the medium (but see: Yar, 2005). McGuire (2018) argues in a similar vein that internet criminality is ultimately the problem of underlying social interactions rather than how those interactions are mediated. The common root of crimes in cyberspace and physical environments has been exposed during recent lockdowns that led to crime displacement to online settings (Buil-Gil et al., 2021). Moreover, the claims about the prevalence of cybercrimes often lack clarification as to what is so particularly 'cyber' about them (Wall, 2008). According to various studies, 80% or more cybercrimes are performed due to the human factor (Kranenbarg & Leukfeldt, 2021). Even actions as technologically advanced as hacking, or the use of malware, show analogies with terrestrial sabotage, vandalism or, espionage (McGuire, 2018). As more and more areas of life go online, so do the related crime opportunities, whose diversity in cyberspace reaches the diversity of traditional crimes. Therefore, 'the relative equity in specialization relative to versatility, particularly in both on- and off-line activities, suggests that there may be limited value in treating cybercriminals as a distinct offender group' (Leukfeldt & Holt, 2022). Some authors have maintained that such 'cyber' framing constructs

internet crime as a unique threat calling for an extraordinary response, which in turn could only be given if crime control agencies were entrusted with extended powers (Palfrey, 2000; Rüther, 2001).

The 'cyber' prefix is also liberally used in reference to terror organizations, although it has been argued that few, if any, computer network attacks meet the criteria for terrorism (Denning, 2010). With critical infrastructure being isolated from the world wide web, terrorist use of the internet remains largely limited to propaganda, fundraising, and recruitment (Yar & Steinmetz, 2019). Holt (2016) classifies cyberterrorist activities comparable to real-life terror as 'social science fiction'. The apparent lack of genuine cyberterrorism provides space for the rhetorical use of the term on a political level (Romagna, 2020). Since the use of the terrorist label is a convenient way of delegitimizing a particular political project (Yar & Steinmetz, 2019), one man's cyberterrorist could as well be another man's hacktivist.

2.2 Fear of Crime

Once such a threat is constructed, it fuels what could be called the fear of cybercrime (Virtanen, 2017). Gradually, cyberspace is seen as pathologically unsafe and highly criminogenic (Wall, 2008). Massive and mostly uncritical media coverage contributes to that 'culture of fear' surrounding cybercrime (Jarvis et al., 2015; Prislan & Bernik, 2013) and does not adequately reflect the rather unspectacular experience of cyber criminality within the criminal justice system (Wall, 2008). While fear of cybercrime could be instilled instrumentally (Banks, 2015; Rüther, 2001), grassroots urban legends of e.g. the Blue Whale also depict the internet community as a deadly threat to children, who are supposedly incited to self-harm and suicide in the alleged online challenge (Puneßen, 2017). Although young people are certainly vulnerable on the internet, exaggerated claims and uninformed attempts to detach minors from cyberspace might hinder their socialization within the technologically savvy generation (Riek et al., 2016). For adults, fear of cybercrime is associated with avoidance behaviour, 'thereby impeding individuals' perceived online freedom and opportunities' (Brands & van Wilsem, 2021). We further link the growing fear of cybercrime to other phenomena: approval of expanded state surveillance or the excesses of online vigilantes.

2.3 Vigilantism

The rise of online vigilantes could be of interest to critical criminology as a challenge to power relations and exertion of control over the web. It could also be indicative of insufficient protection of the users by state agencies who have to fetch for themselves or resort to private security (Chang & Poon, 2017; Rosenbaum & Sederberg, 1974). As these topics are partly addressed below, this section pays special attention to the controversial phenomenon of online paedophile hunting. Some Internet users pass as juveniles under the age of consent and hold erotic conversations with interested adults. Then, they arrange a meeting, which provides the police with an opportunity to arrest the potential

abuser (Hadjimatheou, 2021). Often, chat logs are published before the police are informed and launch any investigation (Smallridge & Wagner, 2020). Online paedophile hunters, often acclaimed as popular heroes, have also received criticism for the use of entrapment, media exposure, and public humiliation prior to valid conviction (Campbell, 2016). Furthermore, such a conviction may prove impossible, e.g. in continental jurisdictions. Child grooming laws address a form of punishable preparation for an offence of child abuse (Albrecht, 2011). As the chat partner is actually an adult, the offence lacks its suitable object and could only be classified as an inept attempt (see Dubber & Hörnle, 2016). Therefore, a conviction for attempted preparatory offence would violate the very principle of the preparation-attempt-consummation sequence. While a criminal attempt to prepare an offence is hardly thinkable, misguided vigilantes could commit a number of infractions including libel, false accusation, or punishable provocation provided that their target person was not guilty.

2.4 Surveillance and (other) Cybercrimes of the Powerful

The moral panic over cybercrimes provides state agencies with arguments in favour of extended internet surveillance (Palfrey, 2000; Rüther, 2001). Scholars associated with critical surveillance studies wrote extensively on the monitoring of users' online behaviour. Some invoke the metaphor of the panopticon to draw a dystopic picture of cyberspace dominated by state and market forces and devoid of any anonymity (see Nussbaum & Udoh, 2020 for a review). Crime control agencies entrusted with overarching competences might face the temptation to employ them for new purposes (Ventura et al., 2005). Internet users are subject to surveillance, not only as state citizens, but also as customers and consumers; the constant analysis, monitoring, and manipulation are now argued to collectively constitute another surveillance regime (Nussbaum & Udoh, 2020).

The increased criminalisation of cybercrime is not necessarily accompanied by high standards of state and business ethics online. In their paper on critical cyber criminology, McCarthy and Steinmetz (2020) have applied the term of the crimes of the powerful to corporate control of internet access or the prosecution of online whistle-blowers. In recent years, big-tech algorithms have been considered a serious threat to democracy (Cho et al., 2020). Another adducible example is the total ban on Wikipedia in Turkey, under Erdogan's administration, instituted by the legal act bearing the telling title 'Law on Fighting Crimes Committed Through Internet Broadcasting'. The emergence of internet-related human rights sheds new light on such clear violations and calls for a better examination of that category of state crime (Szoszkiewicz, 2020).

2.5 Hacktivism

The rise of digital activists, also known as hacktivism, has been another controversial issue in the debate over cybercrimes and cyberliberties. Throughout its over 30-year-long history, its *modi operandi* have included defacement of public websites, distributed denial-of-service attacks, or publishing leaks from state agencies (Karagiannopoulos, 2021). Although many see political activism

in cyberspace as an emerging form of civil disobedience and social protest, unwelcome actions are sometimes given the cyberterrorist label by the security industry and government organizations (Romagna, 2020). The process aimed at constructing hacking as a criminal phenomenon, described by Yar and Steinmetz (2019), inevitably led to the association of politically motivated hackers with extremism and terror. Critical voices, however, have addressed hacktivism with approval of nonviolent methods, cultivation of free speech, and advocacy for human rights (Hampson, 2012; Vegh, 2003). The latter two are of special importance in countries where terrestrial forms of protests are still met with prosecution and state violence (Jordan & Taylor, 2004). Those attached to the narrow definition of terrorism may recognize the hacktivist campaign against the Islamic State as an indication of the qualitative difference between terror organizations and digital activism (Richards & Wood, 2018).

2.6 Digital Piracy

No single issue in internet crime control mirrors the assumptions of conflict criminology better than the fight over various forms of unofficial peer-to-peer file sharing. On the one side, the entertainment industry represented by actors such as RIAA introduces its own discourse of 'intellectual property theft' preying on 'starving artists' (Yar & Steinmetz, 2019). The opposing narration, here and there backed by entire Pirate Parties, embraces the open access to cultural goods and questions the role of corporate mediators between the creators and their audience – some pirates indeed see themselves as promoters of upcoming artists (Tade & Akinleye, 2012). Further dissident voices denounce antipiracy as an ideological endeavor aimed at preserving capital accumulation on the side of the entertainment industry, which seemingly orchestrated its 'version of the war on drugs: an expensive, protracted, apparently ineffective and seemingly misguided battle against a contraband that many suggest does little harm' (Mousley, 2003; Yar, 2008).

In this paper, we focus particularly on what critics call 'guesstimations'; an assessment of industry losses based on official prices multiplied by the number of unauthorised downloads. This methodology produced estimates of billions of dollars in losses incurred as a result of digital piracy (Drahos & Braithwaite, 2007; Yar & Steinmetz, 2019). In fact, overprized digital products are particularly likely to be accessed through unauthorised channels, as subjectively unfair prices were found to increase motivation to use pirate copies (Kukla-Gryz et al., 2021), which, in turn, increases the alleged losses. Remarkably, vast numbers of pirate files are downloaded in the countries of the Global South, where access to cultural goods is limited by inhibitive prices or even absent. Academic writing on that subject should not lack reference to online shadow libraries that make scholarly research on a broad scale possible in many nations, such as India (Liang, 2018). In western countries, many use pirate websites out of convenience despite having access to the media provided by their institutions (Bohannon, 2016). Moreover, the authors question the idea that intellectual property can be stolen or even challenge the idea that culture is subject to property rights. Yar and Steinmetz (2019) evoke

examples of cultures viewing art and knowledge as common goods that can and should be disseminated among the entire population.

2.7 Responsibilization of Cybersecurity

Once fear of crime in cyberspace has been instilled in the populace, the private industry of security products comes to rescue those ready to and capable of paying for its costly software. Symptomatic of the state's failure to protect ordinary users, the growth in sales of security services is additionally cultivated by the narration of fear (Banks, 2015). Yar and Steinmetz (2019) believe that privatization of internet security violates the principle of freedom from (cyber) criminal predation as a right of all citizens. The responsibilisation strategy in that area means that computer security is divisive and unevenly provided as a commodity (Yar, 2009), while societies most susceptible to cyber victimization cannot afford the market-dictated prices (Cassim, 2011). Thereby, the social disadvantage of some groups could be replicated or even exacerbated in cyberspace (Yar & Steinmetz, 2019). According to recent literature, private policing of the internet lacks oversight and accountability, but also suffers from the competing interests of various actors (McCarthy & Steinmetz, 2020; Renaud et al., 2018).

3 CURRENT STUDY

Following the review of selected academic literature on the topics discussed, the results were obtained among the representants of legal, technical, and popular perspectives on cybercrime. We thus intend to do justice to the classification of basic discourses on cybercrime put forward by Wall (2008). The surveyed sample consists of law and computer science students as well as a 'non-cyber contrast group' composed mainly of philology and philosophy students, i.e. individuals from a population assumedly unacquainted with either of the aforementioned area on a professional level. Both law and computer science students undergo a process of gradual socialization to their prospective professions. This process is accomplished through the adoption of certain jargon, ways of thinking, and professional ideologies (Guzman & Stanton, 2004; Mertz, 2007). Incorporating the 'year of study' variable allows for tracing the level of professional socialization in sampled students. Due to this socialization, we consider the opinions of the respondents to be indicative of the views held by practising lawyers and IT specialists. We employ gender, which is widely recognized to influence punitiveness and fear of crime (Armborst, 2017), as a control variable. The responses given to the set of ten questions constitute the dependent variables. These questions were informed by the issues discussed in the general public and the scholarly literature. In so doing, we do not present any comprehensive survey on cybercrime, but rather a snapshot of the opinions expressed on a few thought-provoking topics. In particular, interrelating these subjects in theoretical terms would require a study of an encyclopedic nature, which is beyond our capacities. Nevertheless, we believe that differences between three groups of students, if

observed, might demonstrate the significance of the distinction between the aforementioned modes of thinking about cybercrime.

4 METHODS

Having reviewed the relevant publications, we constructed an internet-based questionnaire with ten main items meant to test the attitude towards each of the aforementioned controversies (or selected aspects thereof) in a non-suggestive manner. The questionnaire was complemented with questions about gender and the current year of study. We did not employ variables on computer and Internet use, treating them as factors that differ inherently across the study groups. We thus do not wish to isolate their influence on the dependent variables from the influence of the field of study. The substantive questions took the form of short statements followed by a five-point (from 1 – *strongly disagree* or related to 5 – *strongly agree* or related) Likert scale[1], on which the subjects were asked to indicate their agreement or disagreement with a given statement. The survey was distributed among students from the nation's leading universities. Graduates of these institutions are most likely to successfully follow a career in their studied professions, e.g. become legal practitioners after obtaining a master's degree in law.

We sent an active link to the online form to the groups of the given courses on the social media platform Facebook, which is the most common form of peer communication among Polish students. To allow the research questions to be answered, respondents were additionally asked to specify their major at the end of the questionnaire. The survey was met with substantial interest, and nearly 400 raw responses were submitted. After cleaning the data set of unusable records, we obtained 370 observations, divided into three groups according to the major studied. The data set included 150 responses from computer science students, 103 responses from law students, and 117 responses from the contrast group.

Statistical analysis was performed using the R v. 3.63 language (R Core Team, 2020), RStudio IDE (RStudio Team, 2020) and packages: *ordinal* (Christensen, 2019a), *dplyr* (Wickham et al., 2020), *brant* (Schlegel & Steenbergen, 2020), *MASS* (Venables & Ripley, 2002), and *readr* (Wickham et al., 2018). Since the surveys used a Likert scale, which is an ordinal scale, it made the most sense to utilise modelling techniques constructed for the ordinal dependent variables. Although it is possible to treat the Likert scale as an interval scale (Norman, 2010), such an approximation would be less accurate the fewer points the scale includes (Wu & Leung, 2017). Therefore, we decided to use cumulative link modeling to create ordinal regression models (Christensen, 2019b). Nevertheless, to illustrate the general characteristics of the responses in the subgroups, the mean values were calculated, treating the Likert scale as an interval scale.

The backward stepwise regression with optimization relative to the Akaike information criterion (AIC) was used for the modelling process. The *Course* variable was binarized so that the reference was the contrast group: binary variables *CS* (1, for *Course* = "CS"; 0 in other cases) and *Law* (1, for *Course* = "Law"; 0 in other cases)

1 *Except for question 6 where we employed six-point scale (from 0 – agree with the contrary opinion to 5 – strongly agree).*

were created. The *Year* variable was transformed to take values from 0 to 4 so that the coefficients and threshold coefficients of the model would offer a meaningful interpretation. After this transformation, *Year* can be interpreted as 'completed year of studies' instead of 'current year of studies'.

Then, for each question, all potential independent variables (*Gender*, *CS*, *Law*, and *Year*) and interactions between *Year* and *CS*, and *Year* and *Law* were included in the input of the backward stepwise method. To test whether fear of cybercrime increases punitiveness, the same procedure was used to create an additional model for question 9 (Q9; *Punitiveness towards cyber-criminals*), but in this case, the responses to Q1 (*Fear of cybercrime*) were included as an additional (numerical – with an assumption of interval character of the Likert scale) potential explanatory variable.

The final models were selected by comparison based on the AIC, log-likelihood, and significance testing of model coefficients. We did not assume a specific significance level for the variables, such as 0.05, since the use of this type of heuristic cannot be considered valid (Goodman, 2008; Wasserstein et al., 2019; Wasserstein & Lazar, 2016). Instead, we recognised the basis for considering a given relationship to be stronger the lower the *p*-value, and weaker, but not nonexistent, when the *p*-value is high, e.g. 0.1.

5 SURVEY FINDINGS

As shown in Table 1, there are noticeable differences between the means in at least two subgroups for most of the questions. The most noticeable differences in the means are for Q8 (*Free access to cybersecurity*) and Q4 (*Focus on the crimes of the powerful*). In some cases, one group differentiates itself relative to the similarity of the other two, such as in Q3 (*Approval of hacktivism*) or Q1. It is noteworthy that the attitude towards copyrights and free access to cybersecurity held by students of computer science is unenthusiastic, and they were more supportive of hacktivism. Law students are the least likely to place a higher value on cybercrimes by states and large corporations and to consider internet control excessive.

The coefficients and their *p*-values for each of the 10 final ordinal regression models are included in Table 2. Each model was tested for proportional odds assumption using the omnibus Brant test. In no case were there strong reasons for rejecting the assumption, as the lowest *p*-values were 0.10 (for Q4) and 0.12 (for Q3), and in the remaining cases p-values ≥ 0.15. The most interesting finding of the study is that at least a variable related to the field of study appears directly, or as an interaction item, in each of the constructed models. The strength, direction and significance of the influence of studying computer science or law majors vary considerably depending on the question being modelled. However, the mere presence of the aforementioned variables in the considered models provides a rationale for acknowledging the influence of the field of study on attitudes towards cybersecurity.

Law as a stand-alone variable (apart from interaction) was included in as many as eight models, with *p*-values lower than 0.13 in each, lower than 0.05 in six, and lower than 0.02 in five. Its strongest positive effect appeared to occur in

the model for Q2 (*Guesstimations*; in the model for Q9 its positive effect is offset by the interaction with the year of study), while the strongest negative effect of this variable occurs in the model for Q4 [in the Q6 (*Cyberterrorism less dangerous*) and Q8 models the mentioned interaction phenomenon occurs]. Less frequently included is the impact of the variable *IT*, which as a stand-alone variable occurred in four models, with *p*-values each time less than 0.08, and in two cases less than 0.02. The strongest positive impact of this variable can be seen in Q3 and the strongest negative impact in Q8. The variable *Year* as a stand-alone was included in four models (*p*-values less than 0.13 in each case and less than 0.04 in three cases) and as an interaction component in five models (six coefficients in total; *p*-values less than 0.08 in each case and less than 0.05 for four coefficients). This indicates that attitudes towards some cyber security issues are shaped throughout the studies, but in different ways from different majors.

Table 1: Responses by major – mean scores

Statement		Contrast	CS	Law
1.	The internet is not a safe place for children and youth.	3.53	3.18	3.54
2.	Each download of an unauthorized copy of a movie incurs a loss on the side of the film producer as high as the price for legal access.	3.43	2.65	3.45
3.	Hacking could pursue legitimate goals and be justified.	3.74	4.22	3.69
4.	Combating internet crime should focus on personal data abuse by huge corporations and illegal activities of the states rather than concentrate on hacker groups and pirate websites.	3.96	3.63	3.27
5.	In the name of combating cyberterrorism, those at power excessively monitor users' activities.	3.59	3.73	3.29
6.	Cyberterrorism is not as dangerous as traditional terrorism.	2.26	2.30	2.00
7.	Some internet users pose as juveniles under the age of consent and hold erotic conversations with interested adults. Then, they arrange a meeting together, which provides the police with an opportunity to arrest the potential paedophile. What is your opinion about the actions of such "paedophile hunters"?2	4.02	3.82	3.75
8.	Cybersecurity including antivirus software should be available for free to all internet users.	4.48	3.27	3.75
9.	Cybercriminals should be prosecuted more efficiently and deserve harsher penalties.	3.86	3.50	3.77
10.	While the internet pervades all areas of life, 'cybercrime' as a separate term becomes meaningless in modern society.	2.92	2.77	2.36

2 *For this question, the possible answers were respectively strongly disapprove (1), disapprove (2), etc.*

Table 2: Ordinal regression models

	Threshold coefficients	CS	Law	Year	Male	Interaction terms
Q1. Fear of cybercrime	1|2 - 3.37 2|3 - 1.48 3|4 - 0.56 4|5 1.55	- 0,40 ° (0.071)	-	-	- 0.32 (0.149)	-
Q2. Guess-timations	1|2 - 2.63 2|3 - 1.54 3|4 - 0.86 4|5 0.82	-	0.61 ** (0.008)	- 0.15 * (0.039)	- 1.37 *** (< 0.001)	-
Q3. Approval of hacktivism	1|2 - 2.60 2|3 - 1.10 3|4 - 0.21 4|5 1.32	0.52 ° (0.053)	- 0.41 (0.124)	0.16 * (0.026)	0.54 * (0.017)	-
Q4. Focus on the crimes of the powerful	1|2 - 3.98 2|3 - 2.01 3|4 - 0.87 4|5 0.49	-	- 1.11 *** (< 0.001)	-	-	CS:Year -0.22 ** (0.003)
Q5. Worries over surveillance	1|2 - 3.22 2|3 - 1.31 3|4 0.12 4|5 1.43	-	-0.54 * (0.016)	-	0.81 *** (< 0.001)	-
Q6. Cyber-terrorism less dangerous	0|1 - 2.55 1|2 - 0.66 2|3 0.46 3|4 1.19 4|5 2.55	-	-1.07 * (0.012)	-	-	Law:Year 0.23 * (0.048)
Q7. Support for paedophile hunting	1|2 - 3.68 2|3 - 2.50 3|4 - 1.23 4|5 0.45	-	- 0.35 (0.113)	-	- 0.53 ** (0.007)	-

Q8. Free access to cybersecurity	1|2 - 4.40 2|3 - 3.16 3|4 - 2.50 4|5 - 1.27	- 1.02 *** (< 0.001)	- 1.53 ** (0.004)	- 0.15 (0.129)	- 1.36 *** (< 0.001)	Law:Year 0.30 ° (0.069)
Q9. Punitiveness towards cyber-criminals	1|2 - 3.82 2|3 - 2.67 3|4 - 0.74 4|5 0.78	- 1.01 * (0.016)	0.99 * (0.040)	-	- 0.46 * (0.048)	CS:Year 0.24 ° (0.071) Law:Year - 0.31 * (0.013)
Q10. Term "cybercrime" meaningless	1|2 - 1.27 2|3 0.27 3|4 1.07 4|5 2.63	-	-	0.19 * (0.024)	-	Law:Year - 0.27 *** (< 0.001)

*° p < 0.1; * p < 0.05; ** p < 0.01; *** p < 0.001; precise p-values are reported in brackets.*

Taking the issue of interactions between the year and the major further, they indicate a different relationship between responses to a given question and the year of study for specific majors. The interaction terms provided interesting conclusions. In the model for Q10 (*Term "cybercrime" meaningless*), the variable *Year* has a positive effect for both the contrast group and the computer science students, while for the law students this effect is negative and weaker, or absent. This model indicates a greater tolerance for the concept of cybercrime among law students than in the other two groups, perhaps increasing over years of study. In the model for Q9, in turn, interactions indicate that with the progress of study, the initially lower punitiveness of computer science students and the higher punitiveness of law students gradually gravitate towards the punitiveness of the contrast group, which is constant over time. In the case of law students, it even turns out to be lower than that of the contrast group near graduation. The phenomenon of levelling the initial attitude during law studies is also indicated by the models for Q6 and Q8. This leads to the conclusion about the influence of the study period on the formation of some views on cybersecurity. In the model for Q4, the effect of the *Law* variable is negative and constant, while the negative effect of the *Year* variable is present only for computer science studies.

Table 3: Ordinal regression model – fear and punitiveness

	Threshold coefficients	Q1. Fear of cybercrime	Law	Male	Fear:IT	CS:Year	Law:Year
Q9. Punitiveness towards cyber-criminals	1|2 - 2.09 2|3 - 0.86 3|4 1.14 4|5 2.73	0.54 *** (< 0.001)	0.92 ° (0.057)	- 0.34 (0.140)	- 0.35 *** (< 0.001)	0.30 * (0.013)	- 0.32 * (0.010)

*° p < 0.1; * p < 0.05; ** p < 0.01; *** p < 0.001; precise p-values are reported in brackets.*

Table 3 presents an additional model for Q9 with the responses given to Question Q1 as the numerical explanatory variable. Proportional odds assumption could be held (*p*-value of the omnibus Brant test = 0.27). As can be seen, the fear of cybercrime has a very significant and powerful effect on cyber-punitiveness. Each additional point in the responses to the fear question shifts the distribution of the dependent variable by +0.54. This effect is much weaker (+0.19) for computer science students. Importantly, an *ANOVA* of the two optimal models for Q9 (including Q1 as the independent variable and lacking it) indicates a strong preference for the extended model (*p*-value < 0.001). This implies that the fear of cybercrime variable carries important information related to cyber-punitiveness.

6 DISCUSSION

The purpose of this research was to investigate how the perception of some controversial issues varies across perspectives of law and information technology. The results have indicated that in several instances the study major differentiated student's attitudes towards cybercrime. Distinct normative (law students) and expert (computer science students) approaches to cybercrime are manifested with high significance as far as piracy, hacking, and internet safety are concerned. Wall's

(2008) four narratives or syntactic and semantic approaches distinguished by McGuire (2018) do not only constitute disparate frames of reference in the debate on cybercrime, but also effectively generate different attitudes towards various controversial issues. The accounts of cybercrime by these groups are not merely two ways of telling the same story. They involve different moral judgements and vary in the appraisal of the facts and the assessment of risks.

All in all, the computer science students expressed a less dramatic view on internet security and hacking. This observation should be read together with the findings by Virtanen (2017) and De Kimpe et al. (2021) that confidence in one's computer skills or perceived knowledge of online safety lowers their fear of cybercrime. Self-selection processes may be involved. Technology-savvy students see the internet as a domesticated place and rarely define it through the lens of urban legends and media scares. By virtue of their computer skills alone, those respondents stood closer to the perpetrators of technologically advanced cybercrimes and were more likely to challenge the negative presentations of hackers or hacktivists. Both could be an object of admiration, if not for political reasons, then at least in acknowledgement of their technical finesse (Wall, 2008). For each group, the support for hacktivism was much higher than in any previous studies (Yar & Steinmetz, 2019: 55–58).

Since the surveillance and data misuse by the corporate and state actors take non-obvious and intangible forms, the computer science students were expected to appreciate these problems to a fuller extent than their peers from other courses. However, only the group of future lawyers differed in their attitudes toward surveillance, which they were more likely to accept. At the same time, they were most focused on the crimes of less powerful actors, while that focus grew over time in computer science students. Considering Dinev (2008), who linked internet literacy with increased government intrusion concern and lowered perceived need for surveillance, one has to conclude that the effects noted to indicate the existence of factors exerting a countervailing influence.

Legal education focuses on procedural safeguards, and, perhaps as a result, future lawyers were more likely than other respondents to express concerns about paedophile hunting (although this effect is not highly significant). At the same time, they were less likely to be concerned about cyber-surveillance. Law students were far less concerned about cybercrimes of the powerful, which was surprising, even though the white-collar criminality remains largely underrepresented in law school curriculums (Friedrichs, 2009). Those entering law school are characterized by significantly higher cyber-punitiveness, which declines rapidly over the course of their studies to reach levels lower than the humanities students at the end of their studies. The conservative vision of intellectual property embraced by the existing regulation might explain relatively high support of 'guesstimations' by law students and their reluctance towards 'socialized' cybersecurity (Mückenberger, 1971). The findings should be read together with the relatively lower actual use of pirate access reported by other Polish law students in a self-report study by Filiciak and Tarkowski (2018). As for other forms of deviation, those who download pirate files are also more likely to employ neutralization techniques, including denial of injury (Sykes & Matza, 1957). Given the doubts about exaggerated industry losses,

that excuse proves popular and convenient. Computer science students could, in turn, identify with the IT industry that develops antivirus software and appreciate its complexity. Conversely, the widespread demands for free cybersecurity in the contrast group correspond to students' low satisfaction with the protection of the public in cyberspace by state agencies observed by Conway and Hadlington (2018).

Generally, fear of cybercrime, as exemplified in the first question, was positively correlated with the punitive stance toward cybercriminals. In one case, that effect was significantly mediated by the study subject. Not only did the computer science students give a lower estimate of the risk of cybercrime, but they were also less likely to translate such worries into punitive demands. The accumulated knowledge of cyberspace might have encouraged them to support other, more cost-effective solutions. Once again, the calls for harsher punishments and more consequential enforcement appear to be a reaction less popular with those more familiar with the actual nature of the issue. It is an original finding since the impact of fear of crime on punitiveness is explored in the specific context of cyber criminology (see Armborst, 2017 and Meško et al., 2012 for a general overview). However, the model does not employ certain control variables, most notably the victimization experience, involved in the broader research into that relationship (Virtanen, 2017). Furthermore, the survey lacks international comparison (Dimc & Dobovsek, 2014).

Finally, most of the students, regardless of their stated major, approved the use of the term 'cybercrime'. Cyberterrorism was also considered a threat at least equal to terrestrial terrorism, with no differences established between the groups. We expected lawyers to question the novelty of cybercrime more frequently than both other groups. This assumption was based on McGuire's (2018) comparison of syntactic and semantic perspectives on cybercrime. In spite of law's focus on the socially constructed meaning attributed to the actions of cybercriminals rather than their instruments, the future lawyers mostly considered the term useful and, contrary to the other groups, they increasingly recognized its importance over the course of the study. Perhaps, lawyers, because of the nature of their educational process, which revolves around learning terms, may have a particular tendency to create concepts and feel compelled to use them. Although academic literature may question its terminological value (see: Grabosky, 2001; Palfrey, 2000), the concept of cybercrime remains popular with both laypeople and professionals.

7 CONCLUSIONS AND LIMITATIONS

We have surveyed students of various majors on the controversial issues in cybercrime and its control. Such a design seems appropriate to examine the relationship between the professional background and the views held on the number of relevant subjects. Moreover, the gathered data has provided insight into the link between the fear of cybercrime and punitiveness, offering a unique opportunity to take account of both the major and the year of study.

These results suggest the following warning: professionals who are to regulate, prosecute, and judge cybercrime hold far more traditional views on it than

individuals with a deeper knowledge of cyberspace, in which this crime occurs. Depending on the professional roles later adopted by lawyers and IT specialists, this could have unexpected consequences and lead to disagreements. Since computer science knowledge is instrumental to the prevention and investigation of cybercrime, the reconciliation of the two perspectives appears necessary. On practical grounds, introductory courses of law for computer science students, and vice versa, could increase mutual understanding between the representatives of both perspectives. Moreover, the disparate results in the contrast group call public support for at least some rules and policies into question. Demands for unrestricted access to internet security, punitiveness towards powerful cybercriminals, and approval of paedophile hunting were higher among students familiar with neither law nor computer science. Regardless of whether the future policy will aim to meet the expectations of the general public or follow the voices of experts, some levels of discontent are expected on either side.

There are some important limitations of the presented study. The most significant issue is the sample, which cannot be considered random. Therefore, the results of the study, though valid for students who use social media, cannot be extrapolated to the entire population. Furthermore, one has to bear in mind the simplified construction of the questionnaire, which is based on single-item unidimensional scaling. Most complex theoretical constructs cannot be represented by a one-item scale in a comprehensive way (McIver & Carmines, 1981). It should be noted, however, that in some cases single-item scales suffice to measure some constructs (Bergkgkvist & Rossiter, 2007; Cunny & Perri, 1991) and, in such cases, multiple-item design can even be a worse option and could cause an increase of random error (Drolet & Morrison, 2001). Secondly, statistical validation of the one-item instrument is not possible without reference to data on the corresponding scale. In particular, it is not possible to determine a measure of the validity of the single-item scale (e.g. the calculation of Cronbach's alpha requires at least two items). Accordingly, no validation of the research tool was performed during the study. Moreover, the questionnaire featured fairly general statements, which included numerous terms that could be considered vague. The understanding of the same terms may have varied to some extent, depending on characteristics of the respondent. This possibly different interpretation of some of the terms used is an additional source of noise in the data and, in conjunction with the single-item nature of the questionnaire, suggests that the conclusions of the study should be interpreted with caution.

One further limitation is the limited set of control variables. The study would highly benefit from including controls for additional variables such as age or general worldview orientation. The study presented here does not account for the possible correlation between study programme and worldview identification, which were found to be an important factor in views on technology (Han et al., 2021). The omission of computer and internet use variables, which we mentioned in the description of the methodology, leads to the impossibility of statistically verifying whether, after isolating their influence, group membership remains a significant predictor of the views studied. The same applies to the extent to which these variables constitute the differentiating factor between the groups studied. In

this sense, the absence of these variables can be considered another limitation of the present study.

Finally, the use of a quantitative methodology can also be treated as a limitation. It is hence impossible to recreate the complete attitudes, including motivations and beliefs underlying the given responses. We use the independent variables (major and year of study) as a proxy for a much more complex process of professional socialization. This study does not take account of the ingroup differences that could be large between, e.g., the lawyers specializing in intellectual property or criminal law. We acknowledge that further, perhaps qualitative, research is needed to grant full insight into the perception of cybercrime including the four main narratives proposed by Wall (2008). It is also beyond the scope of this study to assess participants' awareness of the problems addressed. Along with the depth of the investigation, its thematical scope is by no means complete and covers only a thin selection of issues. The possible cross-country differences also deserve mention; Lawyers' opinions may vary across jurisdictions according to regulations in force. Computer scientists from developing countries could react to lower internet security, but also show higher approval of illicit practices due to the economical constraints of full legal use of the internet.

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Radicalisation: The Societal Response to Radicalisation and the Role of the Security Environment – Seminar Summary

Teja Primc

Co-organised by the Faculty of Social Sciences of the University of Ljubljana, Faculty of Criminal Justice and Security of the University of Maribor, and Slovenian Intelligence and Security Agency (SOVA), under the framework of The Intelligence College in Europe, the 27 participants from 13 European countries attended the seminar *Radicalisation – The Societal Response to Radicalisation and the Role of the Security Environment* in Ljubljana from 15 to 16 February 2022.

As radicalisation leading to violence is becoming an increasingly significant problem in Europe, radicalisation and extremism must be systematically monitored. The participants agreed that we need to create a comprehensive social network structure that brings together several key state and non-state institutions to reduce the causes of radicalisation, identify radical behaviour and develop working de-radicalising approaches. The seminar built on the thesis that radicalisation leading to violence is a complex social phenomenon that can only be handled with a broad-based and socially-inclusive approach. Narrow or field-specific policies will only bring partial or undesirable results.

At the seminar, first, a conceptual and terminological framework for studying and monitoring radicalisation and the measures against it was established. Prof. Iztok Prezelj, the dean of the Faculty of Social Sciences, University of Ljubljana, and prof. Branko Lobnikar, the vice-dean for research from the Faculty of Criminal Justice and Security, University of Maribor, discussed the concepts of radicalisation, de-radicalisation and disengagement. The starting point of their discussion was that terminological clarity must be ensured before the official concept and policy of monitoring radicalisation and de-radicalisation is created.

Prezelj defined radicalisation as a process of fundamental changing or transformation of an individual's or group's perceptions, values and behaviour in the direction of political positions and behavioural patterns that favour the use of non-democratic means and/or illegal violence for the achievement of own political, ideological, religious and other goals. It reflects political polarisation in society (in a local and global context) and leads to or results from polarising views in society (more in Prezelj et al., 2021). Unfortunately for us, radicalisation is not an absolute category, rather, it is a subjective category to some extent –

what is logical in one country may not be logical in another country (perception of "radical" and "ordinary" varies). In Prezelj's opinion, our focus when preventing radicalisation must be on three types of individuals; the ones who have motivation and capabilities; the ones who have motives but do not have capabilities yet to start the radicalisation process; and those who have capabilities and do not have motives yet. There are four typical motives for radicalisation – succession, religious, ideological, and single-issue motivation (e.g. animal rights issues, environmental issues). Radicalisation can also be viewed as part of a process, of which the final stage is extremism and terrorism, where people want to use violence as a means to achieve their goals. With their exclusionary thinking, they are rejecting democratic conversation. During this process values/beliefs and people's behaviour are changing. Although these are two interconnected things, it is important to understand that some people are talkers and not doers, some are doers and not talkers, and some are both. Some of them are frustrated, but they still remain passive because there are numerous legal activities they can do to address their frustrations. The problem arises when people cross the line and start using illegal means. A particularly major problem and a big challenge of a democratic society is how to find these people and how, despite having resources, not to create a "Big brother society" by controlling everybody. As an ideology, radicalism challenges the legitimacy of established norms and policies, but it does not, in itself, lead to violence. People are considered radicals when they adopt radical beliefs, which happens through radicalisation processes. This is influenced by our beliefs, our current and past behaviours and our idea of what we will become in the future, whether true or not. Individuals in radicalised groups embrace an ideology that legitimises violence to address their concerns. This violence is often directed at an out-group viewed as the culprit responsible for creating the grievance. This is best articulated in applying social identity theory to radicalisation, in which identification with the in-group combined with disidentification with the out-group are related to the use of violence against out-group members.

Prezelj presented several models of radicalisation. As most important models Prezelj pointed out the Borum's model and Wiktorowicz's model. Borum's model suggests that the process of radicalisation begins by framing some unsatisfying event, condition, or grievance ("It's not right") as being unjust ("It's not fair"). The injustice is blamed on a target policy, person, or nation ("It's your fault"). The responsible party is then vilified/demonised ("You're Evil"), which facilitates justification for aggression (Borum, 2011). Wiktorowicz's model involves four dimensions of social influence on the individual towards radicalisation: cognitive opening, religious seeking, frame alignment, and socialisation. This process can be influenced by members of radical groups, who can speed up this process with recruitment activities. The NYPD model, Moghddam's staircase model, and Tarnby's 9/11 post-mortem model of radicalisation were also mentioned to explain the process of radicalisation.

In his conclusion, Prezelj presented the paradox of radicalisation. As a social force, radicalisation is a logical social response to deep problems or rather a solution to problems. On the one hand, it represents a threat to national security, and on

the other hand, it brings people together and leads to socio-political changes. For example, history tells us that 500 years ago, liberalism was a threat to the existing order; the same also goes for communism, antiglobalism, anarchism, etc. Today, radicalisation is taking power, and it is becoming normalised and modernised.

Lobnikar continued on the topic of the conceptualisation of radicalisation. In his view, If we want successfully react on radicalisation and terrorism it is important that we fully understand all the notions of this phenomenon because without understanding the process, we cannot fix it. Although terms like radicalisation, extreme violence, extremism, and terrorism are commonly used today, they are individual phnomenon representing different concepts. Radicalisation challenges the legitimacy of established laws and policies but it does not lead to violence. In today's society, radical views are common, especially in politics – if you are not radical, you are not heard. This ideology denies individual freedom and equal rights and represents a threat to society. Violent extremism is the opposite of society's core values and principals and it is regarded as the willingness to use violence or support its use. The reaction on these actions has to be understood when understanding radicalisation, extremism, and individual violent extremism. First, we must understand the complex relations between radical values and radical behaviour. Individuals do not necessarily join extremism groups because they hold extremist views; they sometimes acquire this views because they have joined these groups for other reasons. Some individuals distance themselves from the group and its violent means but retain their radical views on society. The relation between radical values and radical behaviour is complex and multidimensional. We have to develop different approaches to react to these different types of behaviours we face. When talking about reaction on these behaviours, Lobnikar emphasised at least three core actions that must be mentioned. First is counter-radicalisation, which we understand as a prevention strategy to prevent violence and radicalisation. Here non-violence still prevails, but there is a risk of radicalisation and violent extremism. Proactive initiatives are needed to reduce the potential risk for radicalisation. Counter-radicalisation strategies and policies are the most important, but they are almost always absent from the political point of view because it is never the right time to react. Waiting to react until it's too late is, in Lobnikar's opinion, the first failure in contemporary society we make. The second important actions are de-radicalisation strategies, targeting already radicalised individuals and groups with high risk for violence. It is a process of letting go of radical thoughts. The concept of de-radicalisation can be most broadly described as activity of encouraging individuals to adopt moderate, non-violent views. When dealing with someone who is already violent, eliminating them or imprisoning them is not always an option. If we decide to imprison them, we need to consider what actions we will take, to give them a chance to shift their violent thinking toward more nonviolent thinking. De-radicalisation has to be differentiated from the third action – disengagement. Disengagement describes changing an individual's behaviour to withstand the violence and to withdraw from a radical group. Because changing people's minds is very hard, we can change their behaviour instead of changing their minds. This is, from society's point of view, good enough. We can generalise that disengagement

is the first and very crucial step in the process of de-radicalisation. Both de-radicalisation and disengagement usually involve interventions (e.g. by state or local authorities) to promote democratic values and encourage the reintegration of radicalised individuals. Lobnikar further briefly explained the possible ways or means to achieve disengagement. Disengagement can be voluntary, involuntary, or both (which is most common). Push factors for individual disengagement are usually connected with different kinds of dissillusionments (dissillusionment with the goals of group, violent methods, with the leaders, social relations within the group, …). A push factor is also a loss of position or station in the group, the person cannot take the pressure anymore or there are competing loyalties between groups or family obligations. Pull factors usually derive from the availability of an exit from underground life. There has to be the possibility for the person to get out (amnesty or reduced sentencing for crimes comitted, education and job training, economic support for person and family, establishing a family, longing for peaceful and ordinary life, etc.). Besides individual de-radicalisation and disengagement, a collective disengagement also has to be met. Extremist groups and campaigns come to an end because of the defeat by repression – the capture or killing of the leader or the capture and imprisonment of (core) members. Here the intelligence agencies and the police play an essential role. Loss of public support is also important, failure to transition to next-generation or simply closing down/disbanding the group or surrender to authorities. There can also be a transition to a legitimate political process, often involving negotiation with governments, readjustment of goals and ideology, abandoning violent methods, amnesty or reduced sentencing. The last possible reason for collective disengagement is the end by victory – the achievement of the group's aims and coming to power.

Lobnikar concluded that radicalisation and violent extremism require effective criminal justice actions against those who incite others to violence and seek to recrute others, and comprehensive, multi-disciplinary approach. Countering extremism was traditionally an exclusive task for security sectors agencies. However, in the light of current international iniciatives more preventive and soft-oriented approaches to prevention are being developed. Shared responsibilities and multi-agency cooperation play an important role in this endeavour. Sometimes we need to take time and an analytical approach to understand things. Sometimes it is boring, it involves listening to professors, reading books and articles and also involves thinking, but it is the best way of the begining of the process of de-radicalisation and disengagement and it is a pre-requisite for a free and secure society.

In the context of radicalisation, we must pay particular attention to those who are most at risk of becoming members of radicalised groups. Associate Prof. Janja Vuga Beršnak from Faculty of Social Sciences, University of Ljubljana, presented the topic of vulnerable social groups to radicalisation (with a special focus on youth) and the perceptions of the radicalisation in the school hallways.

International research shows that youth is one of the most vulnerable social groups to radicalisation. The educational system is established to start with secondary socialisation of youth at as early age as possible. It has an important role, as it designs the system values, promotes social responsabilities, prevents

stereotyping and discrimination, it serves as a source of knowledge and democracy and promotes active citizenships. In Slovenia, a quarter of the population is under 26 years of age and approximately 10% are young adults between 15 and 26 years old. The majority is included in primary schools and about one fifth is in high school. More than 80% of the 0-5 year olds are included in the childcare system (preschool). This data indicates that the education in Slovenia is financially affordable and brings together youth of various social, national and ethnic background. The school system can be understood as one of more powerful tools of our state in preventing radical views and reducing the probability that the individual will become radicalised later in life. Vuga Beršnak believes the school system should be the main part of preventing radicalisation on strategic and operational levels.

To analyse perception on radicalisation in school environment, a multi-method research design was used. Twenty-three interviews with slovenian experts were conducted, in pre-covid times. On strategic level, representatives of National educational institute of Slovenia, National office of Youth, and Ministery of interior participated, and on the operational level, interviews were conducted with headmasters, school workers, representatives of NGO's and psychologists. Main questions were: What is the perception of radicalisation and the response of educational system in Slovenia?; Which groups are most vulnerable?; How well do they recognise the risk factors for radicalisation so they can take appropriate actions?

Study showed, that the combination of social, personal and biological factors, can be used as early warning indicators for youth radicalisation. The key is the intertwining and interrelations between various factors on different socio-ecological levels triggering the process of youth radicalisation. Many other authors found that important factors which can lead to radicalisation are gender and age. Joining terrorist groups are mostly young males in their early 20s. Social risk factors are socio-economic status, isolation, challenges in the formation of social identity, feelings of personal and social uselessness, the rejection by group and peer presure. In combination with personal factors they can trigger radicalised response. Those factors are personal identity – identity formating, identity gap, unstable personality, moral imperative, narcissistic personality type, proving onself, education and mental health. Vuga Beršnak stressed that we should also pay attention to the consequences of physical and social distance during lockdown in the past years due to Covid-19 pandemic and the effect of that on mental health of young adults.

Findings within the Slovenian educational system showed, that the most vulnerable in the Slovenian youth are individuals with identity issues, emotionally unstable persons, minorities, foreigners and persons depriviledged due to poor command of the language, socially excluded youth and youth with poor education outcomes, individuals with low self-esteem, low family social status and youth living in radicalised family environments. School workers defined the groups, potentially vulnerable to radicalisation only by mentally recalling vulnerability factors for youth violence. Hence, the important finding is that they are not well equipped to recognise nor prevent radicalisation. The youth has recognised the

increase of radical opinions on social media during the pandemic. Social media, physical distancing and rebellion against the government have contributed to that. The youth sometimes notice the radicalisation on school hallways and even feel threatened by it, but on the other hand, school workers seem to remain ignorant about that and do not recognise radicalisation as a problem. Three social levels are key in recognising and preventing radicalisation among youth: school workers, family, and friends. In Slovenia, the three-generational family model is well embedded in society and therefore, an extended family presents a potential for preventing or recognising the radicalisation among youth. Family can represent the pilar of resilience or be the source of the problem.

Vuga Beršnak concluded with the observation that in the Slovenian case, the welfare state with low social and income differences, a good public education system and a wide network of extracurricular activities available to the majority of youth, are leaving less space for radicalisation and might be understood as good preventive practices.

Continuing on the topic of perception of radicalisation in the school environment, Associate Prof. Andrej Sotlar from the Faculty of Criminal Justice and Security, University of Maribor, presented empirical research on the attitude towards radicalisation and extremism among young people in Slovenia.

As a part of the research project *Radicalisation and Comprehensive Countermeasures in the Republic of Slovenia*, a study was conducted among students of the University of Ljubljana (defence studies) and the University of Maribor (criminal justice and security studies) in 2019. The purpose of the study was to find out which forms of radicalisation are perceived by students as the most present and most dangerous and which institutions could/should prevent radicalisation and extremism in Slovenia. A total of 565 surveys were included in the final analysis. The majority of respondents were between 19 and 24 years old, 52% were female. The key findings suggest that students do not know (too) much about radicalisation and extremism, while they believe that we pay too little attention to this phenomenon in Slovenia. In their opinion, right-wing extremism is the most presented in Slovenia, followed by left-wing extremism, religious extremism and environmental extremism, while religious extremism is the most dangerous, followed by right-wing extremism, left-wing extremism and environmental extremism. The most present forms of religiously oriented radicalisation in Slovenia are related to the Roman Catholic religion, and to the same extent to Islamic radicalisation. If any, the Islamic extremism is the most dangerous, while Roman Catholic extremism and Orthodox extremism are not considered really dangerous. The development of extremism is largely influenced by the promotion of hatred by political leaders, followed by religious or other ideological indoctrination of people and propaganda of religious leaders. Media reporting and propaganda spreading on social networks (Facebook, Twitter) are important factors for influencing the formation/emergence of extremism. The most vulnerable groups to radicalisation and extremism are members of religious communities, people who are socially endangered, adolescents, asylum seekers, prisoners, members of marginalised ethnic groups and members of fans clubs, while soldiers and police officers do not belong to vulnerable groups. The

most responsible for the appropriate response to radicalisation are the media, the education system, the government and religious organisations, only then come the police and the intelligence services. The most responsible institutions – political parties, politicians, the media, the government, religious institutions and local authorities – do very little for preventing radicalisation. Police officers, intelligence services, armed forces and health services do more for preventing radicalisation but may have a lesser impact on individuals.

The seminar continued with a representative of the Slovenian Intelligence and Security Agency (SOVA) presenting the agency's role in countering radicalisation, extremism and terrorism. SOVA is the central civilian intelligence and security service responsible for internal and external security. Agency's mission is to collect and evaluate information and provide intelligence from abroad, relevant to safeguarding the security, political and economic interests of the state and also to provide intelligence on organisations, groups and persons who constitute or could constitute a threat to national security, through their activities abroad or in connection with foreign entities ("Zakon o Slovenski obveščevalno-varnostni agenciji (ZSOVA-UPB2)", 1999). The aim of intelligence activities is early detection of radicalisation, extremist and terrorist activities and terrorist threats against Slovenian interests and to disrupt these activities and threats in the early stages.

According to the agency, the biggest security threats in Slovenia and Europe continue to be self-radicalised individuals who are ready to commit acts of violence under the influence of extremist propaganda (e.g. religious extremism, right-wing and left-wing extremism), operatives of terrorist groups sent to European countries to establish a terrorist network or attack, and returnees from Syria and Iraq battlefields that continue to defend the ideas of radical Islam and support violent jihad. In the past years, other single-issue extremism were at the forefront – anti COVID-19 and anti vaccination extremist activites. Nonetheless, current terrorist threat level in Slovenia is low. The agency highlighted the importance of the Counter-terrorism group, consisting of the national security and intelligence services of the EU member states, Norway, Switzerland and the United Kingdom, which was established in the wake of the 2011 terrorist attacks in the United States and provided an informal platform for countering terrorism.

The agency is the leading government's Interdepartmental Counter-Terrorism Working Group, and the agency's director was appointed national coordinator for the prevention of terrorism and violent extremism. The tasks of this group include formulating opinions and proposals for coordinated action of state bodies in the field of counter-terrorism, preparing reports and assessments of the threats to the Republic of Slovenia from the perspective of international terrorism and, if necessary, preparing other documents in the field of terrorism and other forms of violent extremism. The representative of SOVA concluded that counter-terrorism and counter violent extremist coordination system is well-devised at the national level, but it needs a constant upgrade. Cooperation with other national authorities and foreign partner services is of great importance, as well as coordinated activities of the entire community (local communities, school system, health system, social services etc.), not just intelligence and security bodies. This is necessary to

develop mechanisms for the timely detection of radicalised individuals and those responsible for radicalisation.

Albert Černigoj, Head of Counter-Terrorism and Extreme Violence Department of Slovenian Police, presented Slovenia's experience in preventing radicalisation, emphasising international cooperation. Černigoj spoke on trends, challenges and opportunities that we face and have as a community in fighting/preventing/oppressing terrorism and radicalisation. In recent years, well-structured and state-supported terrorist organisations are more and more replaced by lone actors, individual jihadi people, travelling terrorists, etc. Sophisticated, well-organised terrorists attacks have been replaced with simple actions. The two main challenges, we are facing on the European level, are political and social polarisation. When defining who terrorists are today, experience show, that terrorists are loners, isolated, excommunicated, people with no future and more and more often these are very young people. Several studies show that in the EU over 50% of operatives previously had mental issues. Today's challenge is finding a way to be more efficient in preventing and stopping terrorism and radicalisation. It is obvious we have to go beyond the traditional approach. Černigoj pointed out that tackling terrorism is much more than just preventing the plot. The important thing is to define the early stages, when radicalisation is taking place. On EU level, each year a list of thematic priorities for prevention of radicalisation is defined. Recent strategy focuses on six priorities. First, the spread of extremist ideologies and polarisation have to be monitored, as they have a crucial impact on radicalisation processes. While we have a pretty good understanding of religious motivated radicalisation and right-wing radicalisation, EU is currently facing the challenge how to address other kinds of radicalisation, such as anti-vaccinatinon and anti-government radicalisation. The second key area, where EU actions will strenghten, are prisons, rehabilitation and reintegration. EU prisons are full of highly radicalised people. Best approaches regarding management and risk assessment of radicalised inmates and terrorist offenders need to be defined, as well as to provide support to training of professionals involved in this field and more tailored guidance on rehabilitation and reintegration of radical inmates, including after release. The third priority is the management of foreign terrorist fighters, to identify, detect and prosecute them through the establishment of best practices. Fourth thematic priority is online/digital radicalisation. The spread of radical ideologies accelerates through the use of online propaganda, with the use of social media. Terrorists and violent extremists increasingly make use of the internet to disseminate their extremist ideologies, so te main challenge is, how to use the same tool (the internet) against them. Supporting local actors for more resilient communities is the fifth priority in preventing radicalisation. Our cities need to have better access to funding, guidance and training to address current challenges and to increase their resilience. The sixth EU priority is to continue to support and strengthen international cooperation with key third countries, including exchanging information and ensuring the integration of this information in the European security networks.

Slovenia si developing a multi-agency approach, of which the core is the National Counter-Terrorism Strategy, based on prevention. Černigoj believes

prevention programs must address diverse contributing factors, including different stakeholders such as governmental policy-makers, police organisations, intelligence agencies, health care personnel, schools, social services agencies, etc. (more in Prislan et al, 2018). While we are still struggeling to have decent coordination between these stakeholders and prevention programmes on the local level, we are already trying to take first steps at the national level. We are not there yet, but we do have a solution, to bring this strategy to life.

The first part of the seminar was concluded by Lobnikar's presentation of the role of security and intelligence services in responding to radicalisation in the Western Balkans. Results of an empirical study among stakeholders on preventing and respondeing to radicalisation, extreme violence and terrorism were presented. The aim of the study was to analyse the issues they face in the area of Western Balkans and the perceptions of different stakeholders from eight Balkan countries about the effectivness of preventative actions to identify key areas for improvement. The importance of the results of this study is reflected in the fact, that these were not just the lay opinions, but the opinions of expert stakeholders, people from security services, people from policing – criminal justice system, local authorities, governmental authorities, etc. Questionnaries were distributed to participants at workshops, altogether 407 respondents were included in the analysis, carried out in Bosnia and Herzegovina (52), N. Macedonia (49), Serbia (35), Kosovo (27), Albania (42), Montenegro (35), Slovenia (59) and Croatia (108). The data were collected during training courses, which were carried out in the EU-funded First Line Project's scope on preventing radicalisation. Participation in the survey was voluntary and participants anonymity was guarenteed. Respondents were asked to assess the presence of various types of radicalisation in their local envirnoments, to asses the extent to which various stakeholders could successfully prevent radicalisation through adequate and professional conduct, and evaluate the actual impact of prevention. The study results showed that respondents perceive radicalisation inspired by religion (most often refferenced to Islam and partly to Orthodox radicalism) and by nationality or ethnic origin as the most frequent types of radicalisation in Balkan countries.

Apart from religious leaders and the media, respondents believe that intelligence services and specialised police units are also extremely important in preventing extremism, which means that they were, in fact, emphasising the role of governmental institutions. Respondents also believe that police officers, working in special police units and officials of intelligence services are the most efficient stakeholders when it comes to the prevention of radicalisation, followed by police officers in local environment. They agree, that all stakeholders could do a lot more on preventing radicalisation, than they actually do and they are aware, that something has to be done, but they are not doing enough. Lobnikar pointed out that it would be ideal if we could solve everything when doing a prevention, but that is not possible. That's why we need to set priorities in our prevention strategies. Thinking that Western Balken is unified area and that one solution fixes all problems, is wrong. In different countries, there are different priorities. That is why the multi-stakeholder approach has many benefits. It offers more accurate risk and assessment of needs, more systematic management of cases,

better understanding between professionals and greater efficiency in processes and resources.

Rajko Kozmelj, former Director of Slovenian Intelligence and Security Agency discussed a comprehensive, whole-of-society approach to radicalisation and the role od intelligence and security services. The absence of unified definition of radicalism and radicalisation leads to the lack of understanding of this phenomenon. The word *radical* has always been a contested term. To understand radicalism only as a bad thing is short-sighted, however, there is no place for violence in democratic societies. There is no synonym between violence and radicalism – being radical does not mean being violent, in some cases being radical means being different, generating or provoking development. From Kozmelj's perspective, different people have different views in society, which can still be acceptable. Then we have those individuals with more extreme views, that are not acceptable to society. They are diminishing human rights and constitutional order. These individuals require society's attention in the earliest stages of their detection. Having different views can lead to activism – misdemeanours and other activities which trigger or support progressive changes. The next step might be violent extremism or terrorism. Some mechanisms of response to the radicalisation process are Whole-of-Society-approach, the multi-agency approach and P-R-A (Prevent-Refer-Address). The whole society approach is an approach to prevent/counter violent extremism that leads to terrorism, that envisions a role for civil society actors and other non-governmental actors and relevant government actors across sectors in the prevention of violent extremism. In addition to this, the multi-agency aprroach means working in collaboration across organisations to enhance services to meet complex needs, where a variety of stakeholders (schools, social workers, police, etc.) cooperate to prevent radicalisation. The Prevent-Refer-Address approach is a comprehensive multi-level policy solution in preventing radicalisation leading to violent extremism and terrorism. The main elements of P-R-A are the inclusion of all relevant authorities, both at state and local levels, including those who have not traditionally been involved in the counter-terrorism related domain, namely educational and health authorities, civil society and NGO partners, academia, religious communities, law enforcement, prison and probation, local communities, family affairs and social welfare, etc. P-R-A partner then implements measures to prevent further radicalisation or reffered individual cases, after recognising root causes and instrumental factors which may lead to violent extremism. The last step of this approach is to address the reffered radicalised individuals to disengage, de-radicalise, and re-integrate and rehabilitate them. Kozmelj concluded that delivery of efficient and coordinated early prevention measures where they are most efficient, i.e. in the local community and raising awarness, are crucial in preventing radicalisation.

At the seminar a wide range of state and non-state institutions that (may) deal with monitoring radicalisation and countermeasures, and the role of intelligence services within this endeavour were discussed. This was the introduction to the final part of the seminar: *Tour the table* – three to five-minute presentations of seminar participants about their experiences in responding to radicalisation. The participants presented the key challenges for intelligence services in identifying and

responding to radicalisation leading to extreme violence and the most important things they have learned in responding to radicalisation and extremism in their environment. They emphasised that radical individuals are getting younger and radicalised groups are moving online which makes it very difficult to infiltrate these groups. During Covid-19 pandemic, the number of radicalised groups increased, mainly due to social isolation. The most common challenges present right-wing, left-wing and Islamic extremism. Intelligence agencies are primarily concerned with how to identify the next platform where radicalised groups come together and how to de-radicalise individuals of this groups. An example of good practice was also presented – more and more countries are increasingly focusing on proactive community policing, thus improving the process of information gathering. Participants concluded that monitoring radicalised groups and their movement is extremely important to prevent the escalation of radicalisation into extremism or terrorism. It is necessary to engage all community stakeholders to curb this issue, such as schools, NGOs, social work centers and others. The key is to share information and transforming this information into new knowledge and skills that can be used in the fight against this social phenomenon.

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