Editorial

The main focus of the articles in this issue is to explore contemporary criminal justice and security issues. This issue of our journal is a special follow-up to the previous one (2015, 17/1) and features ten articles focusing on reconciliation with regard to war crimes, environmental crimes, reproductive choices, economic crime, juvenile crime, domestic violence, cyber crime, private security, human rights and jurisdiction of criminal courts.

Goran Basic examines the complex issue of reconciliation with regard to war crimes, focusing on the question whether victims should be the only ones to forgive a perpetrator of war crimes or if other entities, institutions, for example, play any role in it. He analyses the narratives of 27 war survivors of the 1990s from the northwestern parts of Bosnia and Herzegovina and identifies *verbal markers of reconciliation and implacability* to assess the extent to which the notions of reconciliation are actualized in their stories. The author notes that while implacability is the dominant condition among the narratives, reconciliation is possible when certain conditions—such as justice for war victims, identification of crime perpetrators, and presence of shame and remorse by war crime perpetrators—are met.

Avi Brisman and Nigel South employ Tonry and Farrington's four major strategies of crime prevention to analyse their application to environmental crimes. Each of these four strategies—law enforcement, developmental prevention, community prevention, and situational prevention—are elaborated upon and applied to environmental crime prevention. In addition, the authors also identify the issue of environmental crime as an underdeveloped area and provide examples of specific challenges associated with governmental roles in these crime prevention strategies in sample countries.

Dragan Dakić addresses the issue of reproductive choices. He argues that the state's primary obligation is to protect the "abortion surviving child," based on the notions of right to life and prohibition of inhumane treatment. He claims that the state's positive obligations require providing medical care to the surviving child. However, he also argues that the state is obligated to provide timely information to women to help educate them on the temporal constraints related to reproductive choices.

Bojan Geršak, Borut Bratina, and Andrej Srakar examine economic criminal offenses in Slovenia. They note that while criminal law theory addresses the criteria to recognize criminal offenses among all unlawful actions, the law of minor offenses has primarily focused on less serious unlawful actions. However, the authors argue that in practice a certain action can sometimes correspond to the definition of both a criminal offense and a minor offense. Thus, it is necessary that the statutory elements of a particular unlawful action are precisely defined and clearly demarcated to ensure legal certainty guaranteed to all by the Slovenian Constitution. Data for the study was drawn from a survey of employees of institutions, police/criminal investigators from the Department for Economic Crime, public prosecutors and those from the Department of Economic Crime, inspectors from Security Market Agency/minor offenses inspectors, and citizens with expertise in the subject. The findings suggest a strong support from

practitioners and citizens for greater clarity of statutory elements of specific unlawful actions and for minimization of the legal vacuum between minor economic offenses and criminal offenses.

Irena Cajner Mraović, Valentina Asančaić, and Dubravko Derk address the question of whether juvenile crime in Croatia is really increasing or it is only a media sensation. They utilize the official crime data between 2000 and 2013 to examine if the average rate of change in overall, violent, and juvenile property crime has increased during that time period. What they observe is that though juvenile crime appeared stable or even on the decline during this time frame, specific forms of juvenile crime, such as juvenile homicide and rape, oscillated during the period studied, while robbery and theft left no clear trends.

The issue of domestic violence is the focus of the study by **Nataša Mrvić Petrović and Milan Počuča**. They analyse theoretical, legislative, and practical advantages and limitations of mediation in resolving domestic violence issues in Serbia, where mediation in civil proceedings exists and seemed popular between 2001 and 2006, but its usage declined sharply thereafter. The authors note that mediation in criminal proceedings does not exist and that the adoption of "zero tolerance" in the cases of domestic violence blocks the use of mediation as an effective tool in dealing with domestic violence.

Milana Pisarić covers the topic of cyber crime. She argues that special skills are needed to investigate and prosecute cybercrime. Further, special skills and electronic evidence are required to successfully prosecute offenders of cybercrime.

Iztok Rakar and Bojan Tičar examine the development of delegation of public authorities to the Chamber for the Development of Slovenian Private Security. The authors argue that a variety of administrative tasks are delegated to subjects of public and private law, yet such delegation poses several major practical problems, including the fact that *ex ante* justifications of delegation are very vague and not supported by analyses, while *ex post* evaluations of delegation are nonexistent, and that supervision of the implementation of public authorities is insufficient.

Tomislav Radović and Žarko Braković's paper focuses on legal analyses of human rights issues and composition of criminal courts in Serbia. They argue that given that human rights are an inalienable human value, Serbia is obliged to comply with the Stabilization and Association Agreement as a part of the laws of the European Union. The authors foresee that the current laws will be replaced by a new legislation incorporating the provisions that are currently part of the European human rights standards.

Finally, **Tatjana Burgarski** focuses on the subject-matter jurisdiction of criminal courts in Serbia and their composition, particularly in the light of organized crime and juvenile delinquency. She argues, by providing examples drawn from these cases, that such specialization of courts is necessary because specific knowledge, skills, and experience of professional judges and jurors participating in such proceedings are required.

We hope you find the articles interesting and a source of new ideas for expanding the scope of research in the region.

Mahesh Nalla, Gorazd Meško, & Branko Ažman
Guest Editors

Uvodnik

Glavni namen prispevkov tokratne številke je proučiti sodobne izzive na področju varstvoslovja. Tokratna izdaja revije predstavlja posebno nadaljevanje prejšnje (2015, 17/1) in vsebuje deset prispevkov, ki se osredotočajo na spravo v zvezi z vojnimi zločini, okoljsko kriminaliteto, reproduktivno izbiro, gospodarsko kriminaliteto, mladoletniško kriminaliteto, nasilje v družini, kibernetsko kriminaliteto, zasebno varovanje, človekove pravice in pristojnost kazenskih sodišč.

Goran Basic proučuje kompleksno področje sprave v zvezi z vojnimi zločini, pri čemer se osredotoča na vprašanje, ali naj bi bile žrtve edine, ki odpuščajo storilcem vojnih zločinov, ali pa imajo tudi drugi subjekti, na primer institucije, pri tem kakšno vlogo. Analizira pripovedi 27 preživelih iz severozahodnega dela Bosne in Hercegovine in identificira *verbalne označevalce sprave in nespravljivosti*, s katerimi ocenjuje, v kolikšni meri se pojmovanje sprave aktualizira v njihovih pripovedih. Avtor ugotavlja, da sicer prevladuje nespravljivost, kljub temu pa je sprava mogoča, če so izpolnjeni določeni pogoji — pravica za vojne žrtve, identifikacija storilcev in prisotnost sramu ter kesanja pri storilcih.

Avi Brisman in Nigel South analizirata aplikacijo štirih glavnih strategij kriminalne prevencije, ki sta jih razvila Tonry in Farrington, na okoljsko kriminaliteto. Vsako od štirih strategij — izvrševanje zakonov, razvojno prevencijo, skupnostno prevencijo in situacijsko prevencijo — avtorja proučita in aplicirata na preprečevanje okoljske kriminalitete. Poleg tega izpostavita slabo razvitost področja okoljske kriminalitete in predstavita primere posebnih izzivov, povezanih z vlogo vlade pri strategijah preprečevanja kriminalitete v izbranih državah.

Dragan Dakić obravnava področje reproduktivne izbire/pravice. Pojasnjuje, da je na podlagi zagotavljanja pravice do življenja in prepovedi nehumanega ravnanja primarna naloga države zaščititi otroka, ki preživi splav. Trdi, da zahteva po zagotavljanju zdravstvene oskrbe preživelega otroka s strani države izhaja iz pozitivnih dolžnosti države. Slednja je dolžna zagotoviti tudi ustrezne informacije ženskam o časovnih omejitvah, povezanih z reproduktivno izbiro.

Bojan Geršak, Borut Bratina in Andrej Srakar proučujejo gospodarsko kriminaliteto v Sloveniji. Ugotavljajo, da se kazenskopravna teorija ukvarja predvsem z merili, po katerih naj se med protipravnimi dejanji prepoznajo kazniva dejanja, pravo o prekrških pa se praviloma ukvarja z lažjimi oblikami kaznivih ravnanj. V praksi se lahko zgodi, da kako ravnanje ustreza opisu kaznivega dejanja in prekrška hkrati, zato je zelo pomembno, da so zakonski znaki določenega protipravnega dejanja točno določeni in jasno razmejeni. Tako se zagotovi pravna varnost, ki jo vsakomur jamči Ustava RS. Podatke za analizo so avtorji pridobili preko anketiranja zaposlenih na policiji (Oddelek za gospodarsko kriminaliteto), Državnem tožilstvu, Agenciji za trg vrednostnih papirjev, Banki Slovenije in Javni agenciji RS za varstvo konkurence. Ugotovitve kažejo na močno podporo strokovnjakov in laikov za večjo jasnost zakonskih elementov specifičnih protipravnih dejanj in za minimizacijo pravne praznine med gospodarskimi prekrški in gospodarskimi kaznivimi dejanji.

Irena Cajner Mraović, Valentina Asančaić in Dubravko Derk si zastavljajo vprašanje, ali je mladoletniška kriminaliteta na Hrvaškem zares v porastu, ali pa gre zgolj za medijsko zaznavo povečanja. Preko analize uradnih podatkov o kriminaliteti od leta 2000 do 2013 so ugotavljali, ali se je povprečna stopnja skupne, nasilniške in mladoletniške premoženjske kriminalitete v tem obdobju povečala. Ugotovili so, da je število mladoletniških kaznivih dejanj v opazovanem obdobju stabilno, včasih celo upada, pri tem pa lahko zaznamo določena nihanja pri specifičnih oblikah mladoletniške kriminalitete, kot so kazniva dejanja umora in posilstva, pri kaznivih dejanjih ropa in tatvine pa ni zaznati nobenih jasnih trendov.

Nasilje v družini je osrednja tema prispevka **Nataše Mrvić Petrović** in **Milana Počuče**. Analizirata teoretične, zakonodajne in praktične prednosti in omejitve mediacije pri reševanju zadev s področja nasilja v družini v Srbiji, kjer je mediacija v civilnih postopkih prisotna in je bila med letoma 2001 in 2006 še posebej priljubljena, kasneje pa je uporaba močno padla. Avtorja ugotavljata, da mediacija v kazenskih postopkih ne obstaja in da uveljavljanje "ničelne tolerance" v primerih nasilja v družini ovira uporabo mediacije kot učinkovitega orodja pri obravnavanju nasilja v družini.

Milana Pisarić obravnava kibernetsko kriminaliteto. Ugotavlja, da so za preiskovanje kibernetske kriminalitete potrebne posebne spretnosti, za uspešen pregon storilcev pa posebna znanja in elektronski dokazi.

Iztok Rakar in Bojan Tičar analizirata razvoj podeljevanja javnih pooblastil Zbornici za razvoj slovenskega zasebnega varovanja. Avtorja ugotavljata, da se zelo raznolike upravne naloge z javnim pooblastilom prenašajo na pravne subjekte javnega in zasebnega prava, pri čemer se pojavlja precej praktičnih težav, vključno z dejstvom, da so *ex ante* gledano obrazložitve razlogov za podelitev javnih pooblastil zelo splošne in ne temeljijo na analizah, *ex post* gledano pa se ne izvaja evalvacija podeljenih javnih pooblastil, nadzor nad njihovim izvajanjem pa je pomanjkljiv.

Prispevek **Tomislava Radovića in Žarka Brakovića** obravnava pravno analizo človekovih pravic in sestavo kazenskih sodišč v Srbiji. Avtorja ugotavljata, da je zaradi neodtujljivosti človekovih pravic Srbija v okviru Sporazuma o stabilizaciji in pridruževanju dolžna uskladiti svojo ureditev z zakonodajo Evropske unije. Predvidevata, da bo splošna uskladitev zakonodaje gotovo terjala tudi usklajevanje zakonov in predpisov s področja kazenskega pravosodja.

Tatjana Burgarski se v zadnjem prispevku tokratne številke osredotoča na pristojnosti kazenskih sodišč v Srbiji in njihovo sestavo, še posebej v luči organizirane kriminalitete in mladoletniškega prestopništva. Ugotavlja in na primerih pokaže, da je specializacija sodišč nujna zato, ker so v specifičnih primerih potrebna določena znanja, spretnosti in predvsem izkušnje poklicnih sodnikov in porotnikov, ki sodelujejo v teh postopkih.

Upamo, da se vam prispevki zdijo zanimivi in boste iz njih lahko črpali nove ideje za razširitev področja raziskav v regiji.

Mahesh Nalla, Gorazd Meško in Branko Ažman
Gostujoči uredniki

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Conditions for Reconciliation: Narratives of Survivors from the War in Bosnia and Herzegovina

Goran Basic

Purpose:

The aim of this article was to analyse the retold experiences of 27 survivors from the 1990s war in Bosnia and Herzegovina. I have examined verbal markers of reconciliation and implacability and analysed the described terms for reconciliation that are being actualized in the narratives.

Design/Methods/Approach:

The material for the study was gathered through qualitative interviews with 27 individuals who survived the war in north-western Bosnia and Herzegovina. This study joins those narrative traditions within sociology where oral presentations are seen as both discursive- and experience-based. In addition, I perceive the concept of reconciliation as an especially relevant component in those specific stories that I analysed.

Findings:

Stories on implacability, reconciliation, and conditions for reconciliation are not shaped only in relation to the war as a whole but also in relation to an individual's wartime actions and those of others. In these stories, implacability is the predominant feature, but reconciliation is said to be possible if certain conditions are met. Examples of these conditions are justice for war victims, perpetrator recognition of crimes, and emotional commitment from the perpetrator (by showing remorse and shame, for example).

Originality/Value:

Previous research on post-war society emphasized structural violence with subsequent reconciliation processes. Researchers have focused on the importance of narratives, but they have neither analysed conditions for reconciliation in post-war interviews. This article tries to fill this gap by analysing the stories told by survivors of the Bosnian war during the 1990s.

UDC: 341.38+94(497.6)

Keywords: reconciliation, narrative, forgiveness, implacability, conditions for reconciliation, justice

Pogoji za spravo: pripoved preživelih iz vojne v Bosni in Hercegovini

Namen prispevka:

Namen prispevka je analizirati ponovno podane izkušnje 27-ih preživelih vojne v Bosni in Hercegovini v 90-ih letih prejšnjega stoletja. V pripovedih smo pregledali verbalne znake sprave in pomiritve ter analizirali opisane izraze za spravo.

Metode:

Gradivo za raziskavo je bilo zbrano s kvalitativnimi intervjuji 27-ih posameznikov, ki so preživeli vojno v severozahodni Bosni in Hercegovini. Raziskava se pridružuje pripovedni tradiciji znotraj sociologije, v kateri so pripovedi osnovane tako na diskurzu kot na izkušnji. Še posebej pomembna komponenta v analiziranih zgodbah je koncept sprave.

Ugotovitve:

Zgodb o pomiritvi, spravi in pogojih za le to ne oblikuje le vojna, temveč tudi dejanja, ki jih v času vojne izvede tako pripovedovalec kot drugi ljudje. V omenjenih zgodbah prevladuje element pomiritve, sprava pa naj bi bila mogoča ob doseženih nekaterih pogojih. Primeri le teh so: pravica za žrtve vojne, priznanje kaznivih dejanj s strani storilca in čustvena zaveza storilca (ki se, na primer, kesa in sramuje).

Omejitve/uporabnost raziskave:

Pretekle raziskave povojne družbe poudarjajo strukturno nasilje, kateremu sledijo procesi sprave. Raziskovalci se osredotočajo na pomen pripovedi, vendar v povojnih intervjujih ne analizirajo pogojev za spravo. Pričujoč članek poskuša zapolniti to vrzel z analizo pripovedi preživelih vojne v Bosni in Hercegovini v 90-ih letih preteklega stoletja.

UDK: 341.38+94(497.6)

Ključne besede: sprava, pripoved, odpuščanje, pomiritev, pogoji za spravo, pravica

1 INTRODUCTION

Previous research on post-war society emphasized the structural violence with subsequent reconciliation processes, for example in South Africa (Sampson, 2003), Rwanda (Applegate, 2012), and Bosnia and Herzegovina (Cehajic, Brown, & Castano, 2008). However, in reality there is usually overlap between actor and structure (Janover, 2005; Schaap, 2006; Simmel, 1955).

Previous research on post-war society emphasizes the importance of narratives (Broz, 2008; Broz, Kain, & Elias-Bursac, 2005; Delpla, 2007; Ericsson, 2011; Hagan & Levi, 2005; Hatzfeld, 2005a, 2005b, 2008; Jansen, 2007; Mannergren Selimovic, 2010; Mannergren Selimovic & Eastmond, 2012; Skjelsbæk, 2007; Stefansson, 2010; Steflja, 2010), but these authors have not focused on narratives

about conditions for reconciliation in post-war interviews. This article tries to fill this gap by analysing stories told by survivors of the Bosnian war during the 1990s. The research issue is with what normative orientations and from what social values do the assumptions behind the above questions draw upon for moral sense and social intelligibility, and how do these normative orientations and values then guide the actions of individuals as well as communities in post-war societies?

This article examines how survivors of the 1990s war in Bosnia and Herzegovina describe reconciliation with their former enemies. In the analysis, voices representing the three ethnic groups involved in the war emerge: Bosniacs[1], Serbs, and Croats. These individuals were living in northwestern Bosnia and Herzegovina during the war, and some of them still live there while others live in Scandinavian countries.

What were the circumstances in northwestern Bosnia during the 1990s war? In their quest to expel Bosniacs and Croats from the area, Serbian police and militia carried out mass executions, systematic rape, and forced flight and established concentration camps. The aim was to remove the Croat and Bosniac population from the region by making life there impossible. Warfare was aimed directly against civilians. War antagonists often knew each other from before the war. Expelling individuals was not enough; the goal was to create an atmosphere so that no one ever would dare return (Bassiouni & Manikas, 1994; Case No.: IT-97-24-T; Case No.: IT-99-36-T; Greve & Bergsmo, 1994).

This article analyses the retold experiences of 27 survivors of the war in northwestern Bosnia and Herzegovina. One partial aim is to analyse markers of reconciliation and implacability; the other is to describe the conditions for reconciliation being actualized in various descriptions. The overall research question asked is, how do the interviewees describe possibilities for post-war reconciliation and forgiveness? The research questions more precisely are actually deeper: Should a victim forgive someone who does not admit his crime? Does the right to forgiveness belong only to the victim and not, say, to an institution? And can a group ask for forgiveness on behalf of an individual when the individual does not?

In the following, I will try to illustrate how markers of reconciliation and implacability, together with described conditions for reconciliation, are highlighted when the interviewees draw attention to (a) war crimes, (b) perpetrators admitting crimes, and (c) perpetrator emotional commitment (for example, the display of remorse and shame). My analytical findings are presented in the following themes: (1) Implacability, (2) Reconciliation, (3) Condition for reconciliation, and (4) Negations – the past and the present.

2 ANALYTIC STARTING POINTS

This study joins those narrative traditions within sociology where oral presentations are seen as both discursive and experience based (Potter, 2007). An

1 *During the war, Bosnian Muslims began to identify themselves as Bosniacs. The term 'Bosniac' is actually the old word for 'Bosnian', and now it is used both in an official context and in everyday language.*

interactionally inspired perspective on human interaction, through symbols and an ethno-methodological perspective on human stories (Blumer, 1986; Garfinkel, 1984), is a general starting point. In addition, I perceive the concept of reconciliation as an especially relevant component in those specific stories that I analysed.

Simmel (1955) looks at social interaction as an interplay between humans – a reciprocity that can take on and display different special social shapes (Bernard, 1950; Simpson, 1955). Conflicts and reconciliations, for example, are special shapes of interaction that become visible when analysing relations between individuals and groups after the fighting ends. Simmel (1955) argues that reconcilability is an emotional attitude aiming at ending a conflict. In contrast, a potential fighting spirit aims at upholding the conflict. Simmel (1955: 117) writes:

"This wholly elementary and irrational tendency to conciliation is probably at work in the innumerable cases in which conflict does not end as the most merciless consequence of power relations. It is something quite different from weakness, gullibility, social morality, or love for one's fellowman; it is not even identical with peacefulness. For, peacefulness avoids fighting from the start, or carries it on, once it is forced upon it, accompanied by the constant undercurrent of the need for peace."

Simmel (1955) argues that peacefulness is a way to avoid struggle from the beginning and that reconciliation emerges only after the struggle has been carried out and finished. Forgiveness is the key element for reconciliation, and Simmel (ibid.) describes it as an exchange of emotions between people. He argues (Simmel, 1955: 118): "that the feeling of antagonism, hatred, separateness yield to another *feeling* – in this respect, a mere resolution seems to be as powerless as it is in respect to feelings generally." Simmel (1995) is saying that when reconciliation takes place, the feeling of hostility and conflict gives way to a feeling of peacefulness and consensus. Simmel (1955: 121–122) sees both reconciliation and implacability as types of emotions that need external conditions to be actualized:

"[…] if one cannot forget, one cannot forgive and not fully reconcile oneself. If this were true, it would mean the most horrible irreconcilability /…/ image and after-effect of the conflict and of everything for which one had to reproach the other continue in consciousness and cannot be forgotten."

Simmel (1955) continues arguing that those who cannot forget certain events are unable to forgive; in other words, they cannot reconcile fully. This situation is something that he interprets as 'the most horrible irreconcilability' because every reason for reconciliation has disappeared from that person's consciousness. Forgiveness is possible only where there is someone who can be assumed or alleged guilty; in the words of Ricœur (2004: 460): "There can, in fact, be forgiveness only where we can accuse someone of something, presume him to be or declare him guilty." Ricœur (2004: 466) also draws attention to the question of unforgivable crimes. By 'unforgivable crimes', he primarily means crimes that are characterized by the victims' great suffering; secondly, crimes that can be tied to named perpetrators; and thirdly, when there is a personal connection between victim and perpetrator.

Based on Simmel's (1955) and Ricœur's (2004) views on forgiveness, we can ask the following question: Can every crime be forgiven? Derrida (2004) reasons

as Ricœur (2004: 468), who writes: "Forgiveness is directed to the unforgivable or it does not exist. It is unconditional, it is without exception and without restriction." Here a relationship between punishment and forgiveness is being raised. According to Ricœur (2004), when committing a crime, a perpetrator may be punished through a symbolic and actual marking of the injustice committed at the expense of somebody else – the victim (for instance, through law enforcement). Punishment creates a marginal space for forgiveness, because of unconditionality among other things, which is seen as an important condition according to Ricœur (2004). Derrida (2004: 45) also believes that unconditional forgiveness is virtually impossible:

"[…] pure and unconditional forgiveness, in order to have its own meaning, must have no 'meaning', no finality, even no intelligibility. It is a madness of the impossible. It would be necessary to follow, without letting up, the consequence of this paradox, or this aporia."

Two questions are especially interesting in this context: (1) Should a victim forgive someone who does not admit his crime, and (2) Does the right to forgive belong only to the victim, or even to someone else without a direct connection to the atrocity (an institution, for example)?

Ricœur (2004) states normatively that the victim should forgive, trying to be considerate to the guilty party's pride, and expect a latter recognition from him. Derrida (2004: 44) writes the following apropos a woman whose husband was murdered: "If anyone has the right to forgive, it is only the victim, and not a tertiary institution." It seems that reconciliation also has an institutional side. Occasionally, we see politicians and leaders of religious communities step forward to apologize for actions that they personally did not commit. The question is, do these individuals have the right to apologize and, in that case, who has the right to forgive? Should a representative of another institution forgive or should it be the victim as the affected individual? Ricœur (2004) argues that true forgiveness should not be institutionalized. He believes that it is only the subjected victim who can forgive.

We see from Ricœur's (2004) and Derrida's (2004) writings that reconciliation ideologies are often generally and indistinctly formulated. They usually consist of two levels – the institutional and the individual. The institutional is often based on the current government's or regime's efforts, with economic and administrative circumstances playing a prominent role (for instance, tribunals and truth commissions). The individual level (or interpersonal level) concerns how victim and perpetrator, through inevitable interaction, discard their former roles – how the perpetrator asks for forgiveness and the victim struggles to forgive. Here there is often no institutional base, and individuals are highly dependent on their own ability to forgive past events and reconcile.

Christie (2004) discusses what importance truth commissions and international tribunals have for reconciliation (for instance, the Hague tribunal and Bosnia and Herzegovina tribunal on war crime[2]). Christie (2004) argues that

2 *International Criminal Tribunal for the former Yugoslavia [ICTY] (2015a, 2015b); Court of Bosnia and Herzegovina (2015).*

by punishing those guilty for war crimes, international tribunals are 'killing' the ideology behind the atrocities. He illuminates his reasoning with the Nuremberg trials in which German Nazi leaders faced accusations and the Nazi ideology was convicted and punished through the individual sentences against those involved in the atrocities. Christie's point is that a better result regarding reconciliation is achieved through a truth commission instead of legally punishing individuals singled out as war criminals (perpetrators described as monsters) – all this provided that the truth commission's operation is carried out without economic or political problems or disruptions preventing the commission's work.

Reconciliation is a comprehensive and exciting theme of my analysis. The perspectives of the mentioned theorists, although they sometimes are slightly abstract and normative as well as distant from people's complex and perhaps contradictory experiences, are useful for my ambition of trying to understand the interviewees' stories of forgiveness, reconciliation, irreconcilability, and conditions for reconciliation, both as an analytical starting point and a subject of nuances.

3 METHOD

The material for the study was gathered through qualitative interviews with 27 individuals who survived the war in northwestern Bosnia and Herzegovina. The material was gathered in two phases.

During the first phase, March through November 2004, I completed my fieldwork in Ljubija, a community in northwestern Bosnia[3]. I interviewed 14 individuals who were living in Ljubija at that time and conducted observations in coffee shops, at bus stops, in the marketplace, and on buses. Two women and five men who all stayed in Ljubija during and after the war were interviewed together with three women and four men from Ljubija who were expelled during the war but now have moved back. Six of the fourteen interviewees are of Serbian origin, three were Croat, and five were Bosniac.

In the second phase, from April through June 2006, I interviewed nine former concentration camp detainees who, despite being civilians during the war, were placed in the camps by Serbian soldiers and police. These individuals, together with four of their relatives who also were interviewed, now live in Sweden, Denmark, and Norway. Three of the interviewees were women and ten were men. The majority of the interviewees come from the municipality of Prijedor (of which Ljubija is a part). Ten are Bosniacs and three are Croats. Some of the collected

3 *Ljubija is a community in northwestern Bosnia (belonging to the municipality of Prijedor). Before the war, the inhabitants of Ljubija lived in two local administrative entities (Mjesne zajednice). Gornja (upper) Ljubija was ethnically mixed, and most inhabitants lived in apartment buildings. In Donja (lower) Ljubija, most inhabitants were Bosniacs who predominately lived in private houses. The area where Ljubija is located is known for its mineral wealth, especially iron ore, black coal, quartz, clay for brick burning, and mineral-rich water. Most people worked at the Ljubija iron mine before the war. War struck Ljubija in the beginning of summer 1992 when Serbian soldiers took control of the local administration without armed resistance (Case No.: IT-97-24-T; Case No.: IT-99-36-T).*

material has been analysed in earlier reports and articles (Basic, 2005, 2007, 2013, 2014, 2015a, 2015b, 2015c).

Since 2004, I have repeatedly reused the empirical material. Understanding this repetitive analysis requires looking back at the research process. During the interviews, the narrators (interviewees) and I interacted as conversation partners (Holstein & Gubrium, 1995). Among other things, I was interested in how the individual was going to present herself or himself in different situations, how certain situations merged with other situations to create social rituals, how the individual defined certain situations, and how the individual's identity was created, preserved, and re-created. I also examined how social symbols such as language participate in the creation of cultural context. Blumer (1986) argues that symbols are social objects that are given a certain meaning. The meaning does not have to be precisely the same for all; individuals interpret symbols of others and in this way try to give them some significance. After transcription of the stories in the Bosnian language, another meaning was added, not to the narrator but to the empirical material. Thereafter, selected parts were translated into the Swedish language by an interpreter. It was both interesting and problematic that the meaning was different in Swedish compared to the Bosnian version, with certain nuances lost in translation. Now I have restarted the process by analysing the English language version. Åkerström, Jacobsson, and Wästerfors (2004) argue that empirical material from completed research sometimes, for different reasons, can linger in a researcher's mind. In some instances, this persistence is about fascination for a field of research or odd circumstances during the collection of the material, for example. These researchers argue that empirical material can be re-analysed again and again through the same or a different set of analytical goggles, and in this sense, the material can always add something new. When I conducted this new analysis of the previously collected material, I was surprised by the narrators' focus on different conditions for reconciliation during interviews, a tendency I partially overlooked in my previous analyses.

4 IMPLACABILITY

The Bosnian stories of reconciliation and implacability are not shaped only in relation to the war but also in relation to the narrators' own and other individuals' personal war actions. The interactive dynamics of war portrays reconciliation as something dependent on various charged symbols. These charges often paint a picture of implacability.

Stories of reconciliation and implacability from post-war Bosnia often start with the interviewee talking about revenge and hate. During the war, one man, named Sveto[4] in the study, participated in a Serbian militia group. Nowadays, he owns a business in northwestern Bosnia (field note). He described an execution that occurred after the war, which seemed to have originated from the war:

Sveto: *He walks in and asks him: 'Have you finished your beer?' 'Yes, I have'; when the answer was given, this fellow takes out a gun and shoots him in the head. He then*

4 *Names have all been changed.*

went outside and the pub-maid tried to escape, but he told her: 'You don't have to flee, call the police 'cause I have settled my business.' He sat down in front of the shop waiting for the police. When they arrived, they took his gun from him. It is said that this man raped his sister in Sanski Most[5] *during the war. /.../ When this comes alive, when people free themselves from that pressure, they will remember who killed their father, brother, uncle. Lots of things will come forth in time. Bodies are still getting excavated, people are looking for them. One day, when it all is accounted for, you will see the perpetrator driving by in his car and your dead brothers' children will appear before your eyes.*

Sveto's story is imbued with an attitude of implacability. In his portrayal, we see how the post-war years are being charged with the importance of the war years – one will see someone 'driving by in his car' and identify this person with his previous atrocities. Stories of hate and revenge, as a direct result from the war, return in several interviews. One example is given by Milanko. He was a child during the war, and he told me that he witnessed his neighbors – Bosniacs and Croats – getting beaten and executed. Nowadays, he works in a factory in northwestern Bosnia. Milanko told the following about the widespread violence during the war and post-war vindictiveness:

Milanko: *In 1992, Rade was not here, he was in Germany. He and Dragan were friends. Dragan came to Rade's parents, he stole their money and abducted Rade's brother Zuti. First, he physically abused Zuti, then Zuti disappeared without a trace. Rade told me that Dragan won't live to get old.*

Goran: *Where is this Dragan nowadays?*

Milanko: *Somewhere outside, he is hiding in his village. He does not dare come to Prijedor now that many people, like Rade, come here completely unimpeded.*

Goran: *Is there any information about Zuti?*

Milanko: *It is known that he was in Keraterm*[6] *and that Dragan went there and brought him out again. Nothing is known of him since that. The lakes in which we swim, there by the mine, are full of corpses. They get drunk in the bars and start talking, thousands have been thrown in there. The lake is deep, more than 100 meters. Who could dive down there now to collect all of them (corpses)? It makes me sick, they put on the uniform and drive out to the villages to rape and kill women. Not just Dragan but also Sveto and Milorad and lots of others. How do they sleep now, do they worry about their children?*

Gangas (2004) argues that Simmel's views on conflicts and reconciliation partly actualize the involvement of the actors' morals, norms, and valuations. These post-war stories of violence and rejecting those actions could be seen as an expression of future morality (Jansen, 2002). In the previous stories, we see how Sveto's and Milanko's morals emerge as a rejection from the war morality in which rape, abduction, robbery, and murder were a part of everyday life (Bassiouni & Manikas, 1994; Case No.: IT-97-24-T; Case No.: IT-99-36-T; Greve & Bergsmo, 1994). This rejection is clearest through the dramatic shape it takes. In Milanko's narration, among other things, we see the conflict being described

5 *Sanski Most is a community in northwestern Bosnia.*

6 *Keraterm is a concentration camp in northwestern Bosnia.*

through a personalized terminology ('Rade,' 'Zuti,' 'Dragan,' 'Sveto,' 'Milorad') and maybe because of these personalized illustrations through a rather implacable terminology.

Sveto and Milanko retell war crimes in which personal relationships among the deceased, surviving victims, and perpetrators are portrayed – they are not strangers. This proximity between perpetrator and victim seems to make Sveto and Milanko pessimistic about post-war reconciliation in Bosnia. Their reasoning is consistent with that of Simmel (1955: 121–122), who argues that someone who cannot forget different events cannot reconcile because reconciliation requires forgiveness. Sveto and Milanko appear to argue that people's consciousness cannot be erased after a trauma, and this, using Simmel's words, creates 'the most horrible irreconcilability'.

5 RECONCILIATION

Hatzfeld (2005a, 2005b, 2008) narrates the telling conversations with survivors of the 1990s war in Rwanda. The author mentions international tribunals and truth commissions through the analysis. These, of course, are institutions. One interesting question is why truth commissions were not established in Bosnia, following the models of South Africa or gacaca courts in Rwanda. Hatzfeld (2005a, 2005b, 2008) means that in Rwanda, the ideology responsible for the genocide was put on trial rather than the individuals. If we follow the Hatzfeld (2005a, 2005b, 2008) reasoning, in Bosnia, the war criminals as individuals are put on trial at the Hague Tribunal and the Bosnia and Herzegovina tribunal on war crimes (Court of Bosnia and Herzegovina, 2015; ICTY, 2015a, 2015b) rather than the ideology that guided them. This analytical point is partly in contrast with Christie (2004), who argues that by punishing those guilty for war crimes, international tribunals are 'killing' the ideology behind the atrocities.

Schaap (2006) and Janover (2005), much like Riccœur (2004) and Derrida (2004), present the image of reconciliation ideologies as often being general and unclearly formulated. They argue that on an institutional level, reconciliation can be ideologized, frequently based on the current government's or regime's efforts. An important point observed by Schaap (2006) and Janover (2005) is that activities on an institutional level often are transferred to the individual level. In my empirical material, the stories appear to be influenced by the regimes regarding the 'war ideology destruction' (Christie, 2004), which is taking place at the Hague Tribunal and the Bosnia and Herzegovina tribunal on war crimes (Court of Bosnia and Herzegovina, 2015; ICTY, 2015a, 2015b).

The majority of Bosniac and Croat organizations for war victims accept and appreciate the effort of the tribunals, in contrast to the Serbian organizations, which often renounce it. Serbian war victims see the tribunal as partisan (Delpla, 2007). The majority of indicted and convicted persons at the tribunal are Serbian politicians, soldiers, and police (Court of Bosnia and Herzegovina, 2015; ICTY, 2015a, 2015b). Regional discussions often stress the importance of justice being done after the war. What is not clearly stated in the discourse is that this justice enforcement also may entrench the antagonism and social identities that emerged

during the war (Hagan & Levi, 2005; Massey, Hodson, & Sekulić, 1999; Steflja, 2010).

Justice for war victims is one of the most important conditions for reconciliation in Bosnia and Herzegovina (Basic, 2015a; Ericsson, 2011; Hagan & Levi, 2005; Mannergren Selimovic, 2010; Mannergren Selimovic & Eastmond, 2012; Skjelsbæk, 2007; Stefansson, 2010). Many war criminals are detained by the Hague tribunal and the Bosnia and Herzegovina tribunal on war crimes; several have been convicted for crimes committed during the war, but many are still at large. Ricœur (2004) argues that forgiveness is possible only when one or several are singled out as guilty. Similar arguments emerge with most of the interviewees in this study. To achieve reconciliation in Bosnia, forgiveness is required and, from what I saw in the interviewees' stories, it is easier to forgive someone who is in prison for his crimes. During the war, Radovan was called into the Serbian militia, but he could not participate because of his illness. Nowadays, he is retired and living in northwestern Bosnia; he says indignantly that 'the task must be done, if one wants to reconcile':

The first thing that needs to be done, if you want reconciliation, is to bring the war criminals to justice. Even if it was my own late father, I would have wanted him to take responsibility if he had murdered a civilian, in front of a firing squad or in jail. Who gives one the right to rape someone's sister and mother or to murder someone? The sentences passed in the Hague are a joke. A 10-year sentence is transformed into 6 years for good behaviour. Without justice and by that I mean real justice /…/ there can be no reconciliation.

Radovan's recipe for reconciliation is based on justice for the victim and punishment for the perpetrator or the idea of a punishment visible for all, that must be displayed as a ceremony or a spectacle (in this context, compare Collins, 1992; Durkheim, 1964). At the same time, Christie (2004) believes that there will be a better reconciliation result if the victim and perpetrator meet in front of a mediator and an audience. This public process creates a situation in which the perpetrator is ashamed instead of being legally punished; thus, justice is done for the victim. Christie (2004, 2005) argues by referring to the hanging of the commander of the Auschwitz-Birkenau extermination camp at the end of World War II. Christie (ibid.) finds it difficult to see the proportionality of the punishment in relation with the crime – one life in exchange for half a million who were gassed, tormented, and starved to death or killed in other frightful ways in that camp. Christie (ibid.) sees the hanging of the commander as yet another way of humiliating the victims. According to Christie's (ibid.) formulation, all of the survivors should have been enabled to speak about what happened there – they should have been enabled to give vent to their rage, their sorrow, their desire for revenge. The commander should also tell how he saw it and what he did and share his current thoughts on these events. All of this should occur in front of an audience.

I was influenced by Christie's (ibid.) perspective while gathering material and therefore asked during the interview of a former concentration camp detainee a question inspired by the South African truth commission. Sanel's health is damaged from repeated physical abuse, starvation, and anxiety in the

concentration camp. He is retired and lives in Scandinavia. These are his words on the conditions for reconciliation:

Sanel: *That all those, I don't want to say war criminals but all those who had something to do with this evil, to come forward in order to get judged. Everyone should confess to what they have done, physical abuse, rape, murder, etcetera, thus it would not be important where they were judged, they could be judged at their own court in Banja Luka*[7].

Goran: *What about giving them pardon if they confessed on television?*

Sanel: *For the murders, too?*

Goran: *Yes.*

Sanel: *Well, regarding physical abuse and such, it would probably be OK but not murder. For murder, you have to spend time in jail according to the court's sentence. /.../ You cannot slaughter people with such pleasure and just say sorry, it is simply not possible. You can forgive someone for beating you up but not for killing your brother.*

The individual's depictions of their war memories are often contradictory and ambivalent (Jansen, 2007; Mannergren Selimovic, 2010; Mannergren Selimovic & Eastmond, 2012; Skjelsbæk, 2007; Stefansson, 2010). In some cases, the interviewees' narratives in this study are also contradictory and ambivalent. The narrators oscillate between different identities and perspectives, depending on the situations, relations, and questions they face. In one and the same sentence, or paragraph, they can express two completely different opinions.

Sanel, just like Radovan, delineates a sort of reconciliation recipe that seems to influence Bosnian people on an everyday basis: One of the most important conditions for reconciliation is justice for the victims of war. Earlier, I mentioned Ricœur (2004), who believes that forgiveness is possible only where there is someone who is presumed guilty. On the other hand, the point made by Ricœur (2004) and Derrida (2004) on forgiveness and punishment is that there is not much room for forgiveness, partly because of the unconditionality, which is seen as an important postulate for forgiveness. Sanel is putting up demands that must be met before he forgives and reconciles ('all those who had something to do with this evil, to come forward in order to get judged'); he will not forgive just like that. Obtaining amnesty by confessing on television could be interpreted as a lowering of Sanel's conditions at the expense of the perpetrator's undergoing disgrace.

Christie (2004) advocates a truth commission instead of punishing the guilty individuals. The idea of a truth commission is not to condemn a criminal but to give him an opportunity to express shame for his action and thereby be forgiven. The criminal shall be offered reentry into the community through his display. Even in the context of a truth commission, a perpetrator's plea for forgiveness (for example, on television) could be understood as conditional: Participation in a truth commission lets the perpetrator avoid a judicial trial and potential punishment.

Simmel (1955) writes that someone who cannot forgive cannot fully reconcile. Forgiveness by punishment is ruled out because of unconditionality (Derrida, 2004; Ricœur, 2004). Conditionality is present in all stories on post-war reconciliation. Sanel's question of forgiveness and reconciliation is conditioned by the crimes he suffered during the war. Through a public confession and apology on the

7 *Banja Luka is a town in northwestern Bosnia.*

television, Sanel may consider forgiving physical assault – but not murder. If we merge the perspectives of Simmel (1955), Riccœur (2004), and Derrida (2004), we could say that Sanel's reconciliation is not complete. We could also say that Sanel is criticizing the reconciliation manual advocated by Simmel (1955) and others.

Variation is a very interesting dynamic at the interpersonal level of reconciliation. Relatives of survivors often want to co-exist in peace with former enemies, with or without forgiveness and reconciliation. It seems that forgiveness and reconciliation are not mandatory after a war. Nor is it certain that reconciliation includes forgiveness (Arendt, 1998; Borneman, 2003; Hagan & Levi, 2005; Sampson, 2003). In the previous quotations, a *resistance* against forgiveness emerges, in which Sanel obviously reacts strongly to the questions about whether he is ready to forgive. Sanel answers by mentioning examples of difficult personal experiences and more or less explicitly shows the *impossibility* of forgiveness in relation to these experiences. It seems that 'conditioned reconciliation' could be interpreted as a resistance to or option of reconciliation based on forgiveness.

6 CONDITION FOR RECONCILIATION

What is required to make Sanel's reconciliation complete? Is it that those who participated in the atrocities admit to emotions such as remorse and shame when they ask their victims for forgiveness? The interviewee stories are imbued with conditionality when they speak about reconciliation following the Bosnian war. Among other things, they highlight the importance of emotional commitment from the perpetrator – the perpetrator's display of remorse and shame. In addition, a collective responsibility for war actions is noted when conditions are imposed. An illustrative example is found from Ljubo, who worked in an elementary school in northwestern Bosnia during the war, as well as after. This is Ljubo's version of a possible reconciliation in Bosnia:

But honestly, if one repents honestly and everyone is held accountable for their actions, I for mine, you for yours, and the third person for his, and we all apologize to one another, but it must come from the heart and with tears, this way there might lead to reconciliation. /.../ Remorse from all three sides, because one cannot be responsible for the war if the other did not participate. They must have quarrelled with each other because if there was no quarrel, they would not have made war.

Ljubo's version emphasizes two central aspects for making reconciliation possible. One is the individual's emotional commitment ('it must come from the heart and with tears'), and the second is reciprocity in reconciliation ('remorse from all three sides'). He presents a kind of blueprint for reconciliation in which the individual and collective levels are interconnected. He presents and links the individual level to emotions that need to be shown, and he links the collective level to a universal war guilt ('all three sides'). Another empirical example, in which reconciliation is conditioned with the perpetrator's emotional commitment together with a collective responsibility, is found in the interview with Rifet. Rifet is a former concentration camp detainee, retired and living in Scandinavia, just like Sanel. Rifet says indignantly:

I could never reconcile with those who harassed me but would not take revenge either. They are the ones being small now, now when I travel to Banja Luka, I meet with people with whom I have always been a good friend, but those who did wrong, they stay away from me. They did not have to help me during the war, but they should have left me in peace. It is hard for them not being able to sit at my table and have a drink with me like before. One of these came up to me and said hello, but I told him to go to hell. The Serbs sitting at my table did the same and this was the worst for him. You should have been a man when it was at its worst, they said. But I would never take revenge, God forbid. I think it is bad enough for him when people ignore him like that. /.../ The Serbs are ashamed now, this is normal if you have an ounce of honour. Even though you tell them that they, personally, did not do anything. There are rotten ones even among my people, but what does that have to do with me? Whoever imprisoned, raped, or killed someone is a disgrace to his people. I despise those because they are neither Bosniacs, Serbs, nor Croats, they are scum. /.../ My message is this: You have to put all of that behind you and move on. Without reconciliation, there will be no life for us nor for Bosnia. But everything will be all right in the end, it must be, for the economy and everything else. This bond between us is a bond of fate.

Rifet's reasonably conciliatory attitude is still imbued with a 'we' and 'the others' division and a categorization of individuals based on their actions during the war. This can be seen as Rifet's way of making his own position stronger with the aid of special symbolic expressions that are common for members of the groups. Rifet generates his own abstract world in which the members can feel safe by creating symbols for each group ('Bosniacs,' 'Serbs,' 'Croats'). This symbol creation can be seen as an important condition for achieving reconciliation. Emotions are a permanent part of all interaction, and it seems that communication together with defining common symbolic expressions – with the display of correct emotions – enables cooperation even between enemies, and in some cases even reconciliation.

Rifet stresses the importance of the perpetrator's display of shame ('are ashamed now, this is normal if you have an ounce of honour'). Braithwaite (2006a) believes that the individual who committed the crime shows displeasure through shame, which in turn could evoke other emotions such as grief, guilt, remorse, and once again – shame. There are, according to Braithwaite (ibid.), two varieties of shame, namely *disintegrative shame* and *reintegrative shame*. Disintegrative shame works negatively through stigmatization and expulsion of criminals, thus generating a group of individuals who are excluded from the community. In other words, the individual is branded as a criminal and loses the right to be a part of the community (for example, through imprisonment and the subsequent stigmatization). Reintegrative shame has more of a positive effect – the individual is not condemned and branded even if the action is punished. The individual is enabled to atone for his crimes and 'be forgiven,' which can be seen as a way to show and offer the individual reentry into the community through stimuli and aid. Braithwaite's book is implicitly permeated with a view on disintegrative and reintegrative shame as an emotion, but it is not expressed explicitly. In a later publication, this viewpoint, stating that these varieties of shame are emotions, is clarified (compare Braithwaite, 2006b).

Rifet points out that the war criminals are shameful now, and he stipulates a kind of exclusion shame that works by stigmatization and expulsion of the

criminals. This means that Rifet, on one hand, condemns the individual's crimes, and on the other hand, strips him of his right to be a part of the group ('people ignore him').

Wohl, Hornsey, and Bennett (2012) have, like Hutchison and Bleiker (2008) and also Klain and Pavic (2002), studied different functions that emotions have for forgiveness and reconciliation. An individual can present a specific image of himself or herself through displayed emotions, create and re-create identities, or attack the identities of the others. Rifet's story is emotional, and he recounts that *the others* are ashamed now or should be ashamed. In this way, he creates a collective and morally 'correct' identity for himself and his friends and rejects his former friends ('those who harassed' him during the war). The shame that Rifet actualizes in his story seems to be able to generate reconciliation on a macro level; here a single perpetrator is sacrificed to achieve forgiveness and reconciliation between the groups ('This bond between us is a bond of fate'). It is rather special that Rifet sees this Simmel-inspired bond. Broz et al. (2005) and Broz (2008) analysed their interviews with people who survived the war in Bosnia and Herzegovina. The conclusion of those studies was that the Yugoslav identity as cultural heritage is often represented in the Bosnian post-war stories (Broz, 2008; Broz et al., 2005). Rifet refers to a kind of Yugoslav connection – despite everything – but similar perspectives did not emerge from the other analysed narratives.

7 NEGATIONS – THE PAST AND THE PRESENT

The stories of forgiveness and reconciliation, much like the stories of implacability, are connected to the past; the interactive consequences of war-time violence are intimately linked to the narrator's war experiences. The interviewees distance themselves from some individuals or described situations. It is common that the portrayal of possible forgiveness and reconciliation is transformed into a depicted implacable attitude, and the interviewees thus negotiate their stances: They articulate between reconciliation and implacability statements. In these stories, 'the others' are presented as external actors in the context (see the following: former friends who did not intervene and perpetrators who killed someone's father). Ivo exemplifies this in his story. He is a former concentration camp detainee who, during the interview, implied that he could 'forgive' Serbian friends and acquaintances who did not help him when he was captured.

Those from Prijedor did not abuse me physically nor did they do me any other harm. In a way, they helped out but not really. That day they did not. Still, one has a soul, one can forgive them. I am better off without them, the less I have to do with them the better. /.../ Someone who had known me all my life could have tried to help me get away, but no one did. What actually happened, if people pointed us out or placed us on lists, I don't know. Anyway, I terminated everything concerning them, have no desire, don't want anything from them, I don't need them.

The picture painted by Ivo expresses a powerful polarization between categories. On one hand, we have Ivo; on the other, we have his friends and acquaintances who did not help him although they could have. Ivo is portraying

a distance towards his pre-war friends, and no closeness between the categories is displayed. I asked the following question of another concentration camp detainee, called Safet here, whose 80-year-old father was tortured before being killed during the war in northwestern Bosnia: 'In which case would you be able to forgive or reconcile with what happened?' His answer:

Safet: *We have already reconciled because we travel to Bosnia every year; this shows that we love Bosnia and that we are trying to return to some kind of normal life, a normal way ahead. To forgive … this … I only had one father, and he was killed unjustly, without doing wrong, you can never forgive that.*

Goran: *So it is thus about what you suffered? It is probably easier to forgive a slap than ...?*

Safet: *Yes, that is easier. Maybe you have heard that they killed the teacher Krupic, from Hambarine, his former pupil asked him if he remembered giving him the lowest grade 10 years ago? I suppose there were many of those who lacked wits and got hold of weapons.*

According to Safet, this annual trip to Bosnia means conciliation, or maybe even reconciliation. This trip takes Safet to an area in which his former enemies now constitute the majority population. He meets them every day, perhaps even those who tortured and killed his father. Safet is keen to highlight that he could never forgive such an unjust crime as his father's murder. Simmel (1955) argues that someone who cannot forgive does not fully reconcile. By turning from a reconcilable conversation ('We have already reconciled') to an implacable tone ('I only had one father and he was killed unjustly /.../ you can never forgive that'), Safet creates a contrasting category, namely the category of 'those who lacked wits and got hold of weapons'.

Simmel (1955) describes conflict as an interplay of proximity and distance between actors. Applegate (2012), Cehajic et al. (2008), and Millar (2012), all of whom have studied reconciliation after the wars in Bosnia, Rwanda, and Sierra Leone, show that the relationship between victim and perpetrator is characterized by a combination of dissociation and closeness together with competition between the victim and perpetrator categories. In Ivo's and Safet's depictions, there is a similar relationship – the actors' stories describe 'them' as distant. The actors are portrayed as participants in two entities that compete on a symbolic level. The narratives on reconciliation seem to become an arena for different disconnects between *us*/*we* and *the others*. Turns from a reconcilable to an implacable attitude reproduce a certain competition because they keep alive those symbols of battle and demarcations that were so obviously played out during the war.

If we were to interlink different perspectives of theorists mentioned in this article, we could infer that the actors' narratives play an important role in a tense network of everyday interaction. In this interaction, communal legal actions and politics together with the moral perspectives of the individuals and their identity labour are combined as the individual struggles with the question: Shall I forgive and reconcile? Janover (2005) emphasizes the importance of studying the stories of both victims and perpetrators. By telling their stories, victims can restore their status and attain a certain level of self-esteem and recognition of their identities. The perpetrators, by telling their stories, can explain to themselves and an audience; they can show their emotions and open a possibility of re-entering

into the community. Without this type of process, the victims are at risk of living in an existence without peace and serenity, and the perpetrators are at risk of permanently being bound by their committed atrocities – which Simmel (1955: 121) calls 'the most horrible irreconcilability'. In my analysis, I found that the possibility for forgiveness usually dies when the atrocity occurs, when a father is killed or a sister is raped.

8 CONCLUSION

The aim of this article was to analyse the retold experiences of 27 survivors from the 1990s war in Bosnia and Herzegovina. I have examined verbal markers of reconciliation and implacability and analysed the described terms for reconciliation that are being actualized in the narratives. Previous research on post-war society emphasized the structural violence with subsequent reconciliation processes, as in South Africa (Sampson, 2003), Rwanda (Applegate, 2012), and Bosnia and Herzegovina (Cehajic et al., 2008). Researchers have emphasized the importance of narratives (Broz, 2008; Broz et al., 2005; Delpla, 2007; Ericsson, 2011; Hagan & Levi, 2005; Hatzfeld, 2005a, 2005b, 2008; Jansen, 2007; Mannergren Selimovic, 2010; Mannergren Selimovic & Eastmond, 2012; Skjelsbæk, 2007; Stefansson, 2010; Steflja, 2010), but they have not focused on narratives about conditions for reconciliation in post-war interviews. This article tries to fill this gap by analysing stories told by survivors of the Bosnian war during the 1990s. The research issue is from which normative orientations and from what social values the assumptions draw for moral sense and social intelligibility, and how do these normative orientations and values then guide the actions of individuals as well as communities in post-war societies?

The war as a whole (its structure and its political character) and individuals' wartime actions are not independent of each other. Personal troubles are addressed in relation to social issues like reconciliation. Post-war reconciliation in Bosnia is closely connected to the war period. The reconciliation process seems to correlate with the war period's interactive dynamics, and events taking place during the war affect interpretations regarding a possible reconciliation.

This analysis used, among others, Simmel (1955), Ricoeur (2004), and Derrida (2004). Their use is not typical for scholarly discussions of interviews, and for this reason, I intend for the study to cast a fresh light on the existing literature.

The struggle has to end before reconciliation takes place, Simmel (1955) argues, and the difficulty of 'forgetting' war memories in many cases seems to generate an unforgiving attitude – especially when the stories are specific and emotionally strong with a concrete course of events and filled with names of individuals and places (for example, 'Rade,' 'Zuti,' 'Dragan,' 'Keraterm').

Atrocities during the war also raise the question of unforgivable crimes. Ricœur (2004) and Derrida (2004) believe that forgiveness either includes 'the unforgivable' or it does not exist. This study shows that some violent war crimes are described as particularly difficult to forgive. The analysis of the interactive consequences of violence shows that it is intimately associated with earlier personal experiences. Anger is sometimes expressed with charged emotional terms, with

very little space for reconciliation, and guilt sometimes gets transferred onto the whole category (not only the individual/individuals who committed atrocities).

The features of reconciliation seen in the interviewees' stories are imbued with conditionality. Forgiveness and reconciliation are depicted as possible to achieve but only if guilty war criminals are punished and also show remorse and shame for their atrocities.

It seems that one of the most important conditions leading to reconciliation in post-war Bosnia is justice for the war victims. Many war criminals have been arrested or convicted by the Hague tribunal and the Bosnia and Herzegovina war crime tribunal for crimes committed during the war, but many are still at large. Simmel (1955) argues that forgiveness is required to achieve reconciliation. The picture that emerges from the analysed narratives is that it is easier to forgive someone imprisoned for his atrocities.

Reconciliation through a truth committee to which the perpetrators confess their crimes as an alternative to judicial punishment is based on the idea of exposing a perpetrator's feeling of remorse and shame (Braithwaite, 2006a; Christie, 2004). The purpose of these feelings is not to condemn the criminal but to give him a possible way out by showing remorse and shame for his actions and thus 'being forgiven'. Even here, there is a visible condition, namely, through participation in a truth commission, the perpetrator avoids a judicial trial and potential punishment. The interviewees did not like the idea that participants in a truth commission avoided being punished, i.e., they were sceptical of this path leading to reconciliation.

In the stories on reconciliation, it is highlighted that the perpetrators now are shameful (or should be ashamed) and an expulsive shame is stipulated that aims at stigmatizing and excluding single perpetrators. In this way, one not only condemns the misdeeds but also points out the individual as a criminal who has lost the right to be a part of the collective. This kind of shame, when single perpetrators are 'sacrificed' to achieve reconciliation between groups, is presented as reconciliation on a macro-level.

An interesting question that could not be resolved in this article is what the limits are in models of international tribunals and truth commissions. In this sense, I mean that sociology can address the dysfunctionality of both processes. Another interesting aspect of the problem that could not be investigated in this study is how the various actors in the reconciliation fare in the future. What significance will be awarded to the reconciliation question in Bosnian society?

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An Assessment of Tonry and Farrington's Four Major Crime Prevention Strategies as Applied to Environmental Crime and Harm

Avi Brisman, Nigel South

Purpose:

To apply the findings and debates arising from the "mainstream" literature on crime prevention to the increasingly urgent issue of crimes and harms that damage the environment. This is also a missing dimension in the rapidly growing field of green criminology.

Design/Methods/Approach:

The method is literature review, including analysis and synthesis of earlier summaries and typologies. Search and selection was aimed at identifying different forms of and strategies for crime prevention that might then be applied to environmental harms and crimes. This leads to a discussion of key findings and models in relation to the theoretical and practical concerns of green criminology.

Findings:

Examining theory and practice concerning the prevention of environmental crimes and harms opens up important new questions and projects for criminology. The framework explored holds promise but in the future a passive prevention approach will need to be supplemented by active interventions to discourage environmentally damaging behaviours.

Research Limitations/Implications:

The process of studying prevention of environmental crimes and harms is still in its infancy and requires further work. It is clear that there are obstacles both to further research and to implementation of measures, however, due to the fact that powerful commercial and political interests may not wish to draw attention to such crimes and harms, may prefer light-touch systems of regulation, and may contest attempts to publicise or prosecute offences.

Practical Implications:

Measures taken to protect persons and property have a long history but a focus on how to prevent individuals and groups from committing crime is more recent. Green criminologists frequently extend their concerns beyond crime and harm covered by existing (criminal) law and, as such, the prevention

of environmental harm and crime is broad in scope and more difficult to effect. Furthermore, such harm and crime is frequently not viewed as "real" crime and not "valued" sufficiently by the law, which also impedes efforts to prevent its occurrence. The more that traditional crime prevention agendas, practice and literature incorporate the subject of the environment, the more effective future efforts may be.

Originality/Value:

It has been argued that if we compare rates of "ordinary crime" to environmental harms and crimes, the latter would significantly outnumber the former (Lynch, 2013). Yet although there is a substantial literature on "ordinary crime prevention", there is relatively little discussion in the literature about the application of crime prevention approaches to environmental harms and crimes. This is one of very few reviews of this field and therefore makes a contribution to theory and practice in both mainstream and green criminology, which have both neglected this topic.

UDC: 343.3/.7: 504

Keywords: crime prevention, environmental crime, environmental harm, green criminology, strategies, typologies

Ocena štirih glavnih strategij preprečevanja kriminalitete Tonryja in Farringtona, uporabljenih pri ekološki kriminaliteti in okoljski škodi

Namen prispevka:

Namen prispevka je uporaba ugotovitev in razprav, ki izhajajo iz sodobne literature o preprečevanju kriminalitete pri vse bolj nujnem vprašanju kriminalitete in škod, ki ogrožajo okolje. To je tudi manjkajoča dimenzija na področju hitro razvijajočega se področja ekološke kriminologije.

Metode:

Uporabili smo pregled literature, vključno z analizo in sintezo predhodnih povzetkov in tipologij. Iskanje in izbor sta bila namenjena prepoznavanju različnih oblik in strategij preprečevanja kriminalitete, ki bi jih lahko nato uporabili na primerih okoljske škode in kriminalitete zoper okolje. To vodi k razpravi o ključnih ugotovitvah in modelih v povezavi s teoretičnim in praktičnim preučevanjem ekološke kriminologije.

Ugotovitve:

Pregled teorije in prakse o preprečevanju kriminalitete zoper okolje in okoljske škode odpira za kriminologijo nova pomembna vprašanja in projekte. Raziskani okvir je obetajoč, vendar pa bo treba v prihodnosti pasiven pristop k preprečevanju dopolniti z aktivnimi posegi za odvračanje okolju škodljivih vedenj.

Omejitve/uporabnost raziskave:

Proces preučevanja preprečevanja kriminalitete zoper okolje in okoljske škode je še vedno v povojih in potrebuje nadaljnje delo. Jasno je, da obstajajo ovire, tako

za nadaljnje raziskovanje kot tudi za izvajanje ukrepov. Zaradi dejstva, da močni trgovski in politični interesi ne želijo pritegniti pozornosti do takšnih zločinov in škode, le-ti dajejo prednost "milim" sistemom regulacije in lahko izpodbijajo poskuse medijskih objav ali pregona kaznivih dejanj.

Praktična uporabnost:

Ukrepi, ki so bili sprejeti za zaščito oseb in premoženja, imajo dolgo zgodovino, toda poudarek na tem, kako posameznikom in skupinam preprečiti storitev kaznivega dejanja, je novejši. Ekološki kriminologi svoje pomisleke pogosto razširijo onstran kriminalitete in škode, ki jo pokriva obstoječe (kazensko) pravo, zato je področje preprečevanja okoljske škode in kriminalitete široko glede obsega in še težje glede učinkovitosti. Poleg tega takšna škoda in kriminaliteta pogosto nista dojeti kot "pravi" kriminal in ju zakon ne "ceni" dovolj, kar prav tako ovira prizadevanja za preprečevanje njunega pojava. Bolj kot bodo tradicionalni načrti preprečevanja kriminalitete, praksa in literatura vključevali okolje kot predmet, bolj bodo prihodnja prizadevanja lahko učinkovita.

Izvirnost/pomembnost prispevka:

Lynch (2013) navaja, da če primerjamo stopnjo "običajne kriminalitete" z okoljsko škodo in ekološko kriminaliteto, bi slednje znatno prekašalo prejšnje. Vendar kljub temu, da obstaja izdatna literatura o "preprečevanju običajne kriminalitete", je v njej razmeroma malo razprave o uporabi pristopov preprečevanja kriminalitete v primerih ekološke kriminalitete in okoljske škode. To je eden od redkih pregledov na tem področju in zato prispeva k teoriji in praksi tako moderne kriminologije kot ekološke kriminologije, ki sta obe zanemarili to temo.

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Ključne besede: preprečevanje kriminalitete, ekološka kriminaliteta, okoljska škoda, ekološka kriminologija, strategije, tipologije

1 GENERAL OVERVIEW

"Crime prevention", as defined by Hughes (2001: 63), refers to "any action taken or technique employed by private individuals or public agencies aimed at the reduction of damage caused by acts defined as criminal by the state". While measures taken to protect persons and property have a long history, attention by criminal justice institutions to who commits crime, why and how they do so, and *how they might be kept from committing crime* is much more recent (see, e.g., Hughes, 2001; Lemieux, 2014a; Weber, Fishwick, & Marmo, 2014). The question of how to avert and thwart crime deserves accentuation and, as White and Heckenberg (2014: 277, 259) assert, "the best way to respond to crime is to prevent it before it occurs. […] The overall aim of criminal law is to prevent certain kinds of behaviour regarded as harmful or potentially harmful". Tonry and Farrington (1995a: vii) suggest that crime bedevils Western societies but the same is true of most societies, including those of Eastern Europe, Asia and the rest of the world. Furthermore, most societies will share the experience that "criminal sanctions are

increasingly understood to have only modest effects on crime rates or patterns". On this point the authors (Tonry & Farrington, 1995a: vii) note that:

> Criminal sanctions, especially incarceration, are expensive to administer and cause collateral damage to offenders and their spouses and children. Prison and jail sentences in many cases increase the likelihood that offenders will reoffend and further handicap typically disadvantaged offenders from later achieving satisfying law-abiding lives. For all these reasons, preventive approaches to crime, as distinguished from law enforcement or criminal justice approaches, are receiving new and renewed emphasis in many countries.

Various typologies have been offered to distinguish different strategies of crime prevention. One approach is to differentiate between "situational" and "social" strategies of prevention, wherein the former focuses on "opportunity reduction" (such as the installation of surveillance technologies in public places) and the latter centres on "changing social environments and the motivations of offenders" (Hughes, 2001: 63). As Weber et al. (2014: 109) explain, while "social crime prevention is concerned with economic, social and cultural conditions associated with crime and criminalization" – on deterring potential or actual offenders from future offending – "situational crime prevention, which also encompasses crime prevention through environmental design, focuses on reducing opportunities for crime to occur. To some extent situational crime prevention rejects the idea that crime is linked to social and economic factors, and instead criminal actions are considered to be the result of a rational choice by an offender in weighing up the benefits and advantages when a crime opportunity is presented."

A second attempt to classify different types of crime prevention entails conceptualizing it on three levels: "primary" crime prevention, which involves reducing criminal opportunities with little consideration of the criminals themselves; "secondary" crime prevention, which focuses on changing individuals prior to their engaging in criminal behaviour; and "tertiary" crime prevention, which concentrates on truncating the criminal career (Hughes, 2001; Last, 1980; Weber et al., 2014). Thus, "primary" crime prevention's orientation is to the *criminal event* (rather than the motivated offender), while "secondary" crime prevention is focused on averting *criminality* and "tertiary" crime prevention is directed towards targeting *known offenders*.

Finally, Tonry and Farrington (1995b) reject the typology of primary, secondary and tertiary prevention and, instead, have suggested distinguishing between four major strategies of crime prevention: (1) law enforcement strategies (through the enactment and enforcement of criminal laws that seek to deter, incapacitate and rehabilitate); (2) developmental preventive interventions (established with the goal of thwarting the development of criminal potential in "at risk" individuals); (3) community prevention (intended to transform the social conditions that affect offending in residential communities); and (4) situational prevention interventions (designed to diminish the occurrences of crimes, especially by reducing opportunities and increasing risks).

Environmental crime – as distinct from the socio-spatial patterns of urban crime studied by some criminologists – involves offenses or transgressions that harm, damage or destroy our natural environments and thereby affect humans,

nonhuman species, specific environments and the Earth as a whole (see, e.g., Eman, 2013; Eman, Meško, & Fields, 2013; White & Heckenberg, 2014). The study of environmental crime – often referred to as "green criminology" – has tended to focus on describing how, why, and the ways in which, environmental harms occur, as well as who – individuals and groups or organizations (e.g., corporations, criminal combines or syndicates, states) – can be identified as responsible for such harm (e.g., Lynch & Stretesky, 2003; White, 2003).[1] Green criminology is also concerned with identifying where such harms are occurring, who is being harmed and the scope and extent of such harm (Eman, Meško, & Fields, 2009; Halsey & White, 1998; South, Eman, & Meško, 2014), and the meaning and representation of such harm (Brisman, 2015; Brisman & South, 2013a, 2014a; Brisman, McClanahan, & South, 2014). But, as White and Heckenberg (2014: 2) remind us, "knowing about the damage and about criminality is one thing. […] In the end it is how groups, organizations, institutions and societies respond to environmental harm that ultimately counts." Accordingly, green criminology has considered the diverse and complex attempts to protect the environment and nonhuman animals and to prevent climate change, natural resource depletion, loss of biodiversity, pollution, and the like (see South et al., 2013) – a task confounded by the fact that much environmentally degrading and destructive behaviour is not only *legal* but *encouraged* by capitalism's mandate of perpetual and infinite growth (see, e.g., Brisman & South, 2014a; Leech, 2012; Ruggiero & South, 2013a, 2013b; Sahramäki, Korsell, & Kankaanranta, 2015; Walters, 2013; White, 2013; White & Heckenberg, 2014; see generally Larsson, 2012). Indeed, while "crime prevention", as conceptualized by Hughes (2001) and others, refers to reducing or blocking the damage caused to people and property as a result of acts or omissions *proscribed by law*, because green criminologists frequently do not limit their inquiry to the study of injury encapsulated under existing (criminal) law (see, e.g., Brisman, 2008; Halsey & White, 1998; South et al., 2013), the prevention of environmental harm and crime is thus broader in scope and more difficult to effect. That environmental harm and crime is frequently not viewed as "real" crime and not "valued" sufficiently by the law (White & Heckenberg, 2014; see also White, 2010) further confounds efforts to prevent its occurrence.

In this article, we discuss some of the ways in which the prevention of environmental crime and harm might be conceptualized and undertaken, including problems, challenges and limitations thereto.

1 *At this stage in its development, it seems that criminologists most frequently employ the term "green criminology" to describe the study of ecological, environmental or green crime or harm, and related matters of speciesism and of environmental (in)justice. But as South, Brisman, and Beirne (2013) note, there is not yet universal agreement on the appropriate name or label for this sub-field or perspective. For example, White (2008) has argued that the term "environmental criminology" should be reclaimed from what is more properly considered "place-based criminology", to cover the study of environmental harms and threats, environmental legislation and related research activity. This usage is an obvious reflection of the way that the word "environment" is frequently employed in everyday discussion and contemporary media but suffers the drawback of being too easily confused with its longer established usage in criminology to describe relationships between the incidence of crime and the spatial features of the built and urban environment. That said, it bears mention that in the latest (fifth) edition of The Oxford Handbook of Criminology, the chapter on this area of criminology is now titled "Developing Socio-spatial Criminology". One reason for this name change, the author of the chapter explains, is that the use of "environmental crime" as a description could generate confusion "because it is sometimes used to refer to the important emerging field of 'green' criminology" (Bottoms, 2012: 451).*

2 POLICY AND PRACTICE

Societies tend to minimise the significance of environmental crime and damage – in part, because "much of the economy is based on the exploitation of natural resources" and because "many of the most serious forms of environmental risk come from 'normal social practice'" (Skinnider, 2013: 3; see also Eman et al., 2009; Sahramäki et al., 2015; South et al., 2014). According to Lynch (2013), if we were to compare rates of "ordinary crime" to environmental harms and negative impacts, the latter would significantly outweigh the former. Lynch (2013: 49) argues that for this reason, we need to re-think our categorizations regarding victims: "The definitions of victims and victimization incidents commonly found within criminological literature illustrate the restrictive scope of the traditional criminological gaze and frame of reference." Indeed, as Skinnider (2013: 2–3) points out, "criminal law generally focuses on individual victims whereas environmental legislation often describes the environmental harm as an offence against public interest". When one realizes that (1) the damage caused by environmental crime may be difficult to identify because it may not be immediate or may have a future impact, (2) identifying the perpetrator of environmental crime and establishing criminal liability can be challenging given lengthy and complex chains of causation, and (3) the victims of environmental crime are not always aware of the fact that they have been victimized and, even if they are, they might not consider themselves to be "crime victims" (Skinnider, 2013; see also Sahramäki et al., 2015; White, 2010; White & Heckenberg, 2014), it becomes understandable that instances of environmental crime are frequently underestimated and their severity minimized. "By taking a broader frame of reference," Lynch (2013: 49) argues, "green criminology calls attention to the extensive array of violence humans produce and the large number of victim and victim incidents that escape the attention of orthodox criminological approaches".

Weber et al. (2014: 233) suggest that "the study of transnational crimes such as trafficking of human beings, cross-border trade in illicit goods, and environmental destruction opens up important new frontiers in criminological inquiry, and invites researchers, practitioners and students to engage with international legal instruments and UN-sanctioned crime prevention techniques." On this note, these authors draw attention to the "Guidelines for Crime Prevention", developed in 2002 by the United Nations Economic and Social Council (ECOSOC) as an annex to a resolution. The "Guidelines for Crime Prevention", which are intentionally broad and define the benefits of crime prevention in a way that we can easily see as applicable if directed at environmental breaches and harms, state that: "There is clear evidence that well-planned crime prevention strategies not only prevent crime and victimization, but also promote community safety and contribute to the sustainable development of countries. Effective, responsible crime prevention enhances the quality of life of all citizens" (United Nations Economic and Social Council, 2002; see also Weber et al., 2014: 111).

While the "Guidelines for Crime Prevention" call upon government institutions and all segments of civil society, including the corporate sector, to play a part in preventing crime, the reality is that environmental crimes are committed

at the individual, organizational, corporate and state levels (see, e.g., White, 2010; White & Heckenberg, 2014). Accordingly, White (2010: 365, 370, 375) has suggested approaching environmental crime prevention from three perspectives: (1) engaging law enforcement agencies and using criminal law against environmental offenders; (2) shifting the focus away from criminal sanctions toward regulatory strategies, where a combination of cooperation and coercive measures are used to improve environmental performance; and (3) "fundamental social transformation" that demands "new ways of thinking about the world […] and a commitment to the 'environment' […]". White (2010: 365–366) stresses that the three approaches "are not mutually exclusive. Indeed, the increasing strength of one reinforces the possibilities of the others. If environmental wellbeing is to be secured, then a variety of legal, economic and social strategies will be needed to change behaviour and modify human practices in positive ecological directions." Part of the reason why such a broad spectrum approach is required stems from the diverse nature of environmental offenses and offenders and the preference in many market societies, with economic imperatives at the core of ideology and practice, for "education, promotion and self-regulation […] rather than directive legislation and active enforcement and prosecution" (White 2010: 367 (footnote omitted)). White (2010: 372, 371) also notes that the use of criminal sanctions to punish environmental offenses and prevent continued or future ones is stymied by "the international character of capital and the trans-border nature of […] harm [which] make[s] prosecution and regulation extremely difficult" and, more generally, by the fact that powerful groups in society, such as corporations, "have considerable financial and legal resources to contest prosecution, making such prosecutions enormously expensive to run". While White (2010: 376, 379) stresses the importance of the "'big stick' of prosecution" with sentencing regimes that include custodial sanctions and fines, he is not overly sanguine about the prosecution and sentencing of environmental crimes as a means of punishment and prevention: "the criminalisation of environmental crime does not necessarily equate with the prosecution and punishment of environmental offenders"; all too frequently, he concludes, "the key actors involved in such crimes are global creatures, able to take advantage of different systems of regulation and legal compliance".

More recently, White and Heckenberg (2014) have adopted a more capacious conceptualization of environmental crime prevention and link *intervention* and *prevention* in their consideration of "what is to be done about environmental crime". As such, the third part of their book consists of separate chapters on: the nature of environmental regulation (reasons, models, limits and opportunities regarding regulation); the dynamics of environmental law enforcement (including networks and collaborative practices); the limits and possibilities of environmental forensic science and studies; the role of environmental courts in stemming the tide of environmentally destructive conduct and practices; and a survey of environmental crime prevention initiatives (e.g., situational/technologies-oriented, social/developmental and communal-oriented).

An expansive conceptualization of environmental crime prevention – indeed, one that intertwines *intervention* and *prevention* – not only serves to

underscore that "not enough is being done to detect, prevent, prosecute and respond to environmental crime" (White & Heckenberg, 2014: 228 (citing White, 2011)), but helps to demonstrate the *instrumental* and *symbolic* dimensions of environmental crime prevention. Environmental crime prevention, like crime prevention, more generally, should strive to protect specific persons and places/property and educate and raise awareness of that which we hold – or *should hold* – dear. Given the space constraints of this article, we are unable to contemplate environmental crime prevention quite as broadly as White and Heckenberg (2014). As such – and following White and Heckenberg's (2014) suggestion that the approaches and techniques of conventional criminology may prove useful in preventing environmental harm and crime – we find it fruitful to think through the applicability of Tonry and Farrington's four-pronged typology of strategies of crime prevention (discussed in the previous section) to *environmental* crime prevention in the hopes of illuminating the similarities and differences between conventional crime and environmental crime, and identifying what has worked to prevent environmental crime, what has not and what promising avenues for environmental crime prevention may be worthy of further consideration. Before doing so, however, we wish to note that a "social-action approach" (White & Heckenberg, 2014; see also White, 2008) – one that emphasizes the need for fundamental social change and attempts to engage in social transformation – should not be discounted, despite our decision not to explore it here. Indeed, of all the approaches and strategies presented in this article, it may represent the best hope for protecting the environment from degradation and despoliation; we leave such a discussion, however, for another day.

We turn now to an application and evaluation of Tonry and Farrington's four major strategies of crime prevention as they might pertain to environmental crime and harm. In the following section, we contemplate problems, challenges and limitations related to the prevention of environmental crime and harm.

2.1 Law Enforcement Strategies

According to Tonry and Farrington (1995b: 3), "most people see crime prevention as the primary reason why criminal laws are enacted and why the criminal law is enforced. H. L. A. Hart (1968), this century's most influential writer in English on the philosophy of punishment, for example, took it as a given that criminal laws exist and are enacted in order that fewer of the proscribed behaviours should take place and that general prevention is the primary justification for maintaining a system of criminal punishment." As such, Tonry and Farrington (1995b) conceptualize "law enforcement strategies" as the enactment and enforcement of criminal laws that seek to deter, incapacitate and rehabilitate. In the context of environmental harm, however, it is important to remember that most environmental violations are resolved via administrative, regulatory, or civil mechanisms and rarely result in criminal charges or penalties (Brisman & South, 2013b). Consequently, enacting and enforcing environmental laws and regulations (which may or may not involve the criminal justice system) is an important ingredient in protecting the environment and preventing or reducing environmental harm (Tomkins, 2005)

– and may include both "command and control" regulations, which focus on preventing environmental problems by specifying how a business or corporation will manage a pollution–generating process, and "performance oriented" regulations, whereby each facility is left to determine the best method to achieve specific environmental performance goals (such as a reduction in the amount of pollution associated with a particular process) (see Stuart, 2013).

A substantial amount of literature exists in green criminology on environmental law enforcement and the challenges of environmental regulation. For example, Tomkins (2005) provides an overview and case studies of organizations engaged in international, regional, federal, state/provincial and local law enforcement. Akella and Cannon (2004) focus less on different levels, types and jurisdictions of police interventions/organizations, as Tomkins (2005) does, and more on emphasizing instead that "enforcement" is not a discrete entity but a process or chain that includes detection and the subsequent steps of arrest, prosecution and conviction. "For an enforcement system to effectively deter environmental crime," they argue, "each of those steps must happen efficiently. The system is only as strong as the weakest link in this chain" (Akella & Cannon, 2004: 3).

Evoking Akella and Cannon (2004), Sahramäki et al. (2015), in a recent article, analyse the prevention of environmental crime via the enforcement chain, arguing that improving the enforcement of environmental crime legislation is an essential part of prevention of environmental crimes, provided that it is supported by other prevention strategies, such as command-and-control (described above), "self-policing" (based on an assumption about the movement from traditional enforcement methods to market-based incentives, wherein economic incentives are offered to companies to report their own environmental violations to the public authorities), "self-regulation" (prevention strategies whereby norms and values work in concert with compliance systems inside the corporations to lead to compliance), "smart regulation" (which relies on the flexibility of regulators and whereby a variety of interventions are used according to the specific characteristics of the business or company, instead of creating more and more extensive rules that prohibit transactions) and "tailored enforcement" (which moves away from the "one-size-fits-all" approach of command-and-control strategies so that industry – and corporation-specific characteristics – are taken into account when choosing the most efficient enforcement strategy). More specifically, Sahramäki et al. (2015: 53) compare the enforcement chain (detection, prosecution and sanctioning) of environmental crimes in Finland and Sweden, and find that 1) command-and-control strategies alone are insufficient in the prevention of environmental crimes; and 2) criminal sanctions for environmental crimes can educate potential criminals by indicating the moral consequences of their actions, and should be inversely related to the probability of detection – "to account for the possibility that only a minor proportion of the offenders will be caught, bigger sanctions are needed". The authors note that while their study is unable to demonstrate if harsher penalties would in effect lead to more effective prevention of environmental crimes, prevention of environmental crime through criminal sanctions is, indeed, effective because the sanctions are imposed on corporate managers who generally have a social status and reputation that they

wish to protect. That said, the authors urge that if the goal of enforcement is to improve compliance, flexibility is needed from the regulatory and enforcement regimes (e.g., combining administrative sanctions and methods with criminal sanctions) and that overall, a wide range of crime prevention strategies are necessary. Essentially, Sahramäki et al. (2015: 56) maintain, "focusing only on single aspects of enforcement, such as detection, prosecution or sanctions, is unlikely to be sufficient in improving prevention. Therefore, the focus of the analysis must be directed to the entire enforcement chain." As such, "prevention should not be based solely on criminal law enforcement," the authors underscore; "enforcement needs to be supported by other crime prevention strategies, such as self-regulation, smart regulation and self-policing in order for it to be effective" (Sahramäki et al., 2015: 56) – thereby bolstering the assertion at the beginning of this section that in the context of environmental harm and crime, law enforcement strategies need to extend beyond the enactment and enforcement of criminal law to administrative, regulatory, or civil mechanisms. The authors conclude by stressing the importance of comparative research in the field of crime prevention, in general, and environmental crime prevention, in particular, due to the transnational character of environmental crimes: "States have [a] clear need to work together in order to prevent cross-border criminality effectively. However, differences in legislation and distribution of responsibilities between authorities may affect the concrete prevention efforts. As such, more comparative research is needed to identify the differences and similarities in the enforcement efforts of different countries, and furthermore to pinpoint the bottlenecks in prevention of environmental crime" (Sahramäki et al., 2015: 55).

Whereas Sahramäki et al. (2015) contend that analysing the prevention of environmental crime via the *entire* enforcement chain is more fruitful than considering one particular prevention strategy, Assunção, Gandour, & Romero (2013: 3) evaluate the impact of law enforcement and monitoring on deforestation, focusing on the Real-Time System for Detection of Deforestation (DETER) – "a satellite-based system that captures and processes georeferenced imagery on Amazon forest cover in 15-day intervals. These images are used to identify deforestation hot spots and issue alerts signalling areas in need of immediate attention, which then serve as the basis for targeting of law enforcement activity." As the authors explain, "prior to the activation of the real-time remote sensing system, Amazon monitoring depended on voluntary and anonymous reports of threatened areas" (Assunção et al., 2013: 7). With the adoption of the new remote sensing system, "the Brazilian environmental authority was able to better identify, more closely monitor, and more quickly act upon areas with illegal deforestation activity" (Assunção et al., 2013: 3). Assunção et al. (2013: 3) note, however, that "DETER is incapable of detecting land cover patterns in areas covered by clouds," meaning that "no deforestation activity is identified in these areas and, thus, no alerts are issued. As they explain (Assunção et al., 2013: 9), "due to DETER's inability to detect land cover patterns beneath clouds, law enforcers have a lower chance of being allocated to areas that are covered by clouds during remote sensing, even if deforestation activity is occurring in these areas". The authors conclude that monitoring and law enforcement activities have a substantial effect

on deforestation activity – that DETER-based monitoring and law enforcement have played a crucial role in curbing Amazon deforestation (as compared to other recent conservation efforts adopted in Brazil) and consequently containing carbon dioxide (CO_2) emissions, without adversely affecting local/municipality-level agricultural production (Assunção et al., 2013).

Finally, Stretesky (2006) considers the U.S. Environmental Protection Agency's (EPA) Self-Policing Policy (more commonly referred to as the "Audit Policy"), which waives or reduces penalties when regulatory entities voluntarily discover, disclose, and correct environmental violations; he finds that while large companies are more likely to use the Audit Policy than small companies, companies are more likely to self-police minor violations (such as reporting violations) than more serious emissions or violations that breach their permits, leading to the conclusion that regulatory agencies like the EPA can do relatively little to increase the self-policing of environmental violations. Such findings are particularly depressing given that at the other end of the spectrum, the EPA and the U.S. Department of Justice (DOJ) largely decline to bring criminal charges against those violating environmental laws (see, e.g., Jacobs, 2015). Indeed, of the more than 64,000 facilities that are currently listed in U.S. environmental agency databases as being in violation of federal environmental laws, fewer than one-half of one percent of violations trigger criminal investigations (Kates, 2014).

Thus, in the context of environmental law enforcement strategies (which we have expanded beyond the enactment and enforcement of criminal laws that seek to deter, incapacitate and rehabilitate to include administrative, regulatory, or civil mechanisms), it appears that self-policing and criminal prosecution do not offer much promise. Instead, the consensus seems to favour a multi-jurisdictional approach that seeks to strengthen the "enforcement chain" and employ a range of prevention strategies, with "command-and-control" regulation, "self-policing," "self-regulation," "smart regulation," "tailored enforcement," and criminal prosecution. Before moving to "developmental prevention" – the second of Tonry and Farrington's (1995b) strategies – one last approach bears mention. In late 2014/early 2015, in the USA, *National Public Radio* and *Mine Safety and Health News* reported that safety penalty fines of nearly $70 million had been imposed on delinquent operations at more than 4,000 coal and mineral mines. All the while, the companies responsible continued to manage these dangerous and sometimes deadly mining facilities. The airing of this news prompted the federal Mine Safety and Health Administration (MSHA) to threaten to shut down a coal mine that had failed to pay $30,000 in overdue penalties. When the owner refused to pay, the MHSA shut down the mine. Within forty minutes, mine officials agreed to a payment plan and the mine reopened. While there is some question as to whether the MHSA has the legal authority to shut down mines simply because they have not paid their penalties, this type of straightforward and tough response merits further consideration (see Berkes, 2015).

2.2 Developmental Prevention

Tonry and Farrington (1995b: 2) conceptualize "developmental prevention" as "interventions designed to prevent the development of criminal potential in

individuals, especially those targeting risk and protective factors discovered in studies of human development". As they explain, "interventions that improve parenting skills, children's physical and mental health, and children's school performance and reduce risks of child abuse are also likely to reduce later offending" (Tonry & Farrington, 1995b: 10).

For the most part, this has been an under-explored area in the context of environmental crime (cf. Agnew (1998), who notes data suggesting correlations between animal abuse and violent crime against humans, and who describes how certain individual traits and socialization regarding animals may cause animal abuse). But there is little reason to suggest that if interventions can be designed to prevent the development of potential in individuals to commit crimes against persons and property, they cannot also be created to thwart the development of *environmental* crime potential in individuals. Indeed, as White and Heckenberg (2014: 280) suggest, using recreational fishing as an example:

> *Social crime-prevention* methods might introduce school children to programmes that reshape their concepts of 'the environment', 'fish' and 'fishing'. This could include strategic solutions ranging from 'catch and release' as an imperative for recreational fishing, through to doing assignments on the effects of climate change on fish species. Young people who are known to, or who seem likely to, degrade environments or abuse animals could be encouraged to participate in programmes and projects aimed at challenging and changing attitudes and behaviour.

In other words, just as interventions might be designed to prevent young people who are known to – or who seem prone to – engage in crime and delinquency from taking part in such activities or adopting such behaviors – White and Heckenberg (2014) suggest that young people who have despoiled the(ir) environment(s) or demonstrated a disrespect for flora and fauna could be steered towards programs intended to positively affect their ecological beliefs and practices.

2.3 Community Prevention

Community prevention is intended to transform the social conditions that affect offending in residential communities and "has included efforts to control crime by altering building and neighbourhood design to increase natural surveillance and guardianship, by improving the physical appearance of areas, by organizing community residents to take preventive actions and to solicit additional political and material resources, and by organizing self-conscious community crime prevention strategies such as recreational programs for children" (Tonry & Farrington, 1995b: 9). Thus, for example, while Groff and McCord (2012) have posited that offenders may be attracted to neighbourhood parks in urban areas with little formal or informal control (and where dense foliage and poor lighting may reduce natural surveillance) and have found that neighbourhood parks are associated with increased levels of crime in surrounding areas, their work has also suggested that the more "activity generators" a park has (e.g., recreation centres,

pools, playgrounds) – especially those related to organized sports – the more legitimate users are attracted to the park and the less crime occurs in the park environs. As such, they recommend that city planners contemplate developing parks that include activity generators related to organized sports because their presence is associated with diminished crime in the park environs, and that community groups can play a crucial role in reducing crime by organizing and supporting activities designed to maximize use of park facilities.

Whether it is in the context of preventing violent crime, property crime and disorder events, as Groff and McCord (2012) find, or environmental crime, citizen groups and community involvement are key. As White and Heckenberg (2014: 293) explain,

> Environmental crime prevention, as with all good crime-prevention approaches, ought to incorporate the activities of ordinary people as part and parcel of the overall strategy ... For example, some types of engagement may be based upon Neighbourhood Watch models of citizen surveillance and monitoring – as in the case of coastal watch projects intended to alert authorities to changes in environmental conditions or the presence of illegal fishers ... In other types of community participation, local residents in urban areas may well play an important and vigilant role in exposing toxic waste spills, release of pollutants into the air, water and land, and illegal harvesting of flora and fauna.

But community crime prevention is more elaborate and dynamic than just this. Whereas White and Heckenberg (2014) draw on community (street crime) prevention strategies as suggested by Tonry and Farrington (1995b) and Groff and McCord (2012) and apply them to environmental crime scenarios, Pretty, Wood, Bragg, and Barton (2013) describe how various crimes unrelated to nature and the environment might be mitigated or addressed with "nature-based interventions."

As Pretty et al. (2013) argue, rather than viewing parks as potential sites of crime and foliage as cover for illicit activities, nature and green space should be seen as providing important benefits for human well-being, both through contact with and the ability to view and access nature (see also Hine, Peacock, & Pretty, 2007; Pretty, Peacock, Sellens, & Griffin, 2005). Indeed, the use of nature-based interventions has also been demonstrated to increase health and well-being in vulnerable groups of people (Hine, Peacock, & Pretty, 2008; Sempik, Hine, & Wilcox, 2010). According to Pretty et al. (2013), youth at risk of involvement in crime, individuals who are on parole or probation, ex-offenders and victims of crime could all be considered to be part of a vulnerable group for whom nature-based interventions can be useful (see also Carter & Hanna, 2007; Hine et al., 2008; Peacock, Hine, & Pretty, 2008). For example, Carter and Pycroft (2010) describe how prisoners and probationers can be diverted from future crime through engaging them in "Offenders and Nature"-type schemes bringing them into contact with nature and those who work in forest and conservation management. The use of nature-based interventions for individuals involved in or at-risk of participation in crime can foster positive behavioural change by addressing many of the issues directly related to their criminal activity and

helping them to avoid and overcome these problems (Pretty et al., 2013; see also Hine et al., 2008; Peacock et al., 2008; Pretty et al., 2009). For individuals who have been victims of crime, interactions and experiences with nature can help them to deal with the trauma that they have experienced and reintegrate them into society (Hine, Pretty, & Barton, 2009).

Essentially, Pretty et al. (2013) contend, the reductions in criminal activity achieved through the use of nature and nature-based interventions have direct (and, we might add, broad) implications for contemporary criminological theory. Natural environments can foster the development of social cohesion, trust and friendships for neighbourhoods, social groups and young people (Kuo & Sullivan, 2001a, 2001b; see also Brisman, 2007, 2009; see generally Brown, 2014), and can also provide a suitable environment whereby young people can interact in positive ways (Peacock et al., 2008). These benefits can result in increased levels of collective efficacy and social organization – both of which influence criminal activity (Browning, Feinberg, & Dietz, 2004; Sampson & Groves, 1989; Sampson, Raudenbush, & Earls, 1997).

Others have also suggested that natural environments can contribute to crime prevention (see, e.g., Clarke, 1997; Crowe & Zahm, 1994) – that natural areas, such as bushes and trees can affect access to areas where criminal activity may take place (Crowe & Zahm, 1994), whilst natural interventions can moderate wayward behaviour, change self-perceptions and self-worth, and thus reduce both the opportunities and the desire to take part in criminal behaviour (Carter, 2007; Hine et al., 2008; Peacock et al., 2008). Nature and natural interventions can be effective at rehabilitating individuals both within or at risk of entering the criminal justice system (see Ministry of Justice, 2010).

In sum, the community (street crime) prevention strategies suggested by Tonry and Farrington (1995b) and Groff and McCord (2012) can be applied to environmental crime and environmental crime prevention, as articulated by White and Heckenberg (2014). But we must also bear in mind the work of Pretty et al. (2013) and others, who demonstrate how the creation and maintenance of urban nature and green space, as well as contact with rural natural environments, can function to provide innovative directions for community (street crime) prevention strategy and offender reform and redirection.

2.4 Situational Prevention

Situational prevention is based on the premise that much crime is contextual and opportunistic (Tonry and Farrington, 1995b). As such, interventions are designed to diminish the occurrence of crimes, especially by reducing opportunities and increasing risks. According to White and Heckenberg (2014: 278),

> In regard to environmental crime, great purchase has been derived from the application of 'situational crime prevention' approaches and techniques. Situational crime prevention is based upon the idea that for someone who is capable of, and not adverse to, offending, the decision whether or not to commit a specific crime will be a function of both whether the opportunity presents itself and whether

> the likely rewards from exploiting that opportunity are sufficient to offset the perceived efforts and risks (Sutton, Cherney, & White, 2013). Situational prevention revolves around identifying modifiable conditions that are susceptible to intervention, and which can reduce or pre-empt perceived opportunities for crime (Clarke, 1980, 2005; Clarke & Homel, 1997; Tilley, 2006).

Drawing on Clarke and Eck (2005), White and Heckenberg (2014) describe broad approaches and specific techniques of situational prevention: *increase the effort of crime* (through target-hardening, controlling access to facilities, deflecting offenders, and controlling tools/weapons); *increase the risks* (by extending guardianship, facilitating natural surveillance, reducing anonymity, utilizing place managers, and strengthening formal surveillance); *reduce the rewards* (such as concealing targets, removing targets, identifying property, disrupting markets, and denying benefits); *reduce provocations* (reducing frustration and stress, avoiding disputes, reducing emotional arousal, neutralizing peer pressure, and discouraging imitation); and *remove excuses* (via setting rules, posting instructions, alerting conscience, assisting compliance, and controlling access to drugs, alcohol and other facilitators). Applying these approaches and techniques to the example of illegal fishing, White and Heckenberg (2014) propose increasing the effort (e.g., fencing off key areas; ID badges for users; partial park closure; no anchor markers; vessel and employee registration); increasing the risk (e.g., harbour and jetty vessel checks; CCTV, satellite photos, vessel monitoring scheme; boat and aircraft patrols; reporting by public users); reducing the rewards (e.g., preventing access to parks; relocating species; licensing of vessels and fish tagging; disrupting markets/distribution channels; issuing permits and licensing); and inducing guilt or shame (e.g., strengthening moral condemnation of over-fishing; facilitating compliance by setting up community hot-lines; use of warning signs in ports; and information pamphlets about the state of fishing stocks).

Much like arguments in favour of "tailored regulation" or "tailored enforcement," which attempts to account for the type of environmental actor in question and adjust incentives, penalties, and even standards of proof accordingly (see, e.g., Fortney, 2003), White and Heckenberg (2014: 283) maintain that moulding situational prevention responses to the specific circumstance, context and crime is essential. Thus, for example, preventing elephant poaching might entail closure of logging roads, DNA coding of ivory and the use of pilotless drones, while preventing rhinoceros poaching might be accomplished by increasing the number of on-the-ground rangers and military patrols and dehorning animals (White and Heckenberg, 2014: 283–284 (citing Ayling, 2013; Lemieux & Clarke, 2009; Pires & Clarke, 2011, 2012; Pires & Moreto, 2011; Wellsmith, 2010, 2011)).

Other examples abound. For instance, Bartel (2005) reports on the use of satellites to uncover illegal land clearance – a way of increasing the risks of this crime – while Schneider (2008) assesses the "market reduction approach," which aims to reduce and disrupt the market for endangered flora and fauna, thereby reducing the rewards and making it more risky for individuals to engage in the illicit trade in endangered wildlife and plant species. Lemieux's (2014b) entire volume is devoted to determining what opportunity structures favour poaching

(e.g., parrot, rhino, tiger) and how situational crime prevention may reduce its prevalence. Wellsmith (2010) considers the benefits of extending situational crime prevention techniques to environmental harm, using the example of endangered species conservation; these techniques include: increasing the effort by securing reserves; increasing the risks by rewarding vigilance from locals and tourists; reducing rewards by hiding targeted flora within other (non-invasive crops); removing provocations by offering compensation when endangered species destroy crops and/or livestock; and removing excuses by requiring more explicit customs declarations. While such measures may deter potential offenders and disrupt potential markets, Wellsmith (2010) recognizes that some situational crime prevention interventions may result in displacement to other (endangered) species or other locations, ranges or states. She also notes that promoting ecotourism or wildlife tourism may "alter individuals' behaviour so that non-crime activities are chosen instead," but that "expanding the tourist infrastructure (e.g. roads) may result in habitat destruction and associated loss of biodiversity," meaning that solutions that result in the reduction of trade in endangered species and the risk of extinction that they face may still prove problematic from an ecological or species justice perspective (Wellsmith, 2010 (citing Lado, 1992)). Thus, in order for situational crime prevention strategies to be seen as "green solutions," less anthropocentric approaches that avoid habitat destruction must be employed (Wellsmith, 2010); in order to ensure that situational crime prevention interventions do not simply shift crime to other places, "the structural or underpinning reasons for different types of [poaching]" must be considered and "specific communal circumstances (such as high levels of poverty and unemployment among local residents)" must be taken into account (White & Heckenberg, 2014: 281, 285). In the context of situational prevention, then, as with the other prevention approaches discussed above, "different kinds of places lend themselves to different sorts of environmental harms and different kinds of intervention. […] The specificity of the harm ought to drive the particular type of intervention that is adopted in any given situation" (White & Heckenberg, 2014: 278, 283).

3 PROBLEMS, CHALLENGES AND LIMITATIONS

Some governments take the issue of environmental crime prevention more seriously than others, stressing that this should be a matter of shared responsibility. As one example, the advice on pollution prevention from the UK Government Environment Agency points out that "businesses and individuals are responsible for complying with environmental regulations and for preventing pollution of air, land and water. Many thousands of pollution incidents occur each year, originating from factories, farms, transport activities and even homes. Each incident is an offence and can result in prosecution as well as environmental damage. However, most cases are avoidable […]" (Environment Agency et al., 2013).

As we have already noted, in many – if not most – jurisdictions, it is not the police but environmental regulators that have primary responsibility for the application of law and securing of compliance, often demonstrating a preference for use of non-criminal penalties and adoption of a civil sanctions regime (see

Eman (2013) for a discussion of the entities in Slovenia that deal with offences against the environment). Such regimes may depend upon administrative, paper-based monitoring and encouragement of compliance, and this is probably easier to apply when dealing with relatively low-level and minor offences. In political contexts where there is hesitancy about being seen as "anti-business" and where public funds are scarce and scrutinised, then a focus on the "low-level and minor" may be encouraged and constitute the bulk of occurrences processed. Indeed, as Eman (2013: 247) observes, "one of the major problems in Slovenia is the dependence of municipalities (regions and people) on industry and the businesses in their area. [...] These companies are often major polluters, but the local representatives are indulgent, compassionate and tolerant towards the pollution due to the dependence on the business, which among other things represents needed working places."

Prevention and avoidance of breaches of laws and regulations are desirable for many reasons but the idea of shared responsibility for prevention is not always accepted. Or the "message is received" but "the meaning is not understood". The strategies of denial and techniques of neutralization that are so familiar to us from the criminological literature on other subjects (Cohen, 1993; Sykes & Matza, 1957) are often at work here (Brisman & South, 2015b). Furthermore, as McGarrell and Hipple (2014: 250) note, a wide range of criminological research evidence suggests that "the adoption of new policy or practice often suffers from implementation failure" stemming from "ideological conflict, resource constraints, opposition from line-level actors, poor communication, and lack of clarity and consistency in policy or intended practice," and that "even in cases where [...] support by key decision-makers and resource constraints [is] not an issue," weak implementation can hinder impact. In essence, politics and law enforcement frequently share a short-term horizon dictated by seeking the approval of the general public, superiors and peers and avoiding the uncomfortable and unpopular.

As with many other kinds of crime or cases of non-criminal breaking of rules or regulations, the failure to take measures to avoid the problem is significant. For businesses, non-compliance with "good practice" and with efforts aimed at prevention can follow from short-term assumptions about cost-savings and familiar narratives of denial: "whatever I do won't matter or make a difference," "no-one will catch me," "others are more guilty of this than I," and so on. Because there have always been problems with the inadequacy of resources for enforcement of such rules and laws, it is quite possible that offenders will remain undetected or not prosecuted (de Prez, 2000; du Rées, 2001; Sahramäki et al., 2015; White, 2010; White & Heckenberg, 2014; see generally Eman, Meško, & Ivančič, 2012; Larsson, 2012) – a phenomenon that has made the thwarting of waste trafficking and illegal waste disposal, animal and plant species trafficking, and poaching and illegal fishing in South-Eastern Europe particularly vexatious (see, e.g., Eman, 2013; Eman & Meško, 2013). But it is also the case, that the *victims* of environmental crimes and harms are easily overlooked, as Skinnider (2013: 1) acknowledges, noting that "the complexity of victimization—in terms of time, space, impact, and who or what is victimized – is one of the reasons why governments and the enforcement community have trouble in finding proper responses" (footnote

omitted). Furthermore, in terms of both time and geography, while the effects of a single offence at one location or at one point in time may not appear significant, as Skinnider (2013: 1) recognises, "the cumulative environmental consequences of repeated violations over time can be considerable".

4 DISCUSSION/CONCLUSION

Environmental issues have come to assume a position of some greater prominence on policy, enforcement and criminological agendas (see Assunção et al., 2013). For all the desirability and promise of crime prevention orientated toward environmental offending, however, it is an underdeveloped field, especially in regions of South-Eastern Europe (Eman & Meško, 2013). Meanwhile, legislation, enforcement, prosecution and meaningful punishment face considerable challenges ranging from apathy to resistance (see, e.g., Brack, 2002; de Prez, 2000; du Rées, 2001; Elliott, 2007; see generally Assunção et al., 2013; Eman & Meško, 2013; Sahramäki et al., 2015). Nonetheless, with regard to the future momentum of initiatives to take environmental law enforcement and regulatory compliance seriously, it is important to recognise that even though the political profile of environmental issues may fall as well as rise, some of the key features of actions and frameworks of response *are* being consistently pursued.

Tonry and Farrington (1995b: 7) note that "different crimes have different causes, different offenders commit crimes for different reasons, and sensible prevention policies should take account of those differences". As such, they contend that "crime prevention strategies should be based on wide-ranging theories about the development of criminal potential in individuals and about the interaction between potential offenders and potential victims in situations that provide opportunities for crime" (Tonry & Farrington, 1995b: 11). With this in mind, rather than relying on the apparatus of the criminal justice system, environmental crime prevention might be (better) achieved through greater public education about the harmful environmental consequences of individual and collective patterns and practices, as well as through greater public engagement and participation in the detection and reduction of environmental harms (see Eman, 2013; White & Heckenberg, 2014; see generally Larsson, 2012) – not least in enhancing the perceived status, importance and legitimacy of such preventative and mitigating activities (see Sahramäki et al., 2015). Indeed, the most promising scenario for future crime prevention is one in which we recognise that we are individually and collectively responsible for the health of our environment (Agnew, 2013) and that we or future generations will suffer if we do not preserve it (Brisman & South, 2014b, 2014c, 2015a; Eman, 2013).

From the point of view of a green criminology, while humans and nonhuman animals are differentially affected and women, children, ethnic minorities and the poor are frequently disproportionately impacted, the ultimate environmental victim is the planet, which we share and which sustains life. There cannot be any better argument for developing and implementing strategies to prevent crimes and harms that damage the environment and for crafting and enforcing laws that are designed to protect it. Borrowing from Young (1999: 130; see also Aas, 2013:

67), we might suggest that while environmental harm and crime cause problems for human society and the Earth as a whole and while environmental preservation is in the interest of all humanity (Meško, Dimitrijević, & Fields, 2011), it is human society's growth-oriented economic processes that cause the problems of environmental harm and crime. Unfortunately, given neoliberalism's emphasis on individual responsibility, coupled with a major retreat of the state in the area of corporate regulation, preventing environmental harm and crime will continue to be an imposing challenge (Aas, 2013; Brisman, 2013; White & Heckenberg, 2014).

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Temporal Dimension of Reproductive Choice and Human Rights Issues[1]

Dragan Dakić

Purpose:

The purpose of this investigation is to contribute to better understanding of the scope of positive obligations in safeguarding specific rights related to reproduction. The first aim of the research is to determine the States' obligations in respect of an abortion surviving child. These obligations arise from the right to life and the prohibition on inhuman treatment. The second aim is to determine the effects of temporal constraints to reproductive choice on the Conventional rights of a pregnant woman. This refers to the right to privacy.

Design/Methods/Approach:

Spelled objectives are mostly achieved through the case-law study method. Also, we have used a method of comparison – between exclusive and inclusive theoretical approaches to the issue. We have approached to the topic from the utilitarian positions. The scope of this research is limited only to the margins of the mother-foetal conflict.

Findings:

The main findings could be summarized as follows: the States' positive obligations require providing medical care to the surviving child. Simultaneously, the temporal constraints to accessing the negative aspect of reproductive choice require the States to provide timely information to a woman. Thus, she can decide about terminating her pregnancy.

Originality/Value:

The conclusions may contribute to domestic thought, which mostly relies on defect utilitarian calculations when discussing the issues. The judicial bodies may benefit from this research since it highlights which measures should be imposed upon a handling practitioner. The medical stuff is provided with guidance on how to face a situation when it is overlooked in legislation.

UDC: 342.7

Keywords: reproductive choice, temporal constraints, right to life, blameworthy, private life

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Namen prispevka:

Namen prispevka je prispevati k boljšemu razumevanju pozitivnih dolžnosti pri varovanju posebnih pravic, povezanih z reprodukcijo. Prvi cilj raziskave je ugotoviti dolžnosti države pri pozni prekinitvi nosečnosti, kjer glede na različne metode prekinitve obstaja možnost, da otrok prekinitev nosečnosti preživi. Obveznosti držav članic Sveta Evrope do takega otroka se obravnavajo v sklopu pozitivnih dolžnosti, ki bremenijo države v okviru pravice do življenja in prepovedi nehumanega in ponižujočega ravnanja. Drugi cilj je ugotoviti učinke časovnih omejitev reproduktivne izbire na osnovi konvencijskih pravic nosečnic, ki so zaščitene v okviru pravice do zasebnega življenja.

Metode:

Navedeni cilji so v večini doseženi preko študije primerov. Uporabili smo metodo primerjave med izključujočimi in vključujočimi teoretičnimi pristopi k temu vprašanju. Pri analizi smo uporabili utilitaristični pristop. Cilj te raziskave je omejen le na mejno področje odnosa mati – zarodek.

Ugotovitve:

Glavne ugotovitve raziskave so naslednje: pozitivne dolžnosti države zahtevajo zagotovitev zdravstvene oskrbe za otroke, ki preživijo prekinitev nosečnosti, hkrati pa časovna omejitev pristopa k splavu nalaga državi obveznost, da nosečnici pravočasno zagotovi ustrezne informacije, na podlagi katerih se bo odločila o prekinitvi nosečnosti.

Praktična uporabnost:

Sklepi lahko prispevajo k oblikovanju domačih mnenj, ki večinoma temeljijo na napačnih utilitarističnih predpostavkah pri obravnavi teh vprašanj. Raziskava je lahko uporabna tudi za pravosodne organe, saj izpostavlja ukrepe, ki bi morali biti uvedeni zoper odgovorne zdravnike. Medicinsko osebje se lahko v prispevku seznani z navodili, kako ukrepati v primerih, ki so spregledani v zakonodaji.

UDK: 342.7

Ključne besede: reproduktivna izbira/pravica, časovna omejitev, pravica do življenja, kazenska odgovornost, zasebno življenje

1 INTRODUCTION

For the purpose of this article, the phrase 'reproductive choice' refers to its negative aspect, i.e., the access to pregnancy interruption. Also, this phrase has been used by the Conventional institutions, the former Commission for Human Rights and now European Court of Human Rights. The European Court of Human Rights (hereinafter: the Court) has used this phrase mostly when deciding on relations between abortion and human rights safeguarded through European Convention on Human Rights and Fundamental Freedoms (1950; hereinafter: the Convention).

In order to explore temporal constraints to reproductive choice and human rights consequences, which have arisen from it, we address its main features in the first section of the article. This section is divided into two subsections. The first subsection addresses the legal background of a temporal dimension of reproductive choice. It is done through the analysis of historical developments of two different European national legislations, which represent essentially opposite approaches to the issue of the right to life beginning. Current national standings on temporal constraints are presented in the second subsection. Further discussion in this subsection presents the impact of national standings on regional human rights approach. Through recapitulation of case law, the concluding remarks in this section are about the temporal frameworks of reproductive choice, which is recognized by the Conventional institutions as compliant with human right guarantees.

The second section discusses one of the most controversial questions concerning temporal dimension of reproductive choice. It investigates human right requirements in regard to an empirical consequence of the extensions of temporal framework. It should be borne in mind that neither this section nor the article as a whole addresses legitimacy of late termination of pregnancy or legitimacy of temporal constrains. Special attention is given to the analysis of general right to life requirements regarding the abortion surviving child. Our starting point considers the issue whether the right to life guarantees is applicable on such a child, and if it is, whether all Council of Europe Member States (hereinafter: the States) have obligations to provide life-sustaining treatment or medical care to this child. Furthermore, it considers the obligation of the States to enforce judicial mechanisms against (handling) medical professionals who fail to do so. In order to determinate whether such a child is entitled for human rights protection, the article discusses on his/her Conventional status, which is afforded to him/her through case law. The consequences of this status are addressed in proceedings. Simultaneously, it is discussed whether such consequences are just theoretical ones taking into account the procedural requirements of human right mechanisms.

The third section addresses the effects of temporal dimension of reproductive choice on the private life of a pregnant woman. Temporal constraints unequivocally affect a scope of her reproductive choice denying her access to legal abortion. From the other hand, temporal constraints safeguard her health as late termination of pregnancy imposes considerable risk to it. Thereof, the primary object in this discussion is whether the States which permit termination of pregnancy maintain fair balance between the private life of the pregnant woman on one hand and public interest in maternal health safeguarding on the other hand. National practices in resolving such conflicts have been examined by the Conventional institutions in the cases concerning timely information on mothers' entitlement for therapeutic abortion or foetus's condition in the light of temporal constrains of reproductive choice. Through the recapitulation of relevant case law, we have allocated certain general human rights requirements, which safeguard reproductive choice when national legislation allows abortion access and imposes temporal restrictions to it. Close to this subject is the question of informed consent, which is not going to be addressed on this occasion. Instead, our focus will remain on timely, full and reliable information as one of its aspects.

2 TEMPORAL DIMENSION OF REPRODUCTIVE CHOICE

2.1 Legal Background

The European approach to reproductive choice is partly determined with its historical course, which can be described as ranging from criminalization of abortion to arising reproductive rights. In proceedings, we are going to briefly address legal evolution, which has occurred in statutory regulation of two major European legal schools in regard to the negative aspect of reproductive choice, which refers to abortion. First, we are going to review the developments in England law, which is the leading example of European liberal approach. On the other hand, we choose to explore the historical roots of German legal approach, which is, considering the current legal framework especially in the field of biomedicine, known as one of the most restrictive regimes in Europe.

The first references to abortion in English law appeared in the 13th century (Wakley, 2007). The law followed religious standings that abortion was acceptable until 'quickening', i.e., till the soul entered the body (Eser, 1986). The legal situation remained constant for centuries. In 1803, the Ellenborough Act prescribed that abortion after 'quickening' (16–20 weeks) should be sanctioned with capital punishment (Parliament of the United Kingdom of Great Britain and Ireland, 1803). Previously, the punishment had been less severe. In the 1837, this Act was amended to remove the distinction between the abortion before and after quickening. Offences against the Person Act (Parliament of the United Kingdom of Great Britain and Ireland, 1861) performing an abortion or trying to self-abort carried a sentence of life imprisonment. Infant Life Preservation Act adopted in 1929 introduced a new crime of killing a viable foetus (at that time fixed at 28 weeks) in all cases except when the woman's life was at risk (British Parliamentary, 1929). This Act was at force till Abortion Act (British Parliamentary, 1967), which legalized the abortion under certain conditions. It allows an abortion on demand till 24th week of pregnancy and certain grounds for late-term abortion. In 1990, the Human Fertilization and Embryology Act introduced controls over new techniques, which had been developed to help infertile couples and to monitor experiments on embryos (British Parliamentary, 1990). The 1990 Act lowered the legal time limit from 28 to 24 weeks, which is the currently accepted point of viability. It also clarified the circumstances (grounds) under which abortion could be obtained at a later stage.

The first German native act regulating abortion was the Constitutio Criminalis Carolina of 1532 (effective in some parts of Germany until the mid-nineteenth century). The Constitutio Criminalis Carolina as well as certain criminal codes of various German states punished abortion less severely in the first half of pregnancy than in the second (Eser, 1986). Certain German states did not punish the former at all. From the middle of the nineteenth century the German states considered abortion to be an independent crime distinguishable from the killing of born life (Berner, 1900). The highest German court in decision from 1927 considered abortion as an 'extra-statutory necessity' when it was performed in end to secure the pregnant woman's life and health. Further analysis of national case

law envisages that legalizing abortion during the first three months of pregnancy was considered for incompatible with the constitutionally guaranteed right to life of the foetus. On the other hand, in attempt to regulate time laps between procreation and pregnancy and prevent misuse of artificially created embryos, the Law for Protecting Embryos (ESchG) was passed to protect embryos in vitro from the moment of fertilization, providing prenatal life with wider scope of the protection, from the moment prior the law rendering abortions illegal recognizes that pregnancy has begun (Karnein, 2012).

2.2 Current National Positions and Regional Approach

At national level temporal dimension of reproductive choice is still covered by a prohibition against unlawful termination of pregnancy sanctioned through criminal law. Different criteria, which qualify pregnancy termination as lawful or unlawful are mostly reduced on procedural requirements which should be fulfilled at certain gestational age. For instance, in the Western Balkan countries, self-termination of pregnancy is not criminalized whenever it occurs, even in situation when it is not permissible, considering temporal limitations. There are opinions that grounds for such an approach are determined by considerations for women's health – stimulating them to look for a professional help in case of health complications (Lazarević, 1983). A quite opposite approach is taken in Germany (German Criminal Code, 1998), which introduces punishment of imprisonment if a crime (of unlawful termination of pregnancy) was committed by a woman. The grounds for the latter approach could be also found in the consideration for women's health. It stimulates women to practice safe and lawful methods of pregnancy termination and to avoid health complications. The former approach facilitates health consequences while the latter apparently prevents them.

Considering protection of the positive aspect of reproductive choice by means of criminal law, we might consider that European legislators were negligent to it. Legislation of the most Council of Europe Member States does not extend offence of unintentional homicide to the foetus regardless of its gestational stage. Unlike this general feature of the most European legislations, there are three countries, which have created specific offences.[2] In Italy a person negligently causing a pregnancy to terminate is liable to a prison sentence of between three months and two years under section 17 of the Abortion Act of 22 May 1978 (British Parliamentary, 1978). In Spain Article 157 of the Spanish Criminal Code (1995) makes it a criminal offence to cause damage to the foetus and Article 146 an offence to cause an abortion through gross negligence. In Turkey Article 456 of the Turkish Criminal Code (2004) lays down that a person who causes damage to another shall be liable to a prison sentence of between six months and one year; if the victim is a pregnant woman and the damage results in premature birth, the Criminal Code prescribes a sentence of between two and five years' imprisonment. French criminal law recognizes that if, as a result of unintentional negligence, a mother gives birth to a live child who dies shortly after being born,

2 *See Vo v France Application No 17004/90, Merits, 8 July 2004, para 41.*

the person responsible for it may be convicted of the unintentional homicide of the child.[3]

In regard to the negative aspect of reproductive choice, European national statutory regulation is divided into two broadly drawn concepts. There are the States with a restrictive approach to abortion and the States with a liberal legislation.[4] In most of the States the law permits abortion in order to save the expectant mother's life. Abortion is available on request (according to certain criteria including gestational limits) in some 30 States. Abortion on health grounds is available in some 40 Contracting States, while on well-being grounds in some 35 of them. Three States prohibit abortion in all circumstances (Andorra, Malta and San Marino). In recent years, certain States have extended the grounds on which abortion can be obtained (Monaco, Montenegro, Portugal, Spain and Bosnia and Herzegovina/Republic of Srpska), while two States reduced them (Hungary and the Former Yugoslav Republic of Macedonia). Ireland adopted legislation, which enables women to obtain abortion in certain situations.

Such legal background affected regional human right approach to the negative aspect of reproductive choice. Apparently, the issue of prenatal life protection has not been resolved within the majority of the States themselves and there is no European consensus on the scientific and legal definition of the beginning of life. Thereof, whenever the questions of relations between human right guarantees and abortion have been invoked before the Court, it stated that the issue of determining the moment when the protection of right to life began had come within the States' margin of appreciation. However, the Court noted that most States had had in their legislation resolved the conflicting rights of the foetus and mother in favour of a greater access to abortion. This also refers to wider temporal frameworks of abortion permissibility.

Convention institutions have found that abortion is compliant to human right guarantees when it occurs in the initial stage of pregnancy on the grounds of medical indication and/or well-being reasons. Such provisions are, from the Conventional point, legitimizing for interference into other parties' conflicted rights and according to Court's opinion taken in the *Boso v Italy*,[5] they strike a fair balance between, on the one hand, the need to ensure protection of the foetus and, on the other, the woman's interests. In this light, some considers that if the State permits temporally unlimited abortions it would breach Conventional guarantees (O'Donovan, 2006). In their case law, Convention institutions do not determinate the exact duration of the initial stage of pregnancy. The conclusion could be reached through a recapitulation of the relevant case law. In the *Paton* case[6] in which temporal parameter was applied for the first time, the termination of pregnancy occurred approximately at 10th week of gestation. In the aforementioned *Boso v Italy*, the precise information when termination occurred was not presented to the Court. It was concluded according to the procedural

3 *See Vo v France Application No 17004/90, Merits, 8 July 2004, para 83.*

4 *For the European laws review refer to A, B and C v Ireland, Application No 25579/05, Merits, 16 December 2010 para 112.*

5 *Boso v Italy, Application No 50490/99, Merits 5 September 2002.*

6 *See Paton v United Kingdom, Application No 8416/78, Decision of the Commission 1980at para 2–4.*

provisions of the national legislation to have been happened during the first twelve weeks. In *R. H. v Norway* the abortion occurred between 12th and 18th week of pregnancy. Therefore, we could conclude that the relevant case law indicates that first 18 weeks comes within the initial stage of pregnancy. In the *following discussion*, we will be considering the temporal dimension of reproductive choice and how it bears significant legal consequences. It affects the guarantees inherent in Article 2, Article 3 and Article 8 of the Convention (1950).

3 LATE TERMINATION OF PREGNANCY AND RIGHT TO LIFE PROTECTION

In the previous subsection, we were trying to determine the duration of the initial stage of pregnancy. It is, according to Conventional institutions, 'safe zone' for operation of medical indication and/or well-being reasons as abortion grounds. Since it is not defined at regional scale when the right to life begins, there is no strict parameter in defining the meaning of 'late termination of pregnancy'. It could mean the termination following the initial stage of pregnancy or any other provisory moment. For the purpose of further discussion, 'late termination of pregnancy' means the interruption of pregnancy after the point that the foetus becomes viable. From this point, it is quite possible that the child survives pregnancy interruption. Most techniques of late termination of pregnancy are similar to the procedure of medically induced labour. The difference between those two procedures is in their purposes; the former aims to deliver the life, while the latter does not (Mujović-Zorić, 2009). The human right issues which arise here relates the States' obligation to provide life-sustaining treatment or medical care for those who survive abortion, legal accountability of handling medical professional (Wicks, Wyldes, & Kilby, 2004), and even the purpose of abortion itself.

The obligation of the States to provide life-sustaining treatment or medical care could arise of Article 2 of the Convention (1950), which reads:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

According to Conventional institutions, right to life cannot be derogated,[7]

7 *McCann and others v The United Kingdom, Application No 18984/91, Merits, 27 September 1995, para 147; Soering v The United Kingdom, Application No 14038/88, Merits, 07 July1989, para 88; Cruz Varas and others v Sweden, Application No 15576/89, Merits, 20 March1991, para 99; Orhan v Turkey, Application No 25656/94, Merits, 18 June 2002, para 325; Ipekv Turkey, Application No 25760/94, Merits, 17 February 2004, para 163; Imakayeva v Russia, Application No 7615/02, Merits, 09. November 2006, para 139; Timurtas v Turkey, Application No 23531/94, Merits, 13. June 2000, para 82-83; Velikova v Bulgaria, Application No 41488/98, Merits, 18 May 2000, para 68; Makaratzis v Greece, Application No 50385/99, Merits, 20 December 2004, para 56; Esmukhambetov and others v Russia, Application No 23445/03, Merits, 29 March 2011, para 138.*

except in the circumstances expressly listed in paragraph 2 of Article 2.[8] General positive obligations introduced in Article 2 require from the States to take appropriate steps to safeguard the lives of those within its jurisdiction.[9] This provision requires the States not only to refrain from the 'intentional' taking of life, but also to take positive measures to safeguard those within its jurisdiction.[10] In certain circumstances, it may also imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk.[11] Also, in the field of medical care, positive obligations require the States to make regulations which compel hospitals, whether private or public, to adopt the appropriate measures for the protection of patients' lives.[12] They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession could be determined and those responsible made accountable.[13]

Therefore, the failure of the State to adopt and enforce life-saving procedures in the case when a child survives the abortion, and to enforce judicial proceedings against responsible, could constitute the breach of Article 2 of the Convention (1950).[14] In order to examine the applicability of general guarantees on the surviving children, we must first determine their Conventional status. First, we should bear in mind that the Court has recognized these embryos, which are not viable in the sense such as foetuses, as the members of the human race. It is an important recognition as being a human is inextricably connected to human rights protection. As members of the human race, embryos and foetuses are entitled to human rights protection to the certain extent. Second, Conventional institutions have found that the unborn child's right to life is subject to implied limitations. When reasoning on the constraints to its right to life, then the existed Commission stated that 'protecting the life and health of the woman "at that stage, of the right to life" of the foetus' justifies termination. Because of the applied graduation of right to life protection depending on gestation, it could be considered that the scope of right to life protection grows with foetus while the implied limitations are being reduced. Third, from the age of *Paton* case Conventional institutions have separated recognition of legal status from right to life protection (Wicks, 2011). Although the recognition of the legal status of a person in the moment of

8 *Esmukhambetov and others v Russia, Application No 23445/03, Merits, 29 March 2011, para 138.*

9 *L.C.B. v the United Kingdom, Merits, 9 June 1998, Reports of Merits, s and Decisions 1998-III, p. 1403, para 36. In regard to protection against third parties offences see: Osman v the UK, Application No 23452/94 Merits, 18 October 1998, par 115; Mahmut Kaya v Turkey, Application No 22535/93, Merits, 28/03/2000, par 85; Akkoç v Turkey, Application No 22947/93, Merits, 10 October 2000, par 71; Kiliç v Turkey, Application No 22492/93, Merits, 28 March 2000, par 62; Oneryildiz v Turkey, Application No 48939/99, Merits, 30 November 2004, par 89.*

10 *L.C.B. v the United Kingdom, supra n 18, Association X v the United Kingdom, Application No 7154/75, Decision of 1979, Decisions and Reports 14, pp 31.*

11 *Osman v the UK, Application No 23452/94 Merits, 18 October 1998 para 115, and Keenan v the United Kingdom, Application No 27229/95, ECHR 2001-III.*

12 *Trocellier v France (dec.), Application No 75725/01, para 4, ECHR 2006-XIV*

13 *Powell v the United Kingdom (dec.), , Application No 45305/99, ECHR 2000-V*

14 *About required judicial response on infringement of new-born patient's lives refer to Calvelli i Ciglio v Italy, Application No 32967/96, Merits, 17. 01. 2002 par 50–57.*

his or her birth is common European legal standard (Enders, 2010), it does not necessarily restrict the legal protection afforded to human beings in prenatal stage.[15] Therefore, if some argue that such child cannot be recognized as a person before law for whatsoever reasons, it cannot affect its entitlement for human rights protection. Fourth, as potential moments for beginning of right to life protection, Conventional institutions marked: conception, nidation, point that the foetus becomes 'viable' or live birth.[16] There is considerable academic support for position that right to life is applicable when the foetus reaches the point of viability. According to Wicks, foetus has right to life from this moment, which requires right to life protection (Wicks, 2010). It follows that regardless of the employed means or length of gestation, live birth is the last moment for the beginning of right to life protection afforded to 'everyone'.

Considering Conventional status afforded to prenatal life, it may be concluded that the abortion surviving child is entitled for Conventional protection. Without regard for the question whether labour was induced at 6th or 9,5th month of gestation or it occurred naturally, from the moment of live birth, life becomes universally and regionally profound value. From that moment, the States' have positive obligation to preserve it by any reasonable means, which cannot be derogated by private,[17] or/and professional interests (Heywood, 2012). From that moment human life certainly steps out the scope of 'limited' right to life protection afforded to the initial stage (in uterus) foetus. Thereof, no matter on which grounds abortion (pregnancy termination) occurs, initiating reasons cannot be applied to termination of new born life. Even more, the purpose of the pregnancy termination cannot be to kill foetus, which is hardly justified under the human rights. The purpose of the pregnancy termination could be only to remove foetus from the uterus (Thomson, 1971).

Now, after the conclusion that the surviving child is entitled for Conventional protection, we should address human rights safeguards of its inviolability. Although the Court has yet to determine the issue of the 'beginning' of 'everyone's right to life' within the meaning of Article 2 of the Convention (1950) provisions (Mowbray, 2005), the infringement in this case could be qualified as manslaughter or even as homicide. Because of that, mere civil-law remedies could not satisfy requirements of Article 2 of the Convention (1950), even though the infringement occurs by means of omission. The infringement of the right to life or to personal integrity caused by means of omission in the field of health care could not stay immune on this requirement.[18] Moreover, it cannot be excluded that acts and omissions on the part of the authorities in the field of health-care may engage

15 *German Federal Constitutional Court, February 25, 1975 (BVerfGE 39, 1) and May 28, 1993 (BVerfGE 88, 203).*

16 *Paton v United Kingdom, supra n 13 at para 12.*

17 *In Sommerfeld v. Germany [GC],No. 31871/96, ECHR 2003-VIII, para 66, Görgülü v. Germany, No. 74969/01, 26 February 2004, para 43; and Ahrens v. Germany, No. 45071/09, 22 March 2012, para 63, the Court recognized that depending on their nature and seriousness, the child's best interests may override that of the parents.*

18 *See Anguelova v Bulgaria, Application No 38361/97, Merits, 13 June 2002 and Velikova v Bulgaria, Application No 41488/98, Merits, 18 May 2000.*

their responsibility also under Article 3 of the Convention (1950),[19] even when the purpose of omission was not intended to humiliate or debase the surviving new-born. Although the purpose of treatment is a factor to be taken into account when deciding whether it falls within the scope of Article 3 of the Convention (1950), the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 of the Convention (1950).[20] Apparently, denial of medical care to those children stands against both, Article 2 of the Convention (1950),[21] and Article 3 of the Convention (1950),[22] guarantees. Bearing in mind that existing human rights norms protect human dignity from the earlier stages of life[23] till the dying stage (Wicks, 2010), it would be truly hard to justify denial of at least medical care, which is the most naturally expected and which in the most cases bears a significant benefit potential.

But, the practice in the States seems to be negligent over those requirements. In the States where late termination of pregnancy is allowed, hospitals are practicing the so-called *comfort care,* a sort of nonmedical treatment to surviving new-borns. This treatment includes leaving these children to die of dehydration or hunger, deprived of any medical care meanwhile (Mujović-Zorić, 2009). This practice is challenged under the collective complaint before European Comity for Social Rights, and the outcome in this procedure is going to unequivocally impact standings on this practice in Europe. There is one fact, which in this regard makes Convention (1950) guarantees and rights close to theoretical and illusory, distant from practical and effective as they should be.[24] That fact stares out of the procedural requirements for starting the Strasbourg machinery i.e. in the power to invoke application before the Court in behalf of those children. If there is parental consent to abortion and following *comfort care* procedure, in reality those children are completely excluded from the Conventional protection (CF to Congress of the United States of America, 2002). There are considerations that the approach should be extended to children born alive with no temporal limitations (Giubilini & Minerva, 2012). In future, this practice could be challenged before the Court probably by the non-consent parent. Depending on judicial outcome, the Court is going to support for the growing scope of children rights and their autonomy, or introduce the renaissance of Romans' *jus vitae ac necis.* In the comparative law, even the techniques of pregnancy termination were legislatively referred in the light of unborn life protection (Steinbock, 2011). The Supreme Court of USA upheld the ban on so called partial birth abortion, considering that even when abortion is legal, not every method is acceptable: "the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn."[25]

19 *See, for example, Powell v the United Kingdom Application No 45305/99, ECHR 2000-V, İlhan v Turkey [GC], Application No 22277/93, para 87, ECHR 2000-VII. Paragraph 1 of Article 3 reads: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

20 *P. and S. v Poland, Application No 57375/08, Merits, 30 October2012par 160.*

21 *Cyprus v Turkey, Application No 25781/94, Merits, 10 May 2001.*

22 *D v United Kingdom, Application No 30240/96, Merits, 2 May 1997.*

23 *Vo v Francesupra n 3 para 84.*

24 *See Airey v Ireland, 9 October 1979, para 24, Series A Application No 32.*

25 *Gonzales, Attorney General v Carhart etal. Application No 05-380, 18 April 2007*

4 TEMPORAL DIMENSION OF REPRODUCTIVE CHOICE AND MOTHER'S RIGHTS

Temporal dimension of reproductive rights does not necessarily have restrictive effects on the rights and interests of a pregnant woman. In fact, it imposes demanding obligations on the States' side. For instance, it requires law to provide effective procedural mechanisms capable for determining whether the conditions existing for obtaining a lawful abortion on the grounds of danger to the mother's health[26], or of addressing the mother's fears on condition of foetus.[27] It also requires timely information to be obtained.[28] In *Tysiąc v Poland*[29] there were indications that delivery might endanger the applicant's health. Previously, Conventional institutions had considered that the establishment of any such relevant risk to a woman's life caused by her pregnancy clearly concerned fundamental values and essential aspects of her right to respect for her private life.[30] Therefore, having regard to the particular circumstances of the case and notably the nature of the decisions to be taken, the question was invoked before the Court whether an individual had been involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interests. On this occasion the Court pointed the importance of time factor in deciding on pregnancy. It was done through reviewing possibilities to make timely decision to terminate pregnancy in order to avoid or prevent damage to a woman's health, which might be occasioned by a late abortion. In this case, the Court concluded it had not been demonstrated that Polish law as applied to the applicant's case contained any effective mechanisms capable of determining whether the conditions for obtaining a lawful abortion had been met in her case.

The access to timely information about the foetus health in the light of the mother's reproductive choice has been addressed in the *R.R. v Poland*.[31] In this case, the applicant was denied adequate and timely medical care in the form of prenatal genetic examinations, which were prescribed by law in circumstances, which she obtained. Such testing would have made it possible to establish whether in her case the conditions existed for a lawful termination of pregnancy within the meaning of national legislation. Thus, the access to a full and reliable explanation about the foetus' health was not only important for the comfort of the pregnant woman but also a necessary prerequisite for a legally permitted possibility. Therefore, the denial to adequate and timely medical testing was qualified as breach of Article 8 of the Convention (1950). The Court stated that unlawful deprivation of medical services proscribed by the law to a pregnant woman was humiliation and therefore caused suffering enough to disclose a level of severity falling within the scope of Article 3 of the Convention (1950).[32]

26 *Tysiąc v Poland Application No 5410/03 Merits, 20 March 2007*

27 *R.R. v Poland, Application No 27617/04, Merits, 26 May 2011 at para 200*

28 *R.R. v Poland, supra n 49 at para 148–162*

29 *Tysiąc v Poland supra n 48*

30 *X and Y v. the Netherlands, 26 March 1985*

31 *R.R. v Poland, supra n 49*

32 *See R.R. v Poland, supra n 49 at para 161*

In this light we cannot overlook a raising threat of eugenic practices, which is inherent in selective abortions. Although the Court has accepted a right to access to embryonic screening, Article 8 of the Convention (1950) must not be interpreted as providing claimants with right to a genetic healthy child since the Court recognized it as a right only when a certain genetic disorder is recognized as abortion defence under national statutory (Exter, 2012). It is to bear in mind that a different treatment based on disability stands against universal[33] and regional[34] human rights guarantees. Those guarantees could be applicable in regard to legal treatment of all members of human race; they refer even to those humans in prenatal stage of development. If we consider killing an able body foetus at certain point of gestation as *actus reus* of criminal offence, then killing a foetus with abnormality at that gestation is also *actus reus* of criminal defense. Discussions on this issue are not new (Joseph, 2009). There are national legislators who are reviewing statutory regulation, which introduced malformation as abortion defence (British Parliamentary, 2013). Some other characteristics of the unborn have been already recognized at regional level as prohibited for abortion or in vitro created embryos destruction (Council of Europe, 2011). Although this regional source allows abortion and destruction if there is a potential disability, a conceptual novelty is in prohibiting body characteristics (sex) to be taken as grounds for it. Apparently, most recent European tendency goes toward limiting the operation of foetal malformations (physical or genetic) as abortion defence. Such tendency could rather have restrictive effects on access to the negative aspect of reproductive choice.

5 CONCLUSION

A temporal framework of reproductive choice, which is recognized by the Conventional institutions to be compliant with human right guarantees, is reduced to the initial stage of pregnancy. First 18 weeks fall within this stage, and pregnancy could be interrupted on the grounds of medical indications and/or well-being reasons. National statutory regulation allows pregnancy interruption after that stage when exceptional conditions are met. Since in this stage a child becomes viable, he/she may survive pregnancy interruption. If it happens, this child is entitled for Conventional protection inherent in Article 2 and Article 3 of the Convention (1950). According to right to life guarantees and supported by prohibition against inhumane and degrading treatment, the States have obligation to provide life-sustaining treatment or medical care to them. Human rights guarantees also require the State to enforce judicial mechanisms against the handling medical professional who fails to do so. Such State obligations cannot be derogated by parental wishes not to have a child, since their capacity in reproductive sphere is reduced to power to reproduce or not to reproduce. More precisely, neither of them can be forced to have or not to have a child. However,

33 *The Convention on the rights of Persons with Disabilities, adopted by the General Assembly on 13 December 2006, and entered into force on 3 May 2008.*

34 *See Council of Europe (1979).*

when procreation occurs through natural fertilization, the male partner is not afforded with the power to withdraw his consent to reproduction. In symmetry to that, the female partner cannot withdraw her consent to reproduce as well, but she is accorded with the power to deny her further assistance to life developing inside her womb (to detach herself from the unborn) when certain conditions are fulfilled. Thereof, neither one of the parents is afforded with the power to decide on life of a viable foetus especially when it is ex uterus located. Although the outcome of life sustaining treatment or medical care could be uncertain, professional interests (which is very arguable in this light since medical professionals are not accorded with the power to decide in such manner who is going to live and who is not) cannot precedence over the States' positive obligation in this field. Still, the operation of such guarantees in practice depends on parental will as parents are accorded with power to invoke judicial proceedings on behalf of their children. Because of such procedural requirement, abortion surviving children are deprived of Conventional protection.

Next consequence of temporal constraints to reproductive choice concerns whether the States maintain fair balance between private life of a pregnant woman from one hand and public interest in maternal health safeguarding from the other. When the State acting within its limits of appreciation afforded by regional human right instruments adopts statutory regulations allowing abortion in some situations, access abortion becomes safeguarded under the Convention if statutory conditions are fulfilled. Since temporal constraints limit access to abortion, simultaneously they require that full and reliable information is provided to a pregnant woman enabling her to establish whether in specific case the conditions for lawful termination of pregnancy within the meaning of national legislation are fulfilled. Therefore, such information is a necessary prerequisite for a legally permitted possibility and human rights exercise. Denial of adequate and timely medical service, which could provide such information the Court qualified as breach of Article 8 and Article 3 of the Convention (1950).

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Comparison of and Demarcation between Selected Economic Minor Offences and Economic Criminal Offences

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Purpose:

In the article, we are discussing demarcations between selected economic minor offences and selected economic criminal offences: *Fraud in Securities Trading; Abuse of Insider Information; Disclosure and Unauthorised Acquisition of Trade Secrets*. By now, this topic has been given virtually no attention in legal literature. Criminal law theory has mainly addressed only the question of which criteria to use in order to recognise criminal offences amongst all unlawful actions, while on the other hand, law of minor offences has generally focused strictly on less serious unlawful actions. However, in practice, a certain action can sometimes correspond to the definition of both a criminal offence and a minor offence. Consequently, it is of the essence that the statutory elements of a particular unlawful action are precisely defined and clearly demarcated. Only this can ensure legal certainty that should be guaranteed to everyone already on the basis of the Constitution of the Republic of Slovenia. A problem arises if the statutory elements of a criminal offence and a minor offence completely overlap, which leads to legal uncertainty.

Design/Methods/Approach:

The research is based on a quantitative investigation in the course of which we conducted a survey in order to test our assumption. First, we used basic one sided t tests on the data from section 1 questions to try our general assumption. Afterwards, we designed three sets of factors using factor analysis in order to use them on questions from sections 2–6, 7 and 8. In the last part, we took all the designed variables and some other basic information on respondents and used them in regression models for analysis of factors that affect the opinion on adequacy of Slovenian legislation regarding sanctioning and prosecution of economic crime.

Findings:

With the research, we wished to obtain new knowledge on the adequate demarcation between selected economic minor offences and selected criminal offences. In practice, it is material that statutory elements of a particular unlawful action are clearly defined. On the basis of our findings we propose elimination of

legal vacuum in which the chosen legal articles for minor economic offences and criminal offences overlap.

Research Limitations/Implications:

Limitations of the present article mostly relate to the availability of data and the willingness of state agencies for cooperation in the research. This relates to the quality of primary and secondary data, particularly to the issues related with consistency in data collection and data accuracy (unwillingness of the respondents to complete the survey and the problems of time and sectorial consistency in the definitions of individual statistical variables).

Practical Implications:

Results of the study can provide recommendations for the consequent changes in the studied legislation and clearer demarcation of legal articles on the chosen economic and criminal offences with the purpose of strengthening of respective legal protection.

Namely, this is the only way to ensure legal certainty that should be guaranteed to everyone on the basis of the Constitution of the Republic of Slovenia.

Originality/Value:

Value of this article is in the empirical demonstration and normative arrangement of a specific field of law, i.e., the legislation in the field of sanctioning and prosecution of economic crime.

UDC: 343.37

Keywords: economic criminal offences, economic minor offences, demarcation, legal certainty, unlawful actions

Primerjava in razmejitev med izbranimi gospodarskimi prekrški in gospodarskimi kaznivimi dejanji

Namen prispevka:

V prispevku obravnavamo razmejitve med izbranimi gospodarskimi prekrški in gospodarskimi kaznivimi dejanji, in sicer: *preslepitev pri poslovanju z vrednostnimi papirji; zloraba notranje informacije; izdaja in neupravičena pridobitev poslovne skrivnosti.* Gre za temo, ki v literaturi tako rekoč ni obravnavana. Kazenskopravna teorija se ukvarja predvsem z vprašanjem, po katerih merilih naj se med protipravnimi dejanji prepoznajo kazniva dejanja. Pravo o prekrških pa se praviloma ukvarja z lažjimi oblikami kaznivih ravnanj. V praksi se lahko zgodi, da kako ravnanje ustreza opisu kaznivega dejanja in prekrška hkrati. Zato je zelo pomembno, da so zakonski znaki določenega protipravnega dejanja točno določeni in jasno razmejeni. S tem se zagotovi pravna varnost, ki naj bi bila vsakomur zagotovljena že z Ustavo RS. Problem nastane, če se zakonski znaki kaznivega dejanja in prekrška popolnoma prekrivajo, kar lahko pripelje do pravne negotovosti.

Metode:

Raziskava temelji na kvantitativnem raziskovanju, kjer smo za preverjanje domneve naredili anketno raziskavo. Najprej smo z osnovnimi enostranskimi *t* testi

preverili našo osnovno domnevo na podatkih vprašanj pri prvem poglavju, nato smo za vprašanja pri poglavjih 2–6, 7 in 8 oblikovali tri nabore faktorjev s pomočjo uporabe faktorske analize. V zadnjem delu smo vse oblikovane spremenljivke in še nekatere osnovne podatke o vprašanih uporabili v regresijskih modelih za analizo dejavnikov, ki vplivajo na mnenje o ustreznosti slovenske zakonodaje na področju sankcioniranja in pregona gospodarske kriminalitete.

Ugotovitve:

Z raziskavo smo želeli priti do novih spoznanj na področju ustrezne razmejitve med izbranimi prekrški in izbranimi kaznivimi dejanji. V praksi je zelo pomembno, da so zakonski znaki določenega dejanja točno določeni. Na podlagi novih ugotovitev lahko predlagamo odpravo pravne praznine, kjer se izbrani členi prekrškov in kaznivih dejanj prekrivajo.

Omejitve/uporabnosti raziskave:

Omejitve pričujočega članka se nanašajo predvsem na dostopnost do podatkov, pripravljenost državnih organov za sodelovanje v raziskavi. Navedeno se nanaša na kvaliteto primarnih in sekundarnih podatkov. Sem uvrščamo vprašanja doslednosti v zbiranju in stopnjo točnosti podatkov (nepripravljenost anketirancev izpolniti anketo oziroma intervju ter probleme časovne in sektorske doslednosti v opredelitvi posameznih statističnih vrst).

Praktična uporabnost:

Rezultati študije lahko ponudijo priporočila glede nadaljnje spremembe obravnavane zakonodaje in jasnejše razmejitve izbranih prekrškovnih oziroma kazenskih členov z namenom krepitve pravne varnosti.

Izvirnost/pomembnost prispevka:

Vrednost naslovnega članka je v empiričnem prikazu in normativni ureditvi posebnega pravnega področja, kot je zakonodaja na področju sankcioniranja in pregona gospodarske kriminalitete.

UDK: 343.37

Ključne besede: gospodarska kazniva dejanja, gospodarski prekrški, razmejitev, pravna varnost, protipravna dejanja

1 INTRODUCTION

According to Bele (2005), Slovenian legislation normatively divides criminal conducts in the broader sense into two categories, criminal offences and minor offences, forming a dichotomy of delicts. In his commentary on the Minor Offences Act, Jenull (2009) states that due to the specific structure of criminal law norms which define sanctions for unlawful actions, delicts seem to form a whole but need to be considered as belonging to two separated subsystems of criminal law as a result of the legal differences they show in all other aspects.

In his scientific paper titled *Constructive division of minor offences and criminal offences*, Selinšek (2009) argues that minor offences generally relate to less serious unlawful actions, with sanctions considerably milder than those prescribed for

criminal offences. Additionally, Kocbek, Plavšak, and Premk (2007) claim that a trichotomy of criminal conducts had existed in Slovenia prior to the amendment of the Minor Offences Act in 2000. In addition to the criminal offences and minor offences, the Slovenian legal system had also recognised economic offences as the third form of delicts.

The study presented by Jakulin, Korošec, Ambrož, and Filipčič (2014) establishes that regardless of different concepts of the legal nature of minor offences, these are consistently caught in the middle between the criminal and administrative parts, although the evolution of modern criminal law theory and international human rights law provides enough arguments to support the thesis of minor offences law being a part of a comprehensive criminal law system. Accordingly, as concluded by Bavcon, Šelih, Korošec, Ambrož, and Filipčič (2013), in Slovenia it is more correct to speak of criminal law in a narrower sense, consisting only of criminal offences, and criminal law in a broader sense, which, according to Jakulin et al. (2014), also covers minor offences, than to speak of penal law.

Filipčič and Korošec (2010) and Selinšek (2002) agree that there are two primary criteria for the legislator's decision on the category into which a certain negative conduct or action should be classified. The first relates to the question on harmfulness and danger the conduct or action presents for the legally protected good.[1] The second criterion relates to the question of unlawfulness, that is to the question whether the conduct amounts only to a violation of a rule and does not endanger or harm the protected good, or the conduct directly endangers o even harms the protected good.[2] Besides the two main criteria a number of additional factors exist, e.g. the field of social life in which the negative conduct appears, frequency of such conduct, and the state's possibility for prevention of such conduct. Taking into account these facts, demarcation between minor offences and criminal offences is in some cases not clear and precise, especially if the same conduct can be qualified as both a minor and a criminal offence, depending on the circumstances of the case.

2 CRIMINAL LAW AND LAW OF MINOR OFFENCES ON THE LEVEL OF EUROPEAN UNION

Anderson and Apap (2002) argues that the fundamental objective of the EU concerning the law enforcement's response to economic criminal offences and economic minor offences is to provide all EU citizens with a high level of protection in terms of freedom, safety and rights. Tratnik, Ferčič, and Ferlinc (2004) add

1 *Selinšek (2002) believes that, in this sense, the meaning of minor offences coincides with the meaning of criminal offences, since minor offences also point at a certain level of danger for the protected good, while, on the other hand, the level of minor offences' danger is much lower than the danger of criminal offences.*

2 *As for criminal offences, it is of prime importance that the law clearly describes the conduct, while the unlawfulness is not explicitly specified and can be indirectly inferred (Bele, 2005). On the contrary, for minor offences it is essential that a law, a government decree, or a decree of a self-governing local community accurately indicates the regulation that is violated, while the question of violation's means is of secondary importance (Selinšek, 2002).*

that the EU member states can achieve this goal through adoption of common measures and harmonisation of national legislation concerning economic crime as well as economic minor offences.

Calderoni (2010) calls for the preparation of common instruments which are binding upon all member states and incorporated into their national legal systems (e.g. the obligation to define a certain act as a crime is contained within the EU law which prescribes the common statutory elements of a criminal offence). According to Filipčič and Korošec (2010), all EU member states need to apply common provisions, but their mode of enforcement should rest with individual member states. However, Grover (2010) believes that common provisions should be directly applicable in all EU member states through a special EU-wide procedure.[3]

Furthermore, Grover (2010) states that, in order to increase the efficiency of investigations into economic criminal offences and economic minor offences, it would be necessary to facilitate and promote cooperation in the proceedings and enforcement of decisions between the competent ministries and the judicial and other comparable government bodies within the EU member states. On the other hand, Filipčič and Korošec (2010) believe that it is essential to ensure compliance of regulations applied in the EU member states, as well as gradual adoption of measures to define minimum regulations specifying the elements of criminal acts that fall under the category of economic crime.

As for the theoretical background to this issue, Seredyńska (2012) acknowledges the existence of studies into the independent European criminal law but argues their merit. As stated by Selinšek (2006), the European primary law authorises the Council of the European Union, acting upon a proposal of the European Commission and in consultation with the European Parliament, to adopt a regulation or a directive to impose sanctions for certain violations relating to this field.

The Treaty establishing the Constitution for Europe, which is not yet in effect, stipulates that European framework laws may establish minimum rules concerning the definition of criminal offences (Rovna & Wessels, 2006). Sovdat (2013) mentions that this possibility is limited to particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis (currently, these offences are not governed by Articles detailing provisions for fraud in securities trading, abuse of insider information, and disclosure and authorized acquisition of trade secrets. As argued by Trstenjak (2012), the provisions of European framework laws do not apply directly to the EU member states since the European framework laws bind the member states to strive for the overall objective of the law, but leave the choice of the mode and methods of achieving this objective at the discretion of each member state.

Currently, the EU member states are undergoing a process of harmonisation of the laws governing criminal offences and minor offences, in particular as

3 *This solution has not been adopted on the EU level for any area of law. When (or if) it is passed, it will follow the Corpus Iuris, which is an attempt at extending the jurisdiction of the EU in the field of criminal and substantive law. The model is designed as a type of a European finance and penal code (with a substantive and procedural part), which was to be directly applied in all EU member states (Filipčič & Korošec, 2010).*

regards the acts which violate the interests of the EU. The fundamental argument that supports the harmonisation and the development of the European criminal law lies in the simple fact that it is not reasonable to open up the borders for perpetrators of criminal offences while closing them up to the law enforcement bodies.

3 ECONOMIC CRIMINAL OFFENCES IN SLOVENIAN LEGAL ORDER

In Slovenia, criminal offences are governed by the Penal Code of the Republic of Slovenia as of 2008 (hereinafter referred to as PC-1, 2008), as explained by Bavcon and Šelih (2009). PC-1 (2008) regulates all criminal law issues in one place.[4] It is divided into two parts: the general part and the specific one. The general part applies to all criminal offences and includes: fundamental provisions, application of the penal code, general provisions on criminal offence, sentences (admonitory sanctions, safety measures, confiscation of property benefits gained by committing of criminal offence) and their implementation, legal consequences of conviction, statute of limitations and provisions on amnesty and pardon. The specific part of PC-1 contains descriptions of individual criminal offences, categorised into different sections, and presents a comprehensive display of all actions that are in Slovenia marked as criminal offences. As noted by Selinšek (2009), PC-1 (2008) is a "law above laws", since it envisages and sanctions the worst violations from all legal fields as criminal offences.

Deisigner (2007) states that, in the Slovenian Penal Code, the criminal offences against the economy are defined in chapter XXIV, while the criminal offences that can be committed by legal persons are exhaustively listed in Article 25 of the Law for Legal Persons Committing Criminal Offences as of 2004 (hereinafter referred to as LLPCCO, 2004). Economic criminal law in a narrower sense can be described as a group of legal rules that define economic criminal offences, sanctions for them, and conditions under which natural and legal persons are liable for these criminal offences. Bele (2005) establishes that in legal theory the scope of economic criminal law, when interpreted broadly, includes not only economic criminal offences but also (economic) minor offences.

As proposed by Pinto (2003), substantive conception derives the notion of economic criminal offences from legally protected values and goods, that is from the direct object of attack of the particular criminal offence. Correspondingly, Pedneault (2010) defines as economic criminal offences all those criminal offences that are committed in the field of economic activities and those that endanger the property of corporations or other business entities, while Lamberger (2009) sees as important two aspects that at least partly lean on the definition of economic activity as described under items 10 and 11 of the first paragraph of Article 99 of PC-1 (2008). Economic criminal law can, therefore, relate only to economic operations

4 *Contrary to the majority of other legal orders that govern this field in lateral criminal legislations, the Slovenian legislator followed the principle of collecting all criminal offences in one place, that is, in the Penal Code, and thus moved away from the statutory regulation of other criminal law systems that encompass extensive lateral criminal legislations where norms regarding economic criminal law are dispersed into various statutes and decrees that govern a certain field of economy or economic activity and its borders.*

and activities (in terms of the cited provision: production and trade of goods, performance of services on the market, banking and other financial operations, management services and participation in the management, representation and supervision). The second aspect represents operations within a business entity or mutual economic operations between different business entities.

4 ECONOMIC MINOR OFFENCES IN THE SLOVENIAN LEGAL ORDER

In his study, Pruša (2008) explains that minor offences generally relate to less serious forms of criminal conduct, which, in comparison to criminal offences, requires milder sanctions. Further Bele (2002) explains that needs to be noted that, prior to the amendment of the Minor Offences Act in 2000, a trichotomy of criminal conducts had existed in Slovenia, as in addition to the criminal offences and minor offences, the Slovenian legal system also recognised economic offences as the third form of delicts.

According to Herega (2010), minor offences law in Slovenian legal order is comprised of general, specific and procedural parts. While the general and the procedural parts are uniformly governed by the Minor Offences Act as of 2007 (hereinafter referred to as MOA-1, 2007), the provisions of the specific part are dispersed throughout various statutory instruments and documents that contain descriptions of particular minor offences (generally in the section named "Penal Provisions" at the end of the regulation).

Selinšek (2006) states that minor offences are mainly determined in a specific section of a particular regulation (entitled "Penal Provisions") or in a specific article located before transitional and final provisions. Minor offences are generally defined indirectly. Namely, the "penal" provision that determines a particular action as a minor offence and prescribes the sanction directly refers to an obligation or a prohibition described in the substantive part of the regulation, indicating the article and thus including it in the minor offence's abstract state of facts.

Article 6 of MOA-1 (2007) defines a minor offence as an *"action that is a violation of a law, governmental decree or municipal ordinance, which is determined as a minor offence and for which a sanction for minor offences is prescribed"*. MOA-1 (2007) thus redefines minor offences by determining them as violations of law, which means that the applicable minor offences law stems from the pure formal conception. On the contrary, the definition of criminal offences in the applicable law is based on the formal-substantive conception, since it requires not only violation of law but also protection of legal values and a description of conduct's elements, as explained by Jakulin et al. (2014). The requirement of description of elements by interpretation applies also to minor offences; however, necessity of protection of legal values is the one that should primarily lead the legislator when deciding whether an unlawful conduct should be incriminated as a criminal offence or as a minor offence. MOA-1 (2007) is divided into 5 parts: substantive provisions, the procedure regarding minor offences, enforcement and documentation of decisions, jurisdiction and organization of minor offences courts, transitional and final provisions.

As proposed by Gril, Kovač, and Vitužnik (2009), the legislator decides whether a forbidden conduct should be identified as a criminal offence or as a minor offence. The position of the Slovenian Constitutional Court is that the choice of criminal sanction (and thus the decision on the type of criminal offence) reflects the state of the society in a particular moment: importance of the protected value that is affected by the prohibited action, the frequency of particular conduct, the level of its unacceptability, etc. In his study, Jenull (2013) finds that the Constitution gives no advantage to any specific purpose of punishment as it stated in Decision of the Constitutional Court of the Republic of Slovenia no. RS U-I-183 (1996). A minor offence is generally determined by a law, yet, according to Article 3 of the Minor Offences Act (2007), minor offences can also be stipulated in decrees and governmental or municipal ordinances. Regardless of the type of regulation that defines the minor offence, *lex certa* principle has to be taken into account when formulating the norms – the regulation that determines an action as criminal has to be specific, clear and foreseeable. In its Decision no. U-I-213/98 of 16 March 2000, the Constitutional Court of the Republic of Slovenia adopted a position that the requirement for an exact definition of criminal offences has to be considered also when defining minor offences. Additionally, the legislator has to assure that a minor offence and a criminal offence do not have identical statutory elements (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-213/98, 2000).

MOA-1 (2007) thus differs from PC-1 (2008) by including the provisions on the procedure, while it does not regulate specific minor offences or include specific provisions on minor offences, as it is the case with PC-1 (2008) regarding criminal offences. Namely, MOA-1 (2007) applies to minor offences in general, whereas the descriptions of particular minor offences are dispersed throughout different sector-specific laws, governmental decrees and municipal ordinances.

5 DIFFERENCES IN THE WAY OF SANCTIONING

5.1 Criminal Sanctions

For the majority of economic criminal offenses, Slovenian PC-1 (2008) provides for prison sentence in different durations, depending on the nature and seriousness of the offence.[5] As established by Lamberger (2009), a fine is only stipulated for the criminal offence of deception of purchasers, as defined in the third paragraph of Article 232 of PC-1 (2008), while it is considered an alternative for some other economic criminal offences.[6]

An overview of the prescribed sanctions for criminal offences against economy, included in the specific part of the Penal Code, eloquently shows that the primary status is not given to fines but to imprisonment. The statistical data

5 *The lowest prescribed punishment is imprisonment to maximum one year, the highest prescribed punishment is imprisonment from one to fifteen years.*

6 *E.g. for criminal offences of Fraud in Obtaining Loans or Benefits (Article 230 of PC-1, 2008), Fraud in Trading with Securities (Article 231 of PC-1, 2008), Deception of Purchasers (Article 232 of PC-1, 2008).*

for the years 2013 and 2014 relating to sentencing of perpetrators of economic criminal offences demonstrates that suspended sentences[7] are in such a majority that they could almost be labelled as a rule. If the perpetrators are not sentenced to prison, the (prison) sentence is generally suspended. Some authors, for example Alber (2013) and Jakulin (2012), identify the reasons for this in keeping up with the tradition established in our former country where the majority of middle-class offenders who had committed criminal offences that were not particularly serious were sentenced to probation.[8]

On the other hand, Mazi (2003) argues that in the developed European countries, a fine has been the prevailing criminal sanction for a considerable length of time, with a share of 70 to 85 percent amongst all imposed criminal sanctions. Such a share is in Slovenia comparable with the share of suspended sentences. This data relates to all imposed criminal sanctions, however, there is no significant difference when focusing only on criminal offences against economy.

5.2 Sanctions for Minor Offences

Minor offences are forbidden actions that are, taking into account their consequences, less serious in comparison to criminal offences, which is why no punishments are imposed on the offenders but only sanctions that can have penal nature (Jenull, 2009). The regulation that defines the statutory elements of a particular minor offence also determines the sanction for this minor offence. Unlike the Minor Offences Act of 1983, MOA-1 (2007) does not envisage different types of sanctions (punishments, protective measures), but includes only a uniform category of sanctions. In Article 4, MOA-1 (2007) stipulates the sanctions for a minor offence and prescribes the basic conditions for their determination and imposition. Sanctions for minor offences are governed by and described in detail in chapter 3, Articles 17 to 27, of MOA-1 (2007).

Slovenian minor offences law (MOA-1, 2007) uses only one main sanction, a fine (Article 17), while all the other sanctions, except of a warning, are of accessory nature, since they can be imposed exclusively accompanying a fine and not independently. A warning (Article 21) cannot be prescribed for a minor offence

7 *According to Article 58 of PC-1 (2008), a court may suspend the sentence when the perpetrator has been punished by imprisonment for a term not exceeding two years or by a fine and if the court, considering the circumstances under which the offence was committed, comes to the conclusion that it is reasonable to expect that the perpetrator will not commit any further criminal offences.*

8 *For centuries, punishment was the only form of criminal sanctions. In the first forms of human social life, punishments acted as a revenge of the injured party, while also representing a symbolical means for appeasing the evil caused with the violation. In the beginning, especially death penalty, very cruel corporal punishments and punishments affecting the perpetrator's honour were used. The history of evolution of punishments shows that punishments eventually started humanising, even though slowly. Custodial sentences that gradually replaced corporal punishments present the first step in this direction. However, the main purpose of punishment remained and will always remain the same: it is the key and most frequent means of society's reaction to criminal offences. A punishment always included a negative moral and ethical appraisal of the perpetrator and the criminal offence he committed; its execution presented an interference with one or more values that were of high importance to the perpetrator. Today, punishment remains the most frequently used form of criminal sanctions, while, in the last century, being accompanied with some other forms of reactions to criminality (Jenull, 2009).*

in advance, it can only be issued instead of a fine (and not instead of any other sanction). In such a case, a warning takes over the role of the main sanction, which is why accessory sanctions, besides a warning, can also be imposed.

Zobec (2014) stresses that minor offences law needs to distinguish between sanctions and formal cautions, since the first paragraph of Article 4[9] of MOA-1 (2007) expressly stipulates that a formal caution is not a sanction but represents an alternative to the sanctions. Unlike the warning that can be issued instead of a fine, a formal caution is issued instead of any sanction, as stipulated by the seventh paragraph of Article 4 of MOA-1 (2007), which states that a formal caution is issued instead of instituting the procedure for the minor offence or instead of issuing a decision regarding the minor offence. As established by Filipčič (2005), no procedure needs to be carried out in order to issue a formal caution. This also means that along with a formal caution (which is not a sanction) it is not possible to impose an accessory sanction, since an appropriate procedure would then have to be conducted. Conditions for issuing a formal caution are defined in Article 53 of MOA-1 (2007).

6 DEMARCATION BETWEEN SELECTED ECONOMIC MINOR OFFENCES AND ECONOMIC CRIMINAL OFFENCES

6.1 Fraud in Securities Trading

As regards the criminal offence of fraud in securities trading, Kaleb (2009) finds that the direct object of criminal law protection is the securities market. This criminal offence is a typical example of stock exchange delicts. Stock exchange is in layman's vocabulary a synonym for securities market. Selinšek (2009) points out that although the term "stock exchange delict" is not used in the relevant part of PC-1 (2008), this word is often used in theory as a collective term for the criminal offence in question.

As explained by Lamberger (2009), the criminal offence described in Article 231 of PC-1 2008 is normally defined as a general criminal offence, which means that it can be committed by any subject of criminal law. On the other hand, Selinšek (2007b) argues that because this criminal offence can be committed only when trading with stocks, other securities and options, the scope of possible perpetrators is limited to persons who are placing securities on the market or are trading with securities, i.e., mostly issuers of securities and stock brokers. In accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for committing a fraud in securities trading, as mentioned by Deisinger (2007).

Article 231 of PC-1 (2008) in fact protects investors in securities from the risks of wrong investment decisions caused by false information. Criminal offence of fraud in securities trading is linked to the law of securities and to corporate law,

9 *For the committed minor offence, in accordance with the conditions indicated in the MOA-1 (2007), a prescribed sanction is imposed or a formal caution is issued.*

especially regarding two questions: 1) who can commit this criminal offence,[10] and 2) what other data[11] may importantly affect the value of securities.

According to Weygandt, Kimmel, and Kieso (2011), the perpetrator committing a criminal offence of fraud in securities trading falsifies important information in the prospectus, annual report or in some other way as a result of false indications, a different value of securities is derived from the data, which influences the decision on buying or selling the securities.

The study proposed by Peterlin (2013) states that minor offences, where the object of protection is securities market, are defined in the Financial Instruments Market Act as of 2007 (hereinafter referred to as FIMA, 2007). Minor offences related to securities trading are indicated in the penal provisions of FIMA (2007). A violation that is determined by FIMA (2007) as a minor offence and that corresponds to the definition of the criminal offence governed by the first paragraph of Article 231 of PC-1 (2008) (*"whoever, in trading stocks, other securities or other financial instruments, falsely represents the balance of assets, data on profits or losses, or any other data in the prospectus"*) is introduced in item 4 of the first paragraph of Article 556 of FIMA (2007).

Pursuant to item 4 of the first paragraph of Article 556, in connection with the second paragraph of Article 53 of FIMA (2007), a minor offence is committed already by the fact that information, included in the prospectus, is not correct or complete (and is therefore falsely indicated). On the other hand, in accordance with Article 231 of PC-1 (2008), for a criminal offence of fraud in securities trading to be committed, perpetrator's intent to mislead one or more persons into buying or selling securities is prerequisite. **The minor offence and the criminal offence are, in this case, clearly demarcated.** It is true that the criminal offence of fraud in securities trading incorporates the elements of the minor offence defined under item 4 of the first paragraph of Article 556 of FIMA (2007) (there is a partial overlapping), however, in Slovenian legal order a general rule is used, in accordance with which a perpetrator's liability for a more serious criminal conduct excludes his liability for a less serious criminal conduct.

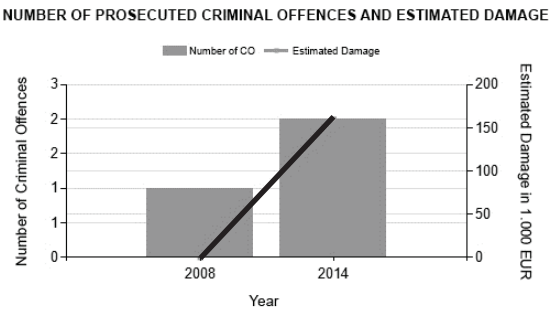

Figure 1: Number of treated criminal offences of fraud in securities trading under Article 231 of PC-1 (Source: Ministry of the Interior, 2009–2015)

10 *Potential perpetrators are persons who put securities into circulation or who trade with securities. It is expected that the majority of criminal offences in terms of Article 231 of PC-1 will be committed by issuers of securities and stock brokers (Selinšek, 2007a).*

11 *"Other data" from Article 231 of PC-1 that could affect the value of securities appears in very diverse forms. Mostly, this will be information about business events that relate to the issuer or to the securities (Selinšek, 2007a).*

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated one criminal offence relating to fraud in securities trading in 2008 and two such criminal offences in 2014, as shown in Figure 1. The annual reports on prosecution activities indicate that two of these cases were dismissed by prosecution. The analysis of the annual reports of the Securities Market Agency (2009–2015; hereinafter referred to as SMA) as the competent minor offence authority responsible for violations of FIMA (2007) and a public authority shows that since 2008 the Agency has issued more than 25 decisions on minor offences, imposing 26 fines and 30 cautions on the perpetrators. Interestingly, only one of these cases was reported to the police and the prosecution as a criminal offence of fraud in securities trading.

6.2 Disclosure and Unauthorised Acquisition of Trade Secrets

The criminal offence of disclosure and unauthorised acquisition of trade secrets (Article 236 of PC-1, 2008) does not indicate the scope of persons who have the "duty to protect trade secrets", which is why the text of the first paragraph of Article 236 should be interpreted as silent blanket referral to the provisions of the Companies Act as of 2006 (Articles 39 and 40 of the Companies Act; hereinafter referred to as CA-1, 2006).

Selinšek (2007a) claims that the criminal offence of disclosure and unauthorised acquisition of trade secrets is determined as a general criminal offence, where the scope of possible perpetrators is narrowed by the statutory definition to persons that have the duty to protect trade secrets. On the other hand, Deisinger (2007) points out that in accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for the criminal offence of disclosure and unauthorised acquisition of trade secrets.

Protection Article 13 of the Protection of Competition Act (1993; hereinafter referred to as PCA, 1993), as a form of unfair competition, also indicates acquisition of other company's trade secret and unjustifiable exploitation of other company's trade secret (item 14 of the third paragraph of Article 13 of PCA, 1993), as also pointed out by Grilc et al. (2009). The indicated conduct is defined as a minor offence in accordance with Article 30 of PCA (1993) and simultaneously as a criminal offence governed by the second paragraph of Article 236 of PC-1 (2008).

The aforementioned text indicates similar or even essentially the same scope of incrimination under the criminal offence of disclosure and unauthorised acquisition of trade secrets, defined in Article 236 of PC-1 (2008), and the minor offence from Article 30 of PCA (1993) in connection with item 14 of the third paragraph of Article 13 of PCA (1993). Nevertheless, a minor offence requires unauthorised acquisition of *other company's* trade secret, which is not indicated in the second paragraph of Article 236 of PC-1 (2008) regarding the criminal offence. It can thus be concluded that, according to second paragraph of Article 236 of PC-1 (2008), the criminal offence of unauthorised acquisition of trade secrets is committed regardless of the company to which the information relates. In case of both criminal offence and minor offence, unauthorised exploitation and use of trade secrets is also incriminated. Statutory elements of the minor offence defined

in Article 30 of PCA (1993) in connection with item 14 of the third paragraph of Article 13 of PCA (1993) **completely overlap with the statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets**, governed by the second paragraph of Article 236 of PC-1 (2008). Taking into account the opinion of the Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this could be interpreted as an *"unconstitutional mutual indivisibility of two different criminal conducts"* (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

Statutory elements of minor offences indicated in the first paragraph of Article 401 of Banking Act as of 2006 (hereinafter referred to as BA-1, 2006) overlap with the statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets, defined in the first paragraph of Article 236 of PC-1 (2008). Confidential information which is in the possession of the bank and needs to be safeguarded by the bank is interpreted as a trade secret pursuant to Article 39 of CA-1 (2006). Statutory elements of the minor offence indicated in Article 401 of BA-1 (2006) and statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets, governed by the second paragraph of Article 236 of PC-1 (2008), **completely overlap**. Taking into account the opinion of the Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this could be interpreted as an *"unconstitutional mutual indivisibility of two different criminal conducts"* (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

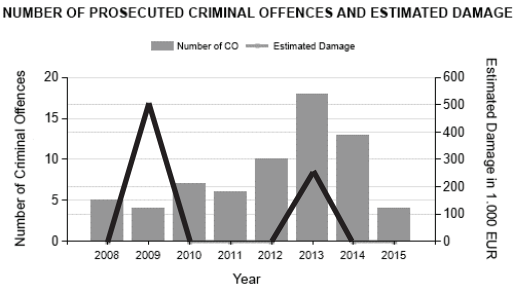

Figure 2: Number of treated criminal offences of disclosure and unauthorised acquisition of trade secrets under Article 236 of PC-1 (2008) (Source: Ministry of the Interior, 2009–2015)

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated 67 criminal offences of disclosure and unauthorised acquisition of trade secrets, as shown in Figure 2. The majority of these cases were treated in 2013 (18 cases), while the number of the cases was lowest in 2009 (4 cases). The annual reports of the prosecution activities indicate that 35 cases were dismissed by the prosecution due to the absence of reasonable grounds for suspicion. In six cases, the prosecution filed an indictment. In the remaining 26 cases the prosecution has not yet pronounced itself regarding the acts submitted by the police. Interestingly, the competent minor offence bodies, i.e., the Bank of Slovenia (hereinafter referred to as BS) and the Slovenian Competition Protection Agency (hereinafter referred to as CPA) as the bodies overseeing the violations relating to the disclosure or unauthorised acquisition of trade secrets, did not refer any of the above mentioned cases to the police or the prosecuting authority within the period studied although the annual reports show several violations concerning trade secrets were treated. In fact, the Bank of Slovenia (2009–2015)

treated 11 cases within the study period. In two cases, a fine was imposed while others were concluded with a caution or warning. CPA (2009–2015), on the other hand, did not issue any decisions indicating cases relating to the disclosure of trade secrets.

6.3 Abuse of Insider Information

The criminal offence of abuse of insider information is determined as a general criminal offence, as explained by Ferlinc (2003). Yet, from the individual descriptions of the criminal offence it can be concluded that the scope of possible perpetrators differs in accordance with the provisions of different paragraphs of Article 238 of PC-1 (2008). Consequently, Selinšek (2009) states that the criminal offence indicated in the first paragraph of Article 238 of PC-1 (2008) can therefore be committed only by a person that obtains insider information in relation to the position he occupies with the issuer of the security or equity in the capital of the issuer of the security, their employment, or when performing activity. The criminal offence indicated in the second paragraph of Article 238 of PC-1 (2008) can be committed by any person who can be subject of criminal law and who (lawfully or unlawfully) obtains insider information. Perpetrator of the criminal offence described in the third paragraph of Article 238 of PC-1 (2008) can be any person who can be subject of criminal law and who obtains insider information without authorisation. In accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for the criminal offence of abuse of insider information, as stated by Deisinger (2007).

Mavko (2010) argues that when committing a minor offence in accordance with item 1 of the first paragraph of Article 566 of FIMA (2007) and when committing a criminal offence of abuse of insider information in accordance with the first paragraph of Article 238 of PC-1 (2008), the perpetrator obtains insider information, uses it to buy (acquire) or sell (divest) the financial instrument (which includes securities) for himself or any third person, directly or indirectly. According to Selinšek (2009), the first paragraph of Article 238 of PC-1 (2008) stipulates who can be punished as a perpetrator of the criminal offence of abuse of insider information, while, regarding the minor offence governed by item 1 of the first paragraph of Article 566 of FIMA (2007), this element is included in the first paragraph of Article 382 of FIMA (2007), as pointed out by Mavko (2010). In both cases, the perpetrator can be the person who obtains insider information in relation to the position he occupies with the issuer of the security (as a member of issuer's managerial and supervisory bodies), to equity in the capital of the issuer of the security (as an owner of a share in issuer's capital), his employment, or when performing activity (because he has access to information in the course of performing his work assignments). It can be concluded that the statutory elements provided under item 1 of the first paragraph of Article 566 of FIMA (2007), in connection with Article 382 of FIMA (2007), **completely overlap with the statutory elements of the criminal offence of abuse of internal information** governed by Article 238 of PC-1 (2008). Taking into account the opinion of Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this

could be interpreted as an *"unconstitutional mutual indivisibility of two different criminal conducts"* (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

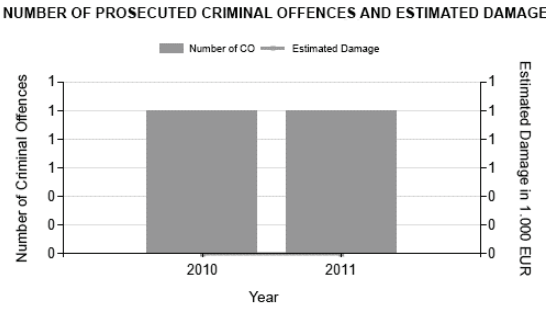

Figure 3: Number of treated criminal offences of abuse of insider information under Article 238 of PC-1(2008) (Source: Ministry of the Interior, 2009–2015)

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated only two cases of criminal offences relating to abuse of insider information, as shown in Figure 3. As evident form the reports on the prosecution activities, an indictment was filed in both cases. Interestingly, within the study period the SMA (2009–2015) as the competent minor offence authority responsible for overseeing the violations relating to the abuse of insider information issued more than 25 minor offence decisions, imposing 26 fines, 24 cautions and 30 warnings. However, only two referrals to the police or the prosecuting authority were made.

7 METHODS

7.1 Choice of Mode, Method and Sample of Study

The study is based on a quantitative research in the course of which we tested the assumption that reads *"Slovenian legal order, governing economic minor offences and economic criminal offences from the field of takeovers, is not adequate and thus enables misuse"* by conducting a survey. The questionnaire consisted of two parts: in the first part, respondents were asked about their employment, education and work experience; in the second part, we established statements that were categorised into eleven sections and related to the topic in question. In section 1 of the questionnaire, respondents expressed their view on four statements in which we claimed that economic criminal offences and economic minor offences are adequately positioned in the Slovenian legal order and that their statutory elements are defined clearly and precisely. In sections 2–4, respondents assessed adequacy of demarcation of provisions governing economic criminal offences and economic minor offences: *Fraud in Securities Trading; Abuse of Insider Information;* and *Disclosure and Unauthorised Acquisition of Trade Secrets*. In section 7, we asked respondents how efficient is their institution as regards discovery and prosecution of economic criminal offences and economic minor offences in comparison to other similar institutions in Slovenia and in EU. In section 8, respondents were asked to assess the listed 12 activities in terms of their potential contribution to more

efficient procedures regarding discovery and prosecution of economic criminal offences. In sections 9, 10 and 11, which are not essential for this article's analysis, we set questions on how many hours of additional education respondents had in the last 24 months in the pre-specified fields; in the fields in which they would like to acquire more knowledge in order to have better work results; and on frequency of pre-specified obstacles respondents face when performing their duties. Except in section 10, where respondents only encircled the most suitable answer, in all sections respondents ranked the answers by using the 5-level Likert-type ranking, where 1 and 2 represented their disagreement with the statement, 3 represented their inability to decide, while 4 and 5 represented their approval of the statement. The questionnaire was of a closed type.

The sample – the studied population – consisted of the expert public, employees of institutions – Police/criminal investigators from the department for economic crime, State Prosecution/prosecutors from the departments for economic crime, Securities Market Agency/minor offences inspectors, Bank of Slovenia/minor offences inspectors, Competition Protection Agency/minor offences inspectors – that are active in the field of research in question within the institution they belong to. Since the topic at hand is very specific and the answers of employees in different positions would differ, it was necessary that the questions were answered by persons that actually work in the field of this article's topic. Sampling was random and stratified. We acquired a list of relevant employees from each institution, inserted the data into Excel and, using the function *"Random"*, selected 30 random persons/prosecutors,[12] thereby assuring representativeness of the sample. We expected an approximately 80-percent level of responses, which gives an expected size of the sample amounting to 120 units. Surveying was anonymous, conducted through a website hosting the questionnaire and based on prior approval of respondents' supervisors.

We analysed the acquired data using statistical software SPSS and Stata. For the basic analysis of data we used frequency distribution and descriptive statistics. We also reproduced the data in a graphic form. In the course of this article's analysis, we will use the following methodology: first, we will use basic one-sided t tests on the data from section 1 questions to try our general assumption. Afterwards, we will design three sets of factors using factor analysis in order to use them on questions from sections 2–6, 7 and 8. In the last part, we will use all the designed variables and some other basic information on the respondents and use them in regression models for the analysis of the factors that affect the opinion on adequacy of Slovenian legislation regarding sanctioning and prosecution of economic crime.

7.2 Study Results

We measured the reliability of the questionnaire by using the reliability test, the Cronbach's Alpha.

12 *These are persons that are, within the specific institution, involved in investigating criminal offences and minor offences from the field of takeovers, e.g. inspectors, criminal investigators, state attorneys, etc.*

Cronbach's Alpha	N of Items
.806	63

Table 1: Cronbach's Alpha

Cronbach's Alpha measures reliability of a questionnaire on the basis of correlations between the variables. If the correlation is higher than 0.8, the reliability is high, if it is between 0.6 and 0.8 the reliability is medium and if it is lower than 0.6 the reliability is low (Šifrer & Bren, 2011). In our case Cronbach's Alpha amounts to 0.806, meaning that the reliability of the questionnaire is high.

Table 2: Results of testing of the basic hypothesis

	Average value	Standard deviation	Standard error of the average value	*t*-statistics	*p*-value of the one sided test	Number of observations
In Slovenian legislation, arrangement of economic criminal offences and economic minor offences is adequately positioned within the legal order.	2.6420	0.9913	0.1101	-3.2504	0.0008	81
The same conduct that can under certain circumstances be considered an economic minor offence and under different circumstances an economic criminal offence is clearly demarcated and specific.	2.5802	0.9336	0.1037	-4.0465	0.0001	81
Statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific.	2.9012	1.1468	0.1274	-0.7751	0.2203	81
Statutory elements in the field of economic criminal offences relating to unlawful conduct in the course of takeovers are in Slovenian legal order clearly formed and specific.	2.4815	1.0737	0.1193	-4.3446	0.0000	81
Prescribed punishments for economic minor offences in the field of takeovers are fair and proportional to the committed minor offence.	2.3375	1.1017	0.1232	-5.3785	0.0000	80
Prescribed punishments for economic criminal offences in the field of takeovers are fair and proportional to the committed criminal offence.	2.5455	1.0456	0.1192	-3.8146	0.0001	77

Table 2 shows the results of basic statistics regarding individual section 1 questions and results of testing (one sided t test), showing that the average value regarding each question is lower than 3, which means that the respondents are of the opinion that the indicated areas are inadequately regulated in the Slovenian legislation. The results clearly show that the average values, except in the case

of question No. 3 ("statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific"), are statistically significantly lower than 3.

Afterwards, as can be seen from Table 3, we used factor analysis in order to shrink the dimensions in sections 2–6. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix. We have designed four factors, whereby each factor was designed on the basis of the answers under following items: with the first factor, we used the answers to questions 2a, 3a, 4a, 5a, and 6a (in all these questions respondents were asked to assess the adequacy of demarcation between statutory provisions regarding economic criminal offences and economic minor offences "by statute"); with the second factor, the answers to questions 2b, 3b, 4b, 5b, and 6b (same questions, but "by amount"); with the third factor, the answers to questions 2c, 3c, 4c, 5c, and 6c (same questions, but "by service form"); with the fourth factor the answers to questions 2d, 3d, 4d, 5d, and 6d (same questions, but "demarcation is not necessary").

Factor analysis was also used to shrink the dimensions in section 7. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix, while the rotated factor matrix showing the interpretation of factors is displayed below.

Table 3: Rotated factor matrix, section 7

	Factors	
	1	2
Assess how efficient is your institution in discovering criminal offences in comparison to other comparable institutions in the country.	0.8122	
Assess how efficient is your institution in discovering criminal offences in comparison to other comparable institutions in the EU.	0.7162	
Assess how efficient is your institution in prosecuting criminal offences in comparison to other comparable institutions in the country.	0.8898	
Assess how efficient is your institution in prosecuting criminal offences in comparison to other comparable institutions in the EU.	0.7996	
Assess how efficient is your institution in sanctioning economic minor offences in comparison to other comparable institutions in the country.		0.8884
Assess how efficient is your institution in sanctioning economic minor offences in comparison to other comparable institutions in the EU.		0.9131

Extraction Method: Principal Component Analysis
Rotation Method: Varimax with Kaiser Normalization
** Only factor weights higher than 0.35 are reproduced*

The matrix above shows that the interpretation of both factors can be written as follows:

- first factor: efficiency in discovering and prosecuting criminal offences;
- second factor: efficiency in sanctioning economic minor offences.

A similar factor analysis was used also to shrink the dimensions in section 8. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix, while the rotated factor matrix showing the interpretation of factors is, again, displayed below.

Table 4: Rotated factor matrix, section 8

Assess to which extent the particular activities would contribute to a better efficiency of procedures carried out by law enforcement authorities as regards economic criminal offences.	**Factors**		
	1	**2**	**3**
Clearer demarcation between economic criminal offences and economic minor offences.			0.8052
Better proportionality of criminal sanctions to the unlawfully gained property benefit.			0.6489
Shortening of court proceedings.			0.6984
Simplification of court proceedings for confiscation of unlawfully gained property benefit.		0.6151	
Lowering of standards of proof during the court trial.	0.7607		
Raising the level of expert knowledge of law enforcement authorities.	0.4758		0.4327
Higher fines imposed by minor offences authorities.	0.5527	0.4624	
For a higher productivity and investigation of economic criminal offences criminal investigators and state prosecutors should work in the same working environment.	0.7965		
Improvement of equipment and work conditions.	0.7728		
Development of mechanisms for decreasing fluctuation of staff.	0.8212		
Exchange of knowledge among various investigation authorities.		0.8440	
Joint work on cases.		0.7732	

Extraction Method: Principal Component Analysis
Rotation Method: Varimax with Kaiser Normalization

** Only factor weights higher than 0.35 are reproduced*

The matrix above shows that the interpretation of both factors can be written as follows:

- the first factor: human resources aspects and aspects of work of law enforcement institutions' employees;
- the second factor: inter-institutional cooperation;
- the third factor: legal environment.

In the last methodological part, we examined which were the aspects that affect the opinion on the suitability of legal order. To this end, we used the answers to individual section 1 questions as respective dependent variables. Since such variables are of discrete nature and can exist only as whole numbers between 1 and 5, we have used the models of ordinal logit analysis (Greene, 2005; Verbeek, 2004). The econometric model we are using is therefore:

$$ln\frac{\sum_1^j \Pr\,(y=j)}{\sum_{j+1}^k \Pr\,(y=j)} = \alpha_j + \sum_{i=1}^{3} \beta_i D_i + \beta_4 educ + \beta_5 logyexp + \beta_6 fact1q26 + \beta_7 fact2q26 + \beta_8 fact3q26 + \beta_9 fact4q26 + \beta_{10} fact1q7 + \beta_{11} fact2q7 + \beta_{12} fact1q8 + \beta_{13} fact2q8 + \beta_{14} fact3q8 + \varepsilon_j$$

where:

are respective dependent variables, that is the answers to the questionnaire section 1 questions;
are quasi (dummy) variables for individual institutions where respondents are employed, namely: has a value of 1 if the respondent works in the police force an 0 if anywhere else; has a value of 1 if the respondent works as a state prosecutor and 0 if anywhere else; has a value of 1 if the respondent works in court and 0 if anywhere else;
is a variable that aims at the highest achieved level of education and has a value of 1 where the respondent has finished high school, value of 2 where the respondent has finished a short-cycle college, value of 3 where the respondent has a university education, value of 4 for M.Sc. respondents and value of 5 for Ph.D. respondents;
is a variable that equals the value of logarithm of years of work experience;

is a variable that equals the value of the first factor from sections 2-6, that is the factor "by statute";
is a variable that equals the value of the second factor from sections2-6, that is the factor "by amount";
is a variable that equals the value of the third factor from sections 2-6, that is the factor "by service form";
is a variable that equals the value of the fourth factor from sections 2-6, that is the factor "demarcation is not necessary";
is a variable that equals the value of the first factor from section 7, that is the factor "efficiency in discovering and prosecuting criminal offences";
is a variable that equals the value of the second factor from section 7, that is the factor "efficiency in sanctioning economic minor offences";
is a variable that equals the value of the first factor from section 8, that is the factor "human resources aspects and aspects of work of law enforcement institutions' employees";
is a variable that equals the value of the first factor from section 8, that is the factor "inter-institutional cooperation";
is a variable that equals the value of the first factor from section 8, that is the factor "legal environment";
and are the parameters we are assessing, indicates a random error.

The table below (Table 5: results of regression models) shows the results of regression models for the first three answers from section 1. As regards the first answer, which is most general, the following variables are statistically significant: the fact that the respondent works at the state prosecutor's office means he will give a higher score regarding this question; the fact that the respondent works in court also means he will give a higher score regarding this question, meaning that respondents who work in court or at the state prosecutor's office have a better opinion on the Slovenian legislation in the field of economic crime, which could also be a security mechanism, since the question directly speaks of their work. A higher level of the respondent's education also means he will give a higher score regarding this question, yet the link is less significant; the number of years of work experience also means a better opinion as regards this question, both showing that the highly educated respondents and respondents with more work experience have a better opinion of the Slovenian legal system in the field of economic crime. A better opinion as regards the "by service form" question also means a better opinion in the scope of the first question; as well as a better opinion on efficiency of respondent's own institution in discovering and prosecuting criminal offences means a better opinion in terms of this particular questions, which is of course not surprising, yet, it is interesting that a similar correlation with the opinion on efficiency in sanctioning of minor offences is not apparent.

The model for the second question that asks about a clear demarcation between economic minor offences and economic criminal offences reaches only a weak level of significance, while only one variable is significant – respondents that work at the state prosecutor's office have a slightly better opinion in terms of this question.

At the third question, the model again clarifies variability in the dependent variable a little better. The question asks about clarity of the legal system as regards economic minor offences in the field of takeovers. Representatives of all three institutions included in the model, that is, the police, prosecutor's office, and courts, have a slightly better opinion of this issue than other respondents. Additionally, those who have more work experience also have a better opinion about it, the link being statistically highly significant. It is interesting that those who have a better opinion on efficiency of their own institution in discovering and prosecuting criminal offences have a slightly lower opinion, which may indicate

demarcation or difference of minor offences from criminal offences. On the other hand, those who have a better opinion on efficiency of their own institution in sanctioning economic minor offences also have a better opinion, which is understandable.

Table 5: Results of regression models

	In Slovenian legislation, arrangement of economic criminal offences and economic minor offences is adequately positioned within the legal order.			The same conduct that can under certain circumstances be considered an economic minor offence and under different circumstances an economic criminal offence is clearly demarcated and specific.			Statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific.		
	Odds ratio	**95% CI**	**Statistical significance**	**Odds ratio**	**95% CI**	**Statistical significance**	**Odds ratio**	**95% CI**	**Statistical significance**
D1	1.96	0.19-20.14		2.22	0.20-24.42	**	22.68	1.90-271.24	**
D2	13.60	1.51-122.60	**	10.47	1.40-78.31	**	13.23	1.57-111.51	**
D3	45.44	1.48-1394.26	**	2.02	0.10-41.50		72.96	2.62-2028.84	**
educ	1.80	0.93-3.50	*	1.12	0.63-1.98		1.62	0.82-3.18	
logyexp	109.32	2.51-4769.69	**	509.51	0.12-2078681.00		88.86	2.96-2666.48	***
fact1q26	0.87	0.41-1.86		1.14	0.55-2.34		0.80	0.36-1.78	
fact2q26	0.70	0.27-1.82		0.94	0.38-2.31		1.39	0.50-3.85	
fact3q26	2.10	0.87-5.05	*	0.86	0.38-1.91		1.34	0.54-3.33	
fact4q26	1.20	0.56-2.56		1.60	0.76-3.36		0.76	0.37-1.59	
fact1q7	2.08	1.09-3.94	**	0.83	0.44-1.55		0.43	0.21-0.89	**
fact2q7	1.27	0.57-2.84		1.03	0.46-2.30		2.75	1.09-6.91	**
fact1q8	1.35	0.57-3.17		1.40	0.60-3.27		0.99	0.42-2.36	
fact2q8	1.63	0.80-3.31		1.18	0.61-2.29		1.62	0.82-3.18	
fact3q8	1.08	0.50-2.33		1.66	0.84-3.26		0.87	0.38-1.99	
Observations	56			56			56		
Pseudo R^2	0.2850			0.1443			0.1794		
Logarithmic likelihood function	-56.0734			-67.0862			-68.0564		

**** - statistical significance at 1%, ** - statistical significance at 5%, * - statistical significance at 10%*

In the table below (Table 6: results of regression models, other three answers to question 1), there are the results of other three section 1 questions. The model for the fourth question is quite weak and has a non-significant value of the basic chi-square statistics of the odds ratio. Much better is the model for the fifth question, where six factors are significant. Again, the respondents that work in the police force, at the prosecutor's office, or in court have a better opinion of this issue (about fairness and proportionality of sanctions for economic minor offences in the field of takeovers). Moreover, an increase in years of work experience again improves the respondents' opinion of this issue, even though the correlation is of statistically weak significance. As expected, those who have a better opinion on the efficiency of their own institution in sanctioning economic minor offences have a better opinion also in terms of this question. Additionally, those who see a possibility of improvements in the legal environment have a lower opinion in terms of this question, which also seems in line with the expectations (since they have a lower opinion in terms of this question, they see a possibility for improvements in the legal environment).

As regards the last question that asks about fairness and proportionality of sanctions for economic criminal offences in the field of takeovers, where the model is of lower significance but still within the margin of tolerance, the following three factors are significant: those who work in court have a better opinion in terms of this question; again, years of work experience add up to the opinion in terms of this question; a slightly better opinion have also those who believe that economic criminal offences and economic minor offences in the field of takeovers should be demarcated "by service form".

Table 6: Results of regression models

	Statutory elements in the field of economic criminal offences relating to unlawful conduct in the course of takeovers are in Slovenian legal order clearly formed and specific.			**Prescribed punishments for economic minor offences in the field of takeovers are fair and proportional to the committed minor offence.**			**Prescribed punishments for economic criminal offences in the field of takeovers are fair and proportional to the committed criminal offence.**		
	Odds ratio	**95% CI**	**Statistical significance**	**Odds ratio**	**95% CI**	**Statistical significance**	**Odds ratio**	**95% CI**	**Statistical significance**
D1	0.63	0.08-5.14		9.73	0.86-109.96	*	1.68	0.20-13.84	
D2	0.75	0.10-5.51		18.91	2.16-165.57	***	5.64	0.66-47.84	
D3	5.75	0.29-115.62		53.43	1.80-1584.26	**	34.62	1.23-972.29	**
educ	0.79	0.42-1.50		1.43	0.78-2.62		1.39	0.77-2.54	
logyexp	13.92	0.55-349.65		1,250.62	0.44-256972.00	*	129.70	3.43-4906.29	***
fact1q26	0.98	0.46-2.09		1.60	0.68-3.78		0.56	0.26-1.21	
fact2q26	1.44	0.58-3.59		0.57	0.20-1.65		0.67	0.24-1.90	
fact3q26	0.79	0.34-1.81		1.69	0.64-4.45		2.28	0.92-5.64	*
fact4q26	1.21	0.61-2.40		0.96	0.43-2.15		0.91	0.45-1.86	
fact1q7	1.22	0.66-2.23		0.78	0.38-1.58		0.90	0.43-1.89	
fact2q7	1.11	0.54-2.30		2.32	1.01-5.30	**	1.11	0.49-2.51	
fact1q8	1.25	0.56-2.80		0.89	0.38-2.08		1.69	0.70-4.04	
fact2q8	1.08	0.61-1.92		0.81	0.43-1.51		1.39	0.77-2.53	
fact3q8	0.75	0.37-1.52		0.29	0.12-0.72	***	0.84	0.43-1.63	
Observations	56			55			55		
Pseudo R^2	0.1132			0.1987			0.1531		
Logarithmic likelihood function	-66.3750			-62.7175			-63.2779		

**** - statistical significance at 1%, ** - statistical significance at 5%, * - statistical significance at 10%*

8 CONCLUSION

Economic criminal offences are regulated in the specific part of PC-1 (2008), more precisely in chapter 24 (Criminal offences against economy). Such a regime is partially suitable. The knowledge of these regulations and their use is made more accessible for experts and lay public. However, chapter 24 also covers criminal offences that (according to their description) have little in common with economy and economic values and goods, some are even not committed in the course of performing economic activities or by economic entities. The

fact that a certain criminal offence in Slovenian legal order is classified within the chapter on criminal offences against the economy does not necessarily mean that the economy or individual values from the field of economy are a direct object of attack of this criminal offence. Economic minor offences are regulated in individual sector-specific statutes and other legal acts governing the narrower fields of economy. Such a regime is, again, only partially suitable. Its good side is that the minor offences from a particular field are governed by the legal instrument that regulates the field in question (financial minor offences, etc.). However, the negative side is that the knowledge of these minor offences is, thereby, made much more difficult. Nobody can be familiar with all the regulations that govern a specific field of corporate law and thus cannot know what is incriminated by these regulations. After an overview of specific provisions on particular economic criminal offences and minor offences corresponding to these criminal offences, we came to the conclusion that the legislator did not devote enough attention to the arrangement of economic minor offences. Namely, on too many occasions, a specific economic criminal offence and an economic minor offence include identical statutory elements, meaning that there is no difference between them.

The results of testing of the set hypothesis clearly show that the average values are, except in the case of question No. 3 ("statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific"), statistically significantly lower than 3. Consequently, we can confirm the basic hypothesis. Further, empirical findings provide that respondents[13] agreed with the position that statutory elements of respective criminal offences and minor offences overlap and that the Slovenian legal order, as regards economic criminal offences and minor offences, is not adequate, which is shown by the results of one sided t tests. Therefore, it would be sensible to consider the possibility of imposing a monetary threshold as a demarcation tool that would set the maximum amount of damage to property under which the act could be treated as a minor economic offence. All criminal acts above that threshold would be considered criminal offences. Also, it would be worth contemplating that the idea that the amount of damage to property should be defined by the injured party. Therefore, legal uncertainty between the above mentioned articles would be eliminated. Studies into the performance of minor offence authorities (SMA, BS, CPA), on the one hand, and law enforcement authorities (police, prosecution), on the other, have led to a conclusion that the officials addressing these issues should improve their professional knowledge, work the cases collectively, and shape the mechanisms to reduce staff turnover. On the other hand, an increase in fines for perpetrators and shorter court proceedings would also have a beneficial effect on the performance of minor offence authorities. The above conclusions have been confirmed through practical work. It has become evident that minor offence authorities make virtually no referrals for the criminal offences concerned, which has strengthened the need for mechanisms to increase the level of professional knowledge among the competent officials. The results of regressions have shown the strongest influence of respondents' workplace and

13 *The questionnaire exhibits a sufficient level of reliability, as demonstrated with the value of the Cronbach's Alpha.*

work experience, whereby it is interesting that those who work in the institutions that directly prosecute economic crime have a better opinion on the statutory regulation of this field, while, in almost all model specifications, those who have more work experience also have a much better opinion on the statutory regulation of economic crime. This clearly shows that also knowledge of or activity in this field is an additional aspect of satisfaction or dissatisfaction with the statutory regulation of this field: those who know the field better (because, for example, they have been working in the field for a number of years) improve their opinion on regulation of this economic crime.

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Juvenile Crime in the 21st Century: A Really Escalating Problem or Just a Media Sensation? The Case of Croatia

Irena Cajner Mraović, Valentina Asančaić, Dubravko Derk

Purpose:

The main goal of the paper is to analyse dynamics of juvenile crime and to identify long-term tendencies in the development of this negative social phenomenon in Croatia in this century.

Design/Methods/Approach:

Based on official police statistics, the analysis of the dynamics and the average rate of change are used to reveal and compare trends in reported overall, violent, and juvenile property crime in Croatia between 2000 and 2013. Model of a linear trend is used to make a prediction of future short-time trends.

Findings:

Though the total number of reported juvenile crime is stable or even slightly declining over the observed period, there are exceptional increases or declines in certain years and in certain offences, which can create the wrong impression about alarming changes. It especially applies to the oscillations of the number of reported juvenile homicide and rape, because of small absolute numbers. Substantial and significant fluctuations during the observed period, are found in reported rates for robbery and theft: there is a decrease in reported theft and increase in reported robbery.

Originality/Value:

In Croatia, but also in other post-socialist countries in Central Eastern Europe, there are general beliefs of the dramatic increase in juvenile crime rates since late 1990s. Results of this study reveal how such cursory review obscures some long-term and significant changes in juvenile crime, which are indicative when speaking about the juvenile crime under conditions of intensive social change.

UDC: 343.915(497.5)

Keywords: juvenile, overall crime, violent crime, property crime, Croatia, trends

Mladoletniška kriminaliteta v 21. stoletju: resnično naraščajoč ali zgolj medijsko izpostavljen problem – študija primera Hrvaške

Namen prispevka:

Namen prispevka je analizirati dinamiko mladoletniške kriminalitete in identificirati dolgoročne trende v razvoju tega nezaželenega družbenega pojava na območju Hrvaške v tem stoletju.

Metode:

Analiza je bila opravljena s pomočjo uporabe uradne statistike hrvaške policije, kjer je analizirana dinamika in povprečje pojavnosti vseh kaznivih dejanj, kaznivih dejanj z elementi nasilja in premoženjskih kaznivih dejanj, ki so jih bili v obdobju od 2000 do 2013 na območju Hrvaške osumljeni mladoletniki. Za predvidevanje pojavnosti analiziranih kaznivih dejanj v bližnji prihodnosti je bila uporabljena metoda linearnih trendov.

Ugotovitve:

Število analiziranih kaznivih dejanj je v opazovanem obdobju stabilno, včasih celo upada, pri tem pa lahko zaznamo določene poraste ali upade pri specifičnih oblikah kaznivih dejanj in v krajšem časovnem obdobju. Slednje nas lahko vodi k napačnim zaključkom ali pa brez potrebe vzbuja alarmne odzive. To še posebej velja za nihanja pojavnosti kaznivih dejanj umora in posilstva, ki so jih bili osumljeni mladoletniki, še posebej zato, ker govorimo o majhni številki pojavnosti teh kaznivih dejanj. Statistično pomembna odstopanja so bila zaznana le pri kaznivih dejanjih ropov in tatvin; ugotovili smo pomemben porast prijavljenih kaznivih dejanj ropa in upad kaznivih dejanj tatvin.

Praktična uporabnost:

Na Hrvaškem, pa tudi v drugih postsocialističnih državah Srednje in Vzhodne Evrope, obstaja prepričanje o dramatičnem porastu mladoletniške kriminalitete v času po 1990. Rezultati te analize pokažejo, kako lahko takšna prepričanja spregledajo dolgoročne in pomembne spremembe na področju mladoletniške delinkvence, ki so pogojene in jih je mogoče pojasniti predvsem skozi prizmo družbenih sprememb.

UDK: 343.915(497.5)

Ključne besede: mladoletniki, kriminaliteta, nasilna kazniva dejanja, premoženjska kazniva dejanja, Hrvaška, trendi

1 INTRODUCTION

Is juvenile crime out of control? Not only does this issue fill the headlines of daily newspapers in an effort to attract more readers, but it is often found in professional and scientific publications. Some 16 years ago, Loose and Thomas (1998: 22) dramatically warned: "To those who regularly deal with youngsters involved in violence, it often feels as if an entire generation is hopelessly lost. The

frustration is heard in the voices of those who jail juveniles and those who treat their wounds." The results of comparative research and official crime statistics across Europe (Cajner Mraović, Butorac, & Kešetović, 2014; Enzmann & Podana, 2010; Killias, Lucia, Lamon, & Simonin, 2004; Sijerčić-Čolić, 2012; Steketee & Gruszczyńska, 2010) bring good news about declining juvenile crime rates overall in Europe since 2005. However, if you talk to people about crime, you do not hear about the results of relevant surveys or recent police statistics, but about concrete media reports on young people who commit brutal offences to gain material benefit or just to have fun. The problem is that nowadays such stories spread quickly and people easily lose a sense of the exact place where they occurred, so it is possible that somebody in Croatia in 2014, feels threatened by juvenile violence like somebody 10 or 15 years ago in the United States, "which has long had the dubious distinction of being the most violent and crime-ridden industrial nation in the world" (The Public Agenda, 1998: 17).

2 LITERATURE REVIEW

It can be said with some certainty that juvenile crime has increased in the second half of the twentieth century in all European countries except Denmark, The Netherlands, Norway, Scotland and Sweden (Estrada, 1999). Although all sources point to a massive increase in offending among juveniles, particularly in violent offences during the 1990s in most European countries (Killias et al., 2004), interest is especially great for juvenile crime in the post-socialist countries in Central and South-Eastern Europe because of the rapid social changes that they have had to cope with in that period. Sijerčić-Čolić (2012) even points out that changes in juvenile delinquency over the last three decades have put considerable pressure on transitional countries. The author analyses juvenile crime in seven post-socialist countries in South-Eastern Europe, with particular emphasis on four countries, which were established after the collapse of Yugoslavia: Bosnia and Herzegovina, Croatia, Serbia and Slovenia. The given data show interesting common trends in all observed countries that could be summarized as follows: over the last ten years of the twentieth century there are oscillating levels in juvenile crime characterised mainly by a sudden upsurge and then a more or less continuous increase in the number of reported juvenile offenders, while over the first decade of the twenty-first century there is an upward trend in officially recorded juvenile crimes continuing for five years, followed by a gradual but more or less constant decline. There are other authors (Asquith, 1998; Cajner Mraović & Stamatel, 2000), whose research lead to the same conclusions about the increase in juvenile crime that occurred in transitional countries in the nineties. It seems that our understanding of these trends is still insufficient, which leaves room for speculation and prevents constructive discussion of trends in this century. It also occurs that previous or now outdated estimates are still uncritically accepted, because they are impressive.

Those who argue that juvenile delinquency is a severe problem refer to a few main theses: young people are committing increasingly brutal offences and seem to feel no remorse for the harm they do to their victims; such acts of juvenile wanton violence are being perpetrated by increasingly younger offenders, not

exclusively by boys but even girls, and by different types of cold weapons and even firearms. It is not difficult to agree with this argument, but one can also easily accept an entirely opposite approach based also on a few main theses: the problem of juvenile crime and particularly the problem of juvenile violence are exaggerated by media and politicians who both need to target something or someone to blame for all problems in society; young people are still far more likely to become the victims rather than perpetrators of crime; juveniles still predominantly commit crimes against property and other non-violent offences.

The correct solution to these dilemmas is not necessary just for the sake of "peace at home," but it is also important for the long-term future of the juvenile justice system. Should the juvenile justice system get tougher on juvenile offenders, particularly for violent crimes, has been a topic of much debate over the past two decades not just in Croatia but in many countries in the world. The answer to this question varies from absolute agreement to absolute disagreement, not only in the general but also in the professional public. Another problem is that the argument for getting tougher, as well as the argument against it, does not necessarily mean the same for different authors. This is because hidden behind this question is a series of controversies about what causes juvenile crime and juvenile violence in particular. Criminological, sociological, psychological and interdisciplinary research in the 20th and 21st century have revealed many different risk factors for juvenile criminal behaviour.

3 METHOD AND MATERIAL

There are three methods of measuring juvenile crime: through measurement of officially recorded crime in police, prosecution or court statistics, through self-reported delinquency surveys and victimisation surveys. This paper focuses on the analysis of juvenile crime trends in Croatia based on the data reported to and recorded by the police. Official crime statistics is often used in criminological research because it is the most accessible source of data on juvenile crime. Taking into account their general limitations resulting from citizens' reporting behaviour and the way various levels of the criminal justice system function, in this study only the data on reported juvenile offenders available from the police statistics are used. Reported juvenile offenders are juvenile perpetrators of criminal offences against whom legal proceedings based on the crime report have been concluded. The number of reported juveniles is much closer to the real state of juvenile crime than the number of accused or convicted minors because the rule of appropriate scope for discretion is to be allowed and even recommended at all stages of criminal proceedings and all levels of juvenile justice administration.

The use of survey data is also problematic because of limited samples, high costs and often inconsistent methodologies. Even the *International Crime Victimisation Survey* (*ICVS*) and the *International Self-Reported Delinquency Survey* (*ISRD*), which both include the use of standardised survey questions, have methodological problems resulting from different sampling procedures: in some countries, national samples were used, while in other countries city samples were drawn. In the *ICVS,* respondents were asked whether they had been exposed to

the victimization of certain types of offenses over the last twelve months and the last five years. In the ISRD respondents were 13- to 16- year- old school children, who were asked whether they had committed any of the provided twelve offences over the last twelve months. Although it is understandable to expect a coincidence of the survey results with official data on juvenile crime, the results of *ICVS* and *ISRD* do not necessarily correlate with the official statistical data on juvenile crime. This fact is crucial in terms of current controversies and dilemmas about nature and scope of the juvenile crime. For instance, based on the results of the self-reported delinquency study conducted in six member states that joined the European Union in 2004 (Czech Republic, Estonia, Lithuania, Poland, Slovenia and Cyprus), Steketee and Gruszczyńska (2010) found a remarkable degree of similarity in juvenile crime patterns among post-socialist EU states which include a large discrepancy between the official criminal statistics in 2008 and the self-reported juvenile crime in the same year: juvenile crime tends to go unreported. This is a critical finding because it clarifies the origin of actual doubts about the extent and severity of juvenile crime: it is largely a part of the "dark figure" of crime, so it is not recorded, but it still exists as a problem in society. Analysing empirical studies on juvenile crime in seven post-socialist European countries, Sijerčić-Čolić (2012) comes to a quite similar conclusion: although the number of reported juveniles in the selected countries at the turn of the century showed an upward trend that was nowhere near to being as dramatic as the number of reported adults, juvenile offenders everywhere are given greater public concern, particularly the violent ones and those under the age of 14. Finally, comparing trends of juvenile violence between 2000 and 2006 in cities in the Czech Republic, Germany, Poland, Russia, and Slovenia, Enzmann and Podana (2010) also found some discrepancies between the official crime statistics and self-reported study data which better enlighten why people are still worried about juvenile violence although the increase in officially registered violent offender rates in the observed five transitional countries did not continue after 2000. An important fact is that data on self-reported violent behaviour in those countries reveal a drop in wanton violence in 2006 compared to 1999, but also an increase in instrumental violence in the same period.

In the paper, we did not use the survey data because they are still not available in Croatia. Last year, Croatia joined the *ISRD* for the first time, but the sample was not representative for Croatia and only the results for one of two participating cities are known.

The main goal of the paper is the analysis of the data readily available from the police statistics in Croatia in 2000–2013 period for overall juvenile crime, juvenile crime against life and limb, juvenile sexual crime, juvenile crime against property and juvenile drug-related crime, as well as for selected ten most common or most dangerous criminal offences: homicide, bodily injury, serious bodily injury, rape, theft, aggravated theft, robbery, property damage, violent behaviour, and attack on a public official.

4 RESULTS

In Table 1 and Figure 1 trends in overall juvenile crime, juvenile crime against life and limb, juvenile sexual crime, juvenile crime against property and juvenile drug-related crime are compared.

Year	Overall juvenile crime		Juvenile crime against life and limb		Juvenile sexual crime		Juvenile crime against property		Juvenile drug-related crime	
		*Vt**		*Vt*		*Vt*		*Vt*		*Vt*
2000	5093		127		31		1855		860	
2001	6294	123.5814	119	93.70079	26	83.87097	2449	132.0216	1134	131.8605
2002	5154	81.88751	134	112.605	19	73.07692	2075	84.72846	952	83.95062
2003	4508	87.46605	153	114.1791	33	173.6842	1808	87.13253	640	67.22689
2004	4572	101.4197	137	89.54248	22	66.66667	1878	103.8717	432	67.5
2005	4307	94.20385	140	102.1898	50	227.2727	1999	106.443	421	97.4537
2006	4715	109.473	264	188.5714	48	96	2012	100.6503	451	107.1259
2007	4975	105.5143	603	228.4091	59	122.9167	2261	112.3757	255	56.54102
2008	4779	96.0603	757	125.539	59	100	2172	96.06369	200	78.43137
2009	4275	89.45386	623	82.29855	56	94.91525	1840	84.71455	229	114.5
2010	4583	107.2047	658	105.618	67	119.6429	1963	106.6848	271	118.3406
2011	4438	96.83613	534	81.15502	60	89.55224	1856	94.54916	334	123.2472
2012	3035	68.38666	461	86.32959	44	73.33333	1632	87.93103	427	127.8443
2013	2292	75.51895	366	79.39262	26	59.09091	1303	79.84069	118	27.63466

*Chain index: $Vt = \frac{X_t}{X_{t-1}} \cdot 100$

Table 1: Trends in reported juvenile crime in Croatia by type of crime (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

The level of juvenile sexual crime is much lower than the juvenile crime against life and limb, the juvenile crime against property and juvenile drug-related crime. However, juvenile sexual crime is included in the analyses because of the complexity of its individual and social consequences.

Figure 1 shows the average annual decline in total juvenile reported crimes: 171.4 crimes per year (y = -171.41x + 5787; R^2 = 0.5826). However, it is important to notice that the same method reveals the average annual increase in reported juvenile crimes against life and limb on the level of 40.9 cases per year (y = 40,932x + 55,582; R^2 = 0.5231). The Figure 1 also shows average annual decline in juvenile reported crime related to drugs: 60,3 cases per year (y = -60,312x + 932.63; R^2 = 0.6794).

In Figure 1, it is evident that only the trend of juvenile sexual crime does not follow the general declining trend of juvenile crime in Croatia. In Table 1, one can notice considerable variations in juvenile sexual crime rates in Croatia over the last 14 years: it almost doubled in 2003 and more than doubled in 2005, but it was almost halved in 2004, and 2013. It is interesting to note that the declining trend in juvenile sexual crime in Croatia started in 2011, unlike juvenile crime against life and limb and juvenile property crime, which both started decreasing somewhat

earlier, in 2008. The trend of juvenile drug-related crime is also interesting: at the very beginning of the observed period, the number of reported juvenile drug-related offences was still rising, but it was decreasing from 2002 to 2008, and from then until 2013, it was slightly growing, when in 2013, it decreased by 82%. The reason for such a rapid decline is a change in the Croatian Criminal Code (Amendments and Supplements to the Criminal Code, 2012): unauthorised possession of illicit drugs has been decriminalised. Taking into account the trend in the number of reported minors for all types of crime, as well as the forecasts provided, a further decline in the overall number of reported minors up to the year 2016 is expected. The same applies to the number of reported minors for criminal offences against property. In contrast, expected in the same period in the future is an increase in the number of reported minors for criminal offences against life and limb, as well as criminal sexual offences. A forecast for drug-related criminal offences by minors will not be made since there was a significant change in relevant legislation.

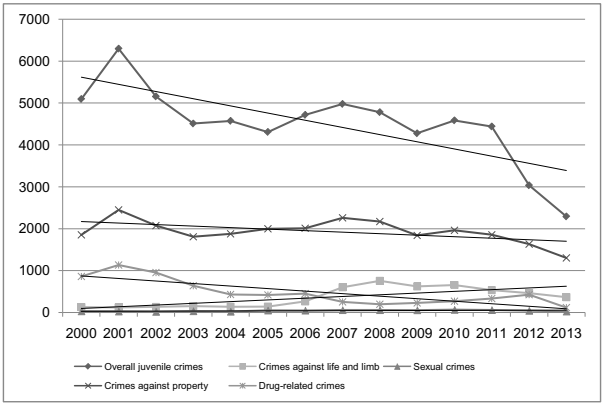

Figure 1: Trends in reported juvenile crime in Croatia by type of crime (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

As the authors have previously indicated, this paper is not limited only to an analysis of the overall juvenile crime trends and changes in certain groups of offences.

Table 2: Trends in reported juvenile serious violent criminal offences in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

Year	Homicide		Bodily injury		Serious bodily injury		Rape	
		Vt		*Vt*		*Vt*		*Vt*
2000	3		0	0	87		9	
2001	2	66.6667	0	0	83	95.4023	1	11.1111
2002	0	0	10	0	94	113.253	6	600
2003	0	0	7	70	111	118.085	0	0
2004	4	0	5	71.4286	105	94.5946	2	0
2005	2	50	4	80	96	91.4286	7	350
2006	4	200	71	1775	78	81.25	9	128.571
2007	2	50	377	530.986	202	258.974	6	66.6667
2008	2	100	468	124.138	113	55.9406	7	116.667

Year	Homicide		Bodily injury		Serious bodily injury		Rape	
		Vt		*Vt*		*Vt*		*Vt*
2009	0	0	399	85.2564	92	81.4159	2	28.5714
2010	2	0	431	108.02	102	110.87	6	300
2011	2	100	367	85.1508	83	81.3726	6	100
2012	1	50	363	98.9101	87	104.819	8	133.333
2013	3	300	262	72.1763	63	72.4138	2	25

Table 2: continuation

Table 2 and Figure 2 show data on three of the most important (homicide, serious bodily injury) and the most frequent (bodily injury) offences against life and limb, and the most important sexual offence (rape). During the first half of the observed period, trends in all four offences are mainly stable. One can only find a sharp decline in the juvenile homicide rate in 2001 when the number of reported juvenile homicides dropped by 33%. This trend is of limited relevance because it results from the low absolute figures: there were three reported juvenile homicides in 2000, and two of them in 2001. Similar oscillations are repeated throughout the period under examination. The number of reported juvenile homicides was halved in 2005, 2007, and 2012, but again the highest absolute figure was four reported offences per year.

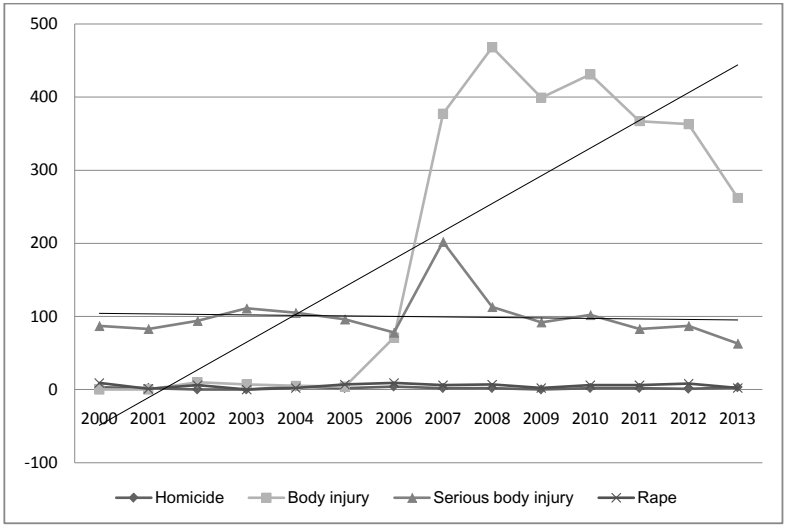

Figure 2: Trends in reported juvenile serious violent criminal offences in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

An increase in the number of juvenile homicides occurred only in 2006 when it was doubled and in 2013 when there were three times more juvenile homicides than in 2012. Once again, it is necessary to stress that behind these alarming increases there are small absolute numbers: when talking about a doubled number of homicides in 2006 it is actually an increase from two such cases in 2005 to four cases in 2006. It is also important to notice that from 2002 to 2005, and again in 2009 and 2010, there was no reported juvenile homicide at all. Taking

into consideration the forecast that can be found in Figure 1, expected in the next three years is a further, yet modest increase in the number of reported homicides committed by minors.

A similar phenomenon of astonishing but no such alarming oscillations in the number of reported cases can be observed with rape: in 2002, there was an increase of 500%, which sounds not only alarming, but even disturbing and upsetting. The fact is that the upsurge resulted there was only one reported juvenile rape in 2001, and six of them in 2002. There was a sharp increase of 250% in the number of reported juvenile rapes again in 2005, but we have to be aware that there were two reported juvenile rapes in 2004, and four of them in 2005. Something similar happened in 2013, when the rate of reported juvenile rapes even tripled, however from one reported case in 2012 to three reported cases in 2013. The declines in reported juvenile rape during the observed period are also "astonishing": in 2001 by 79% (from nine reported juvenile rapes in 2000 to just one such case in 2001), in 2009 by 71% (from seven reported juvenile rapes in 2008 to two reported juvenile rapes in 2009), and finally in 2013 by 75% (from eight in 2012 to two in 2013). In 2003 and 2004, there were no reported juvenile rapes in Croatia. By examining the forecast of the linear trend presented in Figure 1, it can be seen that a modest increase in the number of rapes committed by minors can be expected up to the year 2016 in Croatia.

What should concern us here is the trend in the number of reported bodily injuries. Figure 2 reveals noticeable increase: 37.9 cases per year ($y = 37.908x + 86.879$; $R^2 = 0.6528$). In the first two years of this century, there were no reported juvenile bodily injuries at all (Table 2). From 2003 to 2005, there are just a few such cases per year: the fewest number of cases occurred in 2005, when there were only four such cases, while the peak was ten reported bodily injuries in 2002. From 2006, the number of reported juvenile bodily injuries was rising substantially until 2008. Unfortunately, this cannot be attributed to small absolute figures that result in impressive rising trends. From the data presented in Table 2, one can notice an increase from four reported juvenile bodily injuries in 2005 to 71 reported juvenile bodily injuries in 2006. In 2007, there were already 377 reported bodily injuries perpetrated by juveniles, which grew to an astonishing 468 such cases in 2008. It is also apparent from Table 2 that the same rate of reported bodily injuries committed by juveniles was maintained over the following four years, with its minimum in 2012 ($N = 363$) and maximum in 2010 ($N = 431$), which is a drastically different situation compared to the one from the first half of the observed period. Only in 2013, the first noticeable decline by 28% in the number of reported bodily injuries committed by juveniles was recorded. However, according to Figure 2, the forecast for the next three years is a statistically significant substantial increase.

The trend in reported juvenile serious bodily injuries provides somewhat less cause for concern: it also shows a dramatic increase by 158% in 2007, but since then it was mostly decreasing. Of course, one has to be aware that it is an offence with serious consequences, so despite a relatively stable trend, it is necessary to keep it in focus. It should also be noticed that absolute figures of such cases are not as low as when speaking about homicide or rape, but they are still not as high as figures of reported bodily injuries committed by juveniles in the second half of the

observed period. The forecast for the next three years is that the number of serious bodily injuries committed by minors will continue to decrease.

Year	Theft		Aggravated theft		Robbery		Property damage	
		Vt		*Vt*		*Vt*		*Vt*
2000	935		1843		76		220	
2001	934	99.893	2416	131.091	86	113.158	364	165.455
2002	701	75.0535	1803	74.6275	111	129.07	282	77.4725
2003	644	91.8688	1692	93.8436	82	73.8739	231	81.9149
2004	748	116.149	1917	113.298	129	157.317	199	86.1472
2005	700	93.5829	1634	85.2374	175	135.659	193	96.9849
2006	812	116	1718	105.141	125	71.4286	267	138.342
2007	916	112.808	1682	97.9045	121	96.8	312	116.854
2008	919	100.328	1574	93.5791	126	104.132	270	86.5385
2009	849	92.383	1427	90.6607	130	103.175	270	100
2010	978	115.194	1631	114.296	60	46.1539	215	79.6296
2011	842	86.0941	1617	99.1416	79	131.667	191	88.8372
2012	575	68.2898	2447	151.33	152	192.405	216	113.089
2013	421	73.2174	1964	80.2615	107	70.3947	228	105.556

Table 3: Trends in reported juvenile criminal offenses against property in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

Regarding juvenile property crime in Croatia, the declining trend has already been presented in Table 1 and Figure 1, but in Table 3 and Figure 3 one can find a further analysis of trends in the most common offences against property committed by juveniles: theft, aggravated theft, robbery and property damage. In the context of the dilemma about the seriousness of the problem of juvenile crime and violence indicated in the introduction, it is interesting to note that all of the observed offences against property do not follow the general declining trend of juvenile property crime in Croatia. Furthermore, the trends of reported juvenile aggravated theft and robbery tend to be opposite to this general trend. The number of aggravated thefts committed by juveniles increased by 31% in 2001 and by 51% in 2012, and oscillated considerably over the entire observed period. A similar situation can be observed in reported juvenile robberies in Croatia: one can clearly see an upsurge by 29% in 2002, 57% in 2004, 35% in 2005, 31% in 2011 and even 92% in 2012. There were also some large decreases in the number of reported juvenile robberies: by nearly 30% in 2003, 2006 and 2013, and by 54% in 2010. In contrast, the trend in reported juvenile theft rates was in a continuous slight decline, leading to more than a halving of the number of such cases at the end of the observed period ($N = 421$) compared to its beginning ($N = 935$). It is also to be noticed here that we are talking about huge absolute numbers of reported juvenile offenders for all of the four observed offences against property. There were 1843 reported juvenile aggravated thefts in 2000 and 1964 in 2013. When speaking about the juvenile robbery, there were 76 reported cases in 2000 and 107 in 2013. Finally, there were 220 reported cases of juvenile property damage in 2000 and

228 of them in 2013. Although the number of reported cases of property damage perpetrated by juveniles was the same at the beginning and the end of the observed period, there are considerable oscillations in that number over the observed period. The largest increase by 65% was recorded in 2001, followed by 38% in 2006.

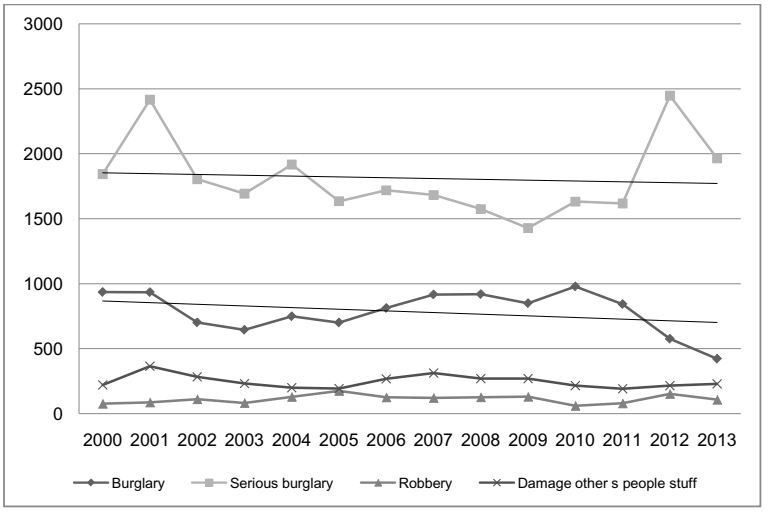

Figure 3: Trends in reported juvenile criminal offenses against property in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

Taking into account the obtained forecasts, expected in the next three years are further oscillations in the number of reported criminal offences of theft, aggravated theft and property damage. The only exception is the criminal offence of robbery, which is, according to the linear trend forecasts, expected to decline in the 2014 to 2016 period.

Table 4: Trends in reported juvenile criminal offenses against public order in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

Year	Violent behaviour		Attack on a public official	
		Vt		*Vt*
2000	37		20	
2001	23	62.1622	25	125
2002	43	186.957	28	112
2003	41	95.3488	7	25
2004	50	121.951	26	371.429
2005	59	118	18	69.2308
2006	69	116.949	25	138.889
2007	78	113.043	7	28
2008	114	146.154	16	228.571
2009	91	79.8246	17	106.25
2010	87	95.6044	27	158.824
2011	84	96.5517	29	107.407
2012	-	-	14	48.2759
2013	-	-	33	235.714

Finally, in Table 4 and Figure 4, one can find trends in two violent offences against the public order: violent behaviour and attack on a public official. These two offences are observed separately for at least two reasons. Firstly, they are criminal offenses with elements of violence, which is interesting for the purpose of this study and because of the dilemmas that were underlined in the introduction. Secondly, previous studies that focused on juvenile delinquency in Croatia during the war and immediately after the war (Cajner Mraović & Stamatel, 2000) revealed a sharp rise in the number of attacks on a public official committed by juveniles in the years following the end of the war.

Data regarding juvenile attacks on public officials in this century in Croatia are rather inconsistent and even confusing. As presented in Table 4 and Figure 4, this upsurge in the late nineties was followed by a highly variable trend between 2000 and 2013. There were sharp increases in some of the years, as well as sharp decreases in others, and only three years in which the trend remained relatively stable. The largest increases were in 2004 (by 271%), 2008 (by 128%), and 2013 (by 135%). In 2003 and 2007, there were substantial declines by an astonishing three-quarters of cases compared to the previous years. The absolute figures were again under 100 and approximately at the level in the mid-nineties, before the mentioned rapid and sharp post-war increase.

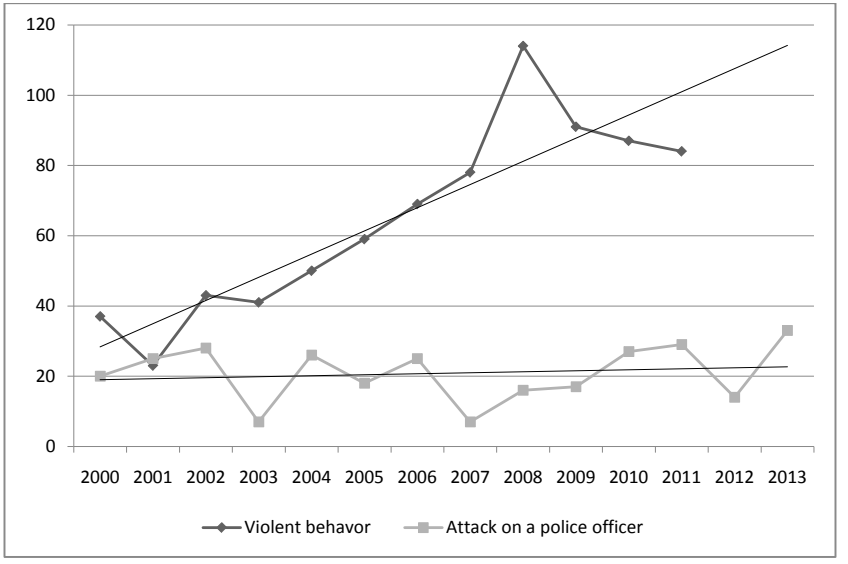

Figure 4: Trends in reported juvenile criminal offenses against public order in Croatia (2000–2013) (Source: Republic of Croatia Ministry of the Interior, 2014)

When speaking of juvenile violent behaviour in Croatia in the period observed in this study, it is important to point out the substantial upward trend between 2002 and 2008, followed by slight declines in 2009, 2010, and 2011. Until 2012, there is average annual increase on the level of 6,6 cases per year cases ($y = 86.879 + 6.6014x$; $R^2 = 0.7814$). There are no data for 2012 and 2013 due to the changes in the Croatian Criminal Code, which entered into force on 1 January 2012, where by this offence was moved into the misdemeanour category.

According to the obtained forecasts, a further increase in the number of reported minors for the criminal offence of violent behaviour would be expected

in the period up to the year 2016. However, due to the changes in the Criminal Code that came into force on 1 January 2012, this criminal offence was moved into the misdemeanour category and is no longer included and monitored in criminal offence statistics.

Although the differences among the numbers of four different types of juvenile crime (against life and limb, sexual crime, against property and drug-related crime) in the whole observed period 2000–2013 might be obvious from the raw data of the Table 1, the appropriate test is needed for statistical confirmation. Since four mentioned types of juvenile crime are observed at the same 14 successive years, and the sample is small, distributions deflect from normality and variances are heterogeneous, we conducted nonparametric Friedman test (Table 5).

Table 5: Differences in juvenile crime trends in Croatia (2000–2013) – Friedman test

	Mean Rank
Crime_Life_Body	2.50
Crime_Sexual	1.00
Crime_Property	4.00
Crime_Drugs	2.50
N	14
Chi-square	37.800
df	3
p	0.000

The test confirmed significant differences among four types of juvenile crime, especially between the number of sexual crime and crime against property. These differences are obvious from the descriptive indicators of the four crime type's numbers in the observed period (Table 6).

Table 6: Differences in juvenile crime trends in Croatia (2000–2013) – descriptive statistics

	N	Mean	Std. Deviation	Minimum	Maximum
Crime_Life_Body	14	362.5714	236.75554	119.00	757.00
Crime_Sexual	14	42.8571	16.31355	19.00	67.00
Crime_Property	14	1935.9286	275.86437	1303.00	2449.00
Crime_Drugs	14	480.2857	306.09210	118.00	1134.00

To analyze the relation between the overall juvenile crime and it's four important components during the observed period of 14 years, we correlated a number of overall juvenile crime with number of (1) juvenile crime against life and limb, (2) juvenile sexual crime, (3) juvenile crime against property, and (4) juvenile drug-related crime. Pearson correlations are presented in Table 7.

		Crime Total	Crime against life and limb	Sexual crime	Property crime	Drug-related crime
Crime Total	Pearson Correlation	1	-.240	-.045	**.907****	**.656***
	p (2-tailed)		.408	.878	**.000**	**.011**
	N	14	14	14	**14**	**14**
Crime against life and limb	Pearson Correlation	-.240	1	**.813****	-.013	**-.729****
	p (2-tailed)	.408		**.000**	.965	**.003**
	N	14	14	**14**	14	**14**
Sexual crime	Pearson Correlation	-.045	.813**	1	.166	**-.630***
	p (2-tailed)	.878	.000		.571	**.016**
	N	14	14	14	14	**14**
Property crime	Pearson Correlation	.907**	-.013	.166	1	.440
	p (2-tailed)	.000	.965	.571		.115
	N	14	14	14	14	14
Drug-related crime	Pearson Correlation	.656*	-.729**	-.630*	.440	1
	p (2-tailed)	.011	.003	.016	.115	
	N	14	14	14	14	14

*** p < 0.01; * p < 0.05*

Table 7: Pearson correlations between juvenile crime trends in Croatia (2000–2013)

The data presented in the Table 7 suggest the statistically significant positive correlation between overall juvenile reported crime and reported juvenile crime against property, as well as between overall reported juvenile crime and reported juvenile drug-related crime. The statistically significant correlation between reported overall juvenile crime and reported juvenile crime against property is understandable because near half of all juvenile offenses constitute offenses against property. However, it is interesting here revealed the positive correlation between reported overall juvenile crime and reported juvenile drug–related crime, because drug-related crime absorbs only 5% to max 20% of all reported juvenile crime. It is also interesting to notice statistically significant and high-level negative correlation between reported juvenile drug–related crime and reported juvenile crime against life and limb, and also statistically significant and high negative correlation between reported juvenile drug-related crime and reported juvenile sexual crime.

Because the sample is small (14 observations), and normality of related distributions is hard to analyse, we checked parametric Pearson correlations with non-parametric tau-correlations and obtained the same results (Table 8).

Table 8: Tau-correlations between juvenile crime trends in Croatia (2000–2013)

		Crime Total	Crime against life and limb	Sexual crime	Property crime	Drug-related crime
Crime_Total	Correlation Coefficient	1.000	-.253	-.122	**.670****	**.429***
	p (2-tailed)	.	.208	.546	**.001**	**.033**
	N	14	14	14	**14**	**14**
Crime against life and limb	Correlation Coefficient	-.253	1.000	**.611****	-.055	**-.692****
	p (2-tailed)	.208	.	**.003**	.784	**.001**
	N	14	14	**14**	14	**14**
Sexual crime	Correlation Coefficient	-.122	.611**	1.000	.078	**-.478***
	p (2-tailed)	.546	.003	.	.701	**.018**
	N	14	14	14	14	**14**
Property crime	Correlation Coefficient	.670**	-.055	.078	1.000	.187
	p (2-tailed)	.001	.784	.701	.	.352
	N	14	14	14	14	14
Drug-related crime	Correlation Coefficient	.429*	-.692**	-.478*	.187	1.000
	p (2-tailed)	.033	.001	.018	.352	.
	N	14	14	14	14	14

*** p < 0.01; * p < 0.05*

5 DISCUSSION AND CONCLUSION

The results of the paper provide an overview of the trends and interrelationships between different types of offences committed by juveniles in Croatia in this century. The authors have presented police data on the incidence of reported overall juvenile, violent and property crime in Croatia in the 21st century, and now we shall try to add to them relevant value and context.

It can be concluded that the general trend in Croatia since the beginning of this century is a significant decline in overall juvenile crime, as well as a decline in criminal offences against life and limb and criminal offences against property, however there was a sharp growth in certain criminal offences such as bodily injury and violent behaviour. There was also an obvious increase in juvenile sexual crime, but absolute figures of reported juvenile sexual offenders are quite low. It is also interesting to notice opposite trends in reported juvenile perpetrators of theft and aggravated theft that occurring at the same time: since 2010, there was a substantial decline of thefts and a rapid growth of aggravated thefts.

When conclusions are to be made based on official police crime statistics, it must be done with caution and their limit must be taken into account: these numbers do not reflect only crime, but also a readiness of victims to report the

crime to the police as well as the likelihood of police to record it. These constraints entail a major dilemma in the interpretation of data and open up opportunities for fundamentally different and even quite contradictory interpretations of the given data. For example, it is questionable whether declining trends in reported crime rates are positive because they may reflect the functioning of formal and informal social control in society rather than crime on its own. In contrast, an increase in crime rates may indicate not just a worsening of the state of crime, but also greater awareness and readiness among citizens to report crimes, or greater focus of institutions of formal social control on certain types of crime. It can be assumed that just such a thing occurred in Croatia regarding bodily injury committed by juveniles. Until 2000, criminal proceedings for the criminal offence of bodily injury were instituted upon a private suit, except when the victim was a person under the age of 18. This provision was restored to the criminal code in 2006. Considering that minors often inflict bodily harm to their peers, it becomes clear why there were no or only a few reported bodily injuries committed by juveniles per year in the period from 2000 and 2005. The private lawsuit could cause expenses and other types inconvenience for victims, so victims are not motivated to report crimes if the prosecution is based only on a private lawsuit. For this reason, in situations when perpetrators and victims are juveniles, their families tend to neglect this as a kind of rough play between youngsters. Although it may seem strange, it is understandable because criminal proceedings for the criminal offence of bodily injury instituted upon a private lawsuit mean that such types of criminal behaviour are not important for society, but only for the victim as an individual person. In 2006, the Criminal Code was changed and bodily injury in the cases of victims under 18 years of age is once to be again prosecuted not by the private lawsuit but by official action. It has already been mentioned that juvenile perpetrators of bodily injury usually victimised their peers, so we can understand that in 2006, 71 such cases were reported. This change in the Criminal Code entered into force on 1 October 2006 (Amendments and Supplements to the Criminal Code, 2006), so the real number of such cases can be observed for the first time in 2007, and it amounts to 377 reported cases. One can assume that this turn in criminal policy has also affected the recording of serious bodily injuries: from 2000 and 2006 there were approx. 100 such cases reported per year, but in 2007 there were 202 reported serious bodily injuries committed by juveniles.

The given data has also revealed that all changes in the nature and scope of juvenile crime in Croatia cannot be explained only through relevant changes in formal and informal social control. For example, there have been no relevant changes in the Criminal Code regarding theft and aggravated theft, and both are typical juvenile crimes, however juvenile theft was decreasing over recent years and aggravated theft was rising in the same period. One can conclude that these two trends indicate the increasing propensity of juveniles to commit more serious offences. On the other hand, after the upsurge in 2001, there was no substantial increase in the number of juvenile property damage case therefore, the conclusion about growing juvenile propensity to serious and violent offences has been brought into question.

The most questionable is the trend in recorded violent behaviour perpetrated by juveniles: the given data reveal that the number of reported cases was

substantially rising in the entire observed period until 2013 when it is moved from the Criminal Code to the Misdemeanours Act (Turković at al., 2013). One can hardly be sure if this increase resulted mainly due to the growing propensity of youth for violence, or if it is a matter of enhanced control of violence in Croatian schools in the same period. It is worth nothing that the year 2000 marks the very beginnings of an interdisciplinary approach to the problem of violence among pupils in schools in Croatia, and since 2004 there has been Rules and procedures in cases of violence among children and youth have been applied.

Return to the problem that was the reason for this analysis, referring to the dilemmas and controversies about the nature and scope of juvenile crime in Croatia in this century, it is obvious that the given data provide support for the various theses. The immediately noticeable trend of decline in overall juvenile crime, or the decline in juvenile property crime, which is the most frequent one, as well as the decline in juvenile crime against life and limb, which is the most dangerous one, lead to the conclusion that juvenile crime in Croatia does not pose a serious problem. On the other hand, the rapid increase in certain criminal offences as bodily injury or violent behaviour provide reason for concern and support those who claim that juvenile crime, especially juvenile violent crime is increasing dramatically and poses a serious threat to Croatian society. It has been already pointed out in the introduction to this paper why it is important to resolve these dilemmas, so here is attempt will be further to explain them despite the given data that seem confusing. The solution to these dilemmas certainly involves dealing with complex social changes that have affected not just post-war Croatia, but also other transitional and even non-transitional European countries. Here an attempt will be made to resolve this dilemma by suggesting the use of a two or three key criminological theories and starting with the following three key theses:

Dilemmas about the extent of the problem of juvenile delinquency also exist in non-transitional European countries, and only because of the stability of the relevant social institutions are than far less pronounced. In the introduction to this paper, comparative analyses have been presented that reveal upward trends in juvenile crime, as well as a significant increase in juvenile violence in post-war Western European countries.

Although we do not initially favour any of the options, and although this is not deal with in this paper, we have to recall the fact that trends in juvenile crime do not seem so alarming when compared to the trends in adult crime in the same countries and the same period (Cartuyvels & Bailleau, 2010). If the situation is dramatic, then it applies to all crimes, regardless of the age of the offender. Of course, from the standpoint of criminological forecasts, juvenile delinquency is always a bigger concern for experts and the general public. However, it should not be a reason for exaggeration in the assessment of the situation.

The results of this paper partly confirm the results of previous research that depict juvenile crime as becoming ever more violent (Šelih, 2012), but we also take into account the possibility that the observed and perceived increase in juvenile violence is partly the result of the growing attention given to the problem.

According to Estrada (1999), two theoretical models are most often used in the literature to explain oscillating and rising trends in juvenile crime during

the period of rapid social change: the theory of routine activities and the social control theory. On the other hand, comparative criminologists are warning of the need to test the generalizability of crime theories and known correlates of crime to settings other than where they originated, which is typically the United States (La Free, 2007; Stamatel, 2009). According to Stamatel (2012: 159), "the fall of communism in Eastern Europe provided a new opportunity to test these theories in geographically, politically, culturally, and economically different settings than previous studies".

One can conclude that dilemmas about the extent and seriousness of the juvenile crime problem in Croatia could be solved by further analyses which must include data collected by the *ISRD* and *ICVS*, as well as analyses in which the Croatian socio-historical context will be more carefully considered. The latter certainly includes analyses of trends and predictions of juvenile delinquency in Croatia for at least three to four decades.

Future research should also explain here identified the impact of drug-related crime on the overall juvenile crime, juvenile violence against life and limb and juvenile sexual violence. The available data in this paper are not enough for in-depth analysis of these statistically significant correlations. At this level of analysis, it can only be assumed that part of the reason for the revealed correlations between trends in the numbers of juvenile reported criminal offenses should be located in some aspects of formal social control.

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Possibilities of Mediation in Republic of Serbia in Cases of Domestic Violence

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Purpose:

This paper analyses the theoretical, legislative and practical advantages and limitations of mediation as an alternative way of resolving the conflict between perpetrator and victim of domestic violence in Serbia. Starting from the premise that mediation in lighter cases of domestic violence is more preferred form of social reaction from the initiation of criminal proceedings; the authors analyse the legislation of the Republic of Serbia and point out that the mutual incompatibility of laws disables use of mediation in practice.

Design/Methods/Approach:

Based on acceptability of the concept of restorative justice, this scientific work analyses the advantages and limitations of mediation as an alternative way of resolving the conflict of the offender and the victim in cases of domestic violence. Authors use the comparative method, legal dogmatic method, case study method (examples for court practice in Serbia) and statistical data to examine the hypothesis that mediation may constitute a constructive way of resolving less violent conflicts within the family members and why is not enough applied in practice.

Findings:

Modern criminal political orientation of the "zero" tolerance of domestic violence, which was adopted in law in practice in Serbia is "blocking" use of mediation, which, in public opinion, is seen as an inadequate response to this crime. Results of the analysis show that the Serbian legislature opted for a punitive response and measures of restraining as most important mechanisms for the prevention of domestic violence.

Research Limitations/Implications:

These data provide insight into the marginal segment of the formal response to domestic violence in Serbia.

Originality/Value:

Few studies in Serbia comparing foreign experience and domestic social possibilities for the success of mediation in cases of domestic violence.

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Keywords: alternative criminal sanction, mediation, domestic violence, Serbia

Možnosti mediacije v Republiki Srbiji v primerih nasilja v družini

Namen prispevka:

Članek analizira teoretične, zakonodajne in praktične prednosti in omejitve mediacije kot alternativnega načina reševanja konflikta med storilcem in žrtvijo nasilja v družini v Srbiji. Izhajajoč iz predpostavke, da je mediacija v lažjih primerih nasilja v družini primernejša oblika socialne reakcije kot uvedba kazenskega postopka, avtorji analizirajo zakonodajo Republike Srbije in poudarjajo, da nezdružljivost zakonodaje onemogoča uporabo mediacije v praksi.

Metode:

Na podlagi sprejemljivosti koncepta restorativne pravičnosti to znanstveno delo analizira prednosti in omejitve mediacije kot alternativni način reševanja konflikta med storilcem in žrtvijo v primerih nasilja v družini. Avtorji uporabljajo primerjalno metodo, pravno dogmatično metodo, študijo primera (primeri sodne prakse v Srbiji) in statistične podatke za preverjanje hipoteze, ali lahko mediacija predstavlja konstruktivni način reševanja manj nasilnih konfliktov med družinskimi člani in zakaj ni dovolj uporabljena v praksi.

Ugotovitve:

Sodobna kazenska politična usmeritev "ničelne" tolerance nasilja v družini, ki je bila sprejeta v pravni praksi v Srbiji, "onemogoča" uporabo mediacije, ki je po mnenju javnosti videti kot nezadosten odziv na to kaznivo dejanje. Rezultati analize kažejo, da se je srbski zakonodajalec odločil za kaznovalni odziv in prepoved približevanja kot najpomembnejša mehanizma za preprečevanje nasilja v družini.

Omejitve/uporabnost raziskave:

Ti podatki omogočajo vpogled v obrobni segment formalnega odziva na nasilje v družini v Srbiji.

Izvirnost/pomembnost prispevka:

Nekatere študije v Srbiji primerjajo tuje izkušnje in domače socialne možnosti za uspeh mediacije v primerih nasilja v družini.

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Ključne besede: alternativna kazenska sankcija, mediacija, nasilje v družini, Srbija

1 INTRODUCTION

The concept of reconciliation of the victim and the offender by court settlement (as one of restorative justice programs) is very popular in Anglo-American countries, the Scandinavian countries and Europe. Such programs of restorative justice are well-established in North America, Australia and Western Europe (Gavrielides, 2007; Liebmann, 2007). In Central and Eastern Europe the concept of restorative justice is relatively new phenomenon that is introduced in legislation during the

transition period (end of the 20th century) under foreign influences, as follows from Willemsens and Miers (2004) and Fellegi (2005).

Among European countries, "pioneers" in the application of informal methods of conciliation and settlement as an alternative method of removing the criminal proceedings are: Austria, Norway, Belgium and Finland (Haller, Pelikan, & Smutny, 2004; Lappi-Seppäla, 2003). Popularity of this concept comes from extended capabilities for effective practical application of this method as an alternative for "classical" criminal prosecutions and indictments. It can be assumed that not only theoretical but also utilitarian reasons stand in favour of the practice of conciliation proceedings and settlement. Therefore, it is necessary to clearly examine the advantages and disadvantages in the application of this alternative procedure criminal charges.

There are limited possibilities of conciliation and settlement in practice. Before the concept of restorative justice gained wide popularity, it was advocated that the reconciliation of the offender and the victim as an alternative way to avoid unnecessary criminal proceedings and convictions could be applied only in cases of minor criminal offenses (the so-called lighter crime) performed among those previously familiar with, such as neighbours, relatives, colleagues at work, spouses (Burgstaller, 1990; Cusson, 1987; Joutsen, 1987). According to this, the reconciliation and settlement could apply only in certain cases, for example when the crimes are carried out by minors or when the offender performed criminal offense for the first time and without the element of violence, when committed minor criminal offenses such as insults, slander, theft (especially theft by supermarkets, the vehicle or vehicle theft), vandalism or minor bodily injury.

Such a stand is even today not in question. In the meantime, there are designed other ways to mediation and settlement procedures that are used in combination with the criminal sanctions or even during the execution of a sentence of imprisonment (according to Gavrielides' typology (2007: 31–32) named "relatively dependent" system).

Mediation and reconciliation of the offender and the victim cannot be practiced as the only alternative way of resolving social conflicts that arise regarding the enforcement of serious crimes that violate the personal good of man, such as attempted murders, rapes, robberies and etc. Yet, they do not exclude any possibility of application of settlement and reconciliation in these cases, if the perpetrator and the victim previously know each other (if they were friends or spouses), which was checked in some Canadian experiments in which participated some victims of crimes involving violence (Fattah, 1998; Roach, 2000). In cases of domestic violence (precisely violence in an intimate relationship) and other crimes committed between victim and offender who previously know each other, reconciliation and settlement have a particular justification, because it is in the interests of both parties and gives them the opportunity to resolve their conflicting relationship without the threat of formal criminal proceedings and the imposition of criminal conviction. And even in serious crimes, which inevitably must be sentenced to imprisonment, such as for example murder or manslaughter, reconciliation and settlement can be beneficial to the offender and the victim's closest relatives (Wright, 2009). Victim-offender mediation in

domestic violence is theoretically controversial, noted Strang and Braithwaite (2002: 4), but domestic violence "is not a unitary phenomenon: it involves varying levels of violence, varying frequency and persistence and varied interpersonal and structural dynamics". Different situations and changes in dynamics of domestic violence require good connection between formal legal regulation and nets of community control – mediation may be one of the links. So, "domestic violence under the lens of restorative justice" deserves attention, at least as a solution for needs of victims for a better protection (in accordance to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards for the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA).

Programs called facilitative mediation that could be applied in relation between those who are convicted of serious crimes and their victims do not exist in Serbia, and due to repressive public opinion every effort to introduce them would be doomed to failure. Because of this, mediation is applicable only in criminal proceedings conducted upon a private charge, which existed since the eighties in cases of domestic violence. It seems to be counterproductive to suggest greater use of mediation, because Serbia since 2000, in accordance to the general trend of strengthening the protection of women as victims of domestic violence, insists on timely recognition, prevention, and more intense repressive response to domestic violence, which excludes the application of mediation, even if it is facilitative in nature. Similar situation exists in many countries where under the influence of women's organizations, governments believe that repression is the only answer to violence against women. Nonetheless, there are examples of good practice in Finland, Austria and United Kingdom as have found Liebmann and Wotton (2008/ 2010), Flinck, Säkkinen, and Kuoppala (2011) and Pelikan (2000, 2010) in research from 2000 and 2009.

In contrast, in Serbia the practice of social protection mediation is still used in marriage and family disputes since fifties. Based on Džamonja Ignjatović and Žegarac (2007) in Serbia and based on Sladović Franz (2006) in Croatia, there are some attempts to comply with international programs to develop transformative model of mediation, which would achieve a change in the relations between the participants of the mediation process.

Without prejudice to the need in Serbia to reinforce changes in public awareness of the unacceptability of domestic violence and to strengthen the protection of victims, in this article, by comparing foreign experience and based on the examples from the case law (case-study method) we point out the perceived deficiencies in the system of protection against domestic violence, which would, in our opinion, contribute to greater application of the conciliation procedure and achieving better results than it is currently the case.

2 LEGAL FRAMEWORK FOR THE PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE AND MEDIATION

Thanks to the activities of the Victimology Society of Serbia and the non-governmental organization for the protection of women against violence since 2001 there has been intensive investigation of domestic violence in Serbia and monitoring state's reaction (Jovanović, 2010; Lukić & Jovanović, 2001; Nikolić Ristanović, 2002; Konstantinović Vilić & Petrušić, 2004). Based on these results, a model for the prevention of domestic violence was designed, which, with the support of non-governmental organizations for the protection of the women rights, influenced the fact that in 2002, the Criminal Law of the Socialist Republic of Serbia [CL SRS], (1977, 1977, 1979, 1984, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1998, 2001, 2003) has been introduced with the article 118a, which was a new criminal offense called domestic violence, prescribed now in article 194 in the Criminal Code of Republic of Serbia [CC RS], 2005, 2009, 2012, 2013, 2014). Then, in 2005, the Family Law of Republic of Serbia (FL RS, 2005, 2011, 2015; which was amended in 2011 by another law) set regulations aimed at preventing and protecting early family members from domestic violence. The same law traditionally accepts mediation, as a part of the divorce proceedings. In addition, family mediation within their powers also practice guardianship authorities.

At a similar time, in 2001, first pilot project of mediation in civil proceedings was introduced, and since 2005, training for mediators is conducted at the Center for Mediation in Belgrade. The process of mediation was regulated by the Law of Mediation of the Republic of Serbia [LM RS], 2005 poorly (the law has only 32 members) and uniformly in various areas of dispute between individuals or between individuals and legal entities (property law, commercial, family, administrative and criminal law). Similar provisions are in the Law on Settlement and Mediation in Resolving Disputes (LSM RS, 2014), in force from 1. January 2015. In the practical application the legal provisions are combined with civil and criminal law, and the additional laws ordered the way of arranging the list of mediators and training program for mediators. It insists on the voluntary initiation of the mediation procedure, which is then converted into a separate formal proceeding. This procedure should be performed before the court proceeding starts or upon its completion, and cases are kept under a special mark "M". LSM RS (2014), as well as LM RS, 2005, regulates the obligations of the court in relation to the referral of the parties to mediation, determining the mediator, and the rights and obligations of the parties and the mediator. Centres which conduct mediation in the event of divorce or other family law cases are in courts, so that judicial mediation is linked to the potential (unsuccessful) process of conciliation and compromise, and is conducted by the custodian in the event of perceived dysfunctional family relationships.

Legislator can be objected that he did not properly understand the nature of mediation, that should not be a "pendant" of formal court proceedings, but a constructive way to resolve a conflict among people to achieve balance in their relationships and restore peace in the community in accordance with the concept of restorative justice. These are all circumstances that mediation associated with the sanctions applicable in the community (community based sanctions) and this concept is realized with great difficulty in Serbia (Mrvić Petrović, 2006, 2010).

The law does not provide a basis to take advantage of all the benefits of the mediation process, which should be undertaken primarily in the interest of improving the relations between the parties, not just for the rapid resolution of the disputed judicial matters.

2.1 The Inability of the Application of Mediation in Criminal Matters

When it comes to criminal cases, mediation is limited to criminal proceedings which are initiated by private complaint. According to the current criminal law, the court refers the parties to mediation, where unexcused absence of duly summoned private prosecutor (the injured, criminal offense) to appear in court in order to be informed of the benefits of mediation leads to the rejection of his private complaint, while "sanctions" for the defendant are that the judge will immediately determine the trial date (according to Section 505 of the Criminal Procedure Code of Republic of Serbia [CPC], 2011, 2012, 2013, 2014).

Criminal legislation which contains criminal act of domestic violence does not allow proceeding for criminal act of domestic violence to be initiated upon a private charge which means that there is no possibility to apply mediation - the only way to exclude possibly lighter case from criminal proceeding is to apply conditional rejection of criminal charges under Art. 283 of the Criminal Procedure Code (CPC, 2011, 2012, 2013, 2014) as the public prosecutor determines performance of an obligation (indemnity, payment of a sum of money to charity, the requirement of a psychosocial treatment for the elimination of the causes of bullying or similar) to the registered person. Secondly, the defendant may be awarded a lighter penalty based on the agreement of the prosecutor and the defendant on the admission of the offense. Otherwise, the agreement can be initiated when the defendant is on trial for the most serious offenses for which a punishment of imprisonment is for a term of 30 to 40 years.

All the more surprising is that the it appropriateness of the solution for the offender and victim using mediation to resolve their relationship in the case involving minor offenses (for which, for example, imprisonment is up to three or five years) was not noticed. It would be quite in line with the general tendency to avoid keeping inadequate criminal proceedings and with measures for its acceleration that dominate the modern criminal procedural law. At the same time, it would correspond to the other provisions of the criminal law, as it is laid out in the Article 18 of the Criminal Code (CC RS, 2005, 2009, 2012, 2013, 2014) which provides that the institution of acts of minor significance, under legal conditions, may apply to the offenses for which the imprisonment is up to five years. Also, Article 59, entitled "Alignment of the offender and the victim", prescribes that the court may remit the punishment of the perpetrator of the offense for which a punishment of imprisonment is up to three years or a fine if it is on the basis of the agreement reached with the victim complied with all obligations under the agreement.

As it turns out, even the Criminal Code (CC RS, 2005, 2009, 2012, 2013, 2014) does not preclude the possibility of using mediation for the crime of domestic violence, which is the most common in practice and for which a punishment of

imprisonment is from three months to three years. Obviously, the reasons for which the provisions of Article 59 of the Criminal Code (CC RS, 2005, 2009, 2012, 2013, 2014) remain a "dead letter on the paper" and that the mediation is not widely permitted in criminal proceedings are only criminally-political. It's criminal and political orientation that is related to the need to strongly respond to the structural violence in society (especially manifested in the family). In a way, that approach comes into play when it comes to the application of legal protection from domestic violence. There's nothing to object such a decision, which is generally accepted among the members of the Council of Europe (regarding 2011/210 Council of Europe (2011) Convention preventing and combating violence against women and domestic violence [CETS], which in art. 48 prohibits "mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence" covered by the Convention). There is a real need to change social attitudes towards domestic violence in Serbia and to ensure the effective protection of victims.

2.2 Protection of Victims of Domestic Violence Based on Civil Remedies

There is a need to criticize the mismatch of civil (FL RS, 2005, 2011, 2015) and criminal legislation in Serbia aimed at preventing violence. Such a mismatch can, on the one hand, undermine legal security of citizens, and on the other hand, can affect the efficiency of legal protection of victims of violence. Thus, the Family Law (FL RS, 2005, 2011, 2015) under domestic violence means any conduct by which a family member threatens the physical integrity, mental health or peace of another family member, followed by the list of the typical types of violence, which include not only threats, outrageously and reckless behaviour, but also attacks on physical integrity and sexual freedom of any family member (article 197). The definition of domestic violence not only includes the elements of the crime of domestic violence under Art. 194 of the Criminal Code (CC RS, 2005, 2009, 2012, 2013, 2014), but also a series of acts of commission of other criminal offenses such as libel, violation of safety, light and serious bodily injury, rape, sexual intercourse with a minor, etc.

Very broad statutory definition of domestic violence in the Family Law (FL, 2005, 2011, 2015) provides that under the domestic violence means any outrageous, wanton or malicious act that threatens even the tranquillity of another family member (Počuča, 2010). Certainly, such a definition has a purpose of achieving the widest possible protection against violence, but there is a problem with arbitrary filling the contents of legal standard by judges, in order to show "zero" tolerance on domestic violence. The manual for judges suggest that any behaviour that deviates from the normal standards of behaviour and communication with family members qualifies as domestic violence (Petrušić & Konstantinović Vilić, 2006). But such an intolerant attitude does not always show up in the constructive response to violence, because, thanks to the legal definition according of which any disorder in marital and family relations can be subsumed under an act of violence for which is permitted judicial protection, which leads to possible abuses in practice.

The social welfare authorities which first observe disorders in families, provide support and "filter out" the cases in which it is necessary to initiate other forms of legal protection from domestic violence. However, in the current conditions in which they work, in spite of great efforts, the employees of these bodies are not always able to make a realistic assessment of the selection of cases that should receive court protection. According to reports of the social welfare centres in Serbia in 2011 and 2012, each year has an increasing number of reported victims of domestic violence, which is associated with a change in public awareness of the unacceptability of such violence. What is the most common type of activity carried out by the centres when cases of domestic violence are recorded? In 2012 in 342 cases Family law protection against domestic violence was initiated, and 253 cases were charged, but most commonly (in 778 cases) it were taken "some other action". In the report it is stated that the data from which we can not conclude what has been undertaken indicate that there are gaps in determining the practices, but can indirectly be considered that these were incidental to violence when in the centres had been probably undertaken various advisory activities and direct, control and monitoring, including possible mediation (Republički zavod za socijalnu zaštitu [RZSZ], 2013). According to this, in most recorded cases of domestic violence centres have taken some action, but we do not know clearly what and with what success. Insufficiency and deficient training of personnel, their bad financial situation and underestimated role in the structure of state organs, poor accommodation and working conditions are the reasons why the social welfare is facing great difficulties in its function, and therefore expected a heavy burden of preventing domestic violence should be transferred to the court. Thus, the report for 2011 states that the court has imposed protective measures only 44.2% of the total number of cases filed such claims of social welfare centres, while the report from 2012 highlights worried that the number of court protective measures drastically reduced, and the court has not imposed even a court order for the eviction of the perpetrator from the home (RZSZ, 2012, 2013). These data, however, indicate a different point of view of social welfare centres and the courts when it comes to the assessment of the legal criteria for protection against domestic violence (which is favoured too broad statutory definition of domestic violence).

On the other hand, it is evident that in this respect there is a lack of uniformity of judicial practice. Some court decisions insist that the existence of vulnerability of the family activities of another member must be proven, although the level of the threat is not important (Supreme Court of Serbia [VSS] solution Rev 96/07 of 14. 3. 2007), but the verdict by Supreme Court of Cassation [VKS] Rev 2857/10 of 9. 6. 2010, allows a measure of protection from violence, although the existence of vulnerability is not proven, but just not clearly excluded. In that case, the defendant is prohibited from approaching the juvenile son, except in the Centre for Social Work, based on the expert opinion of the team of the Clinical Centre, that sexual abuse of a child at the age of three years "cannot be excluded with certainty, but is likely to be more likely to it never happened" (the judgment mentioned by Milikić, 2011). The verdict is even more important as it was adopted in the meeting of the Civil Division of the Supreme Court of Cassation Serbia on 13th September 2010 (Supreme Court of Cassation [VKS], Conclusion (2010). A rare example is, as in

the judgment of the Appellate Court in Novi Sad Gž2. 51/10 from 3rd February 2010 trying to explain the difference between domestic violence and permanently disturbed family relationships. In that judgment the Court stated that "domestic violence is a pattern of behaviour that a family member is taking, or exerts to other member, in order to establish power and control or to satisfy some of their needs at the expense of another family member, but not an isolated incident. In the opinion of this court, it were a serious and permanently disturbed marital relations between plaintiff and the defendant for which it constantly comes to mutual quarrels, insults and abuse, but there were no elements that the behaviour of the respondent was to be considered brash, reckless and malicious behaviour in terms of the legal definition of domestic violence" (judgment of the Appellate Court in Novi Sad, 2010: 98–99).

Courts of different instances of the same case differently can differently assess the need for the protection in the cases of family violence. For example, the lower instance courts have judged that such a need is missing, and that is why they rejected the claim in which the plaintiff alleged that she constantly suffers physical and psychological violence, because the defendant (her former spouse with whom she shares an apartment after divorce), insults, throws her belongings out of the apartment, locks rooms etc., because of what she contacted the police twice. Allegations of violence that she suffered were proved with a medical certificate. Based on the findings of the Institute of Mental Health, the trial court found that the plaintiff was anxious, "with significant depression and a sense of threat from the world around them, and therefore also from the former husband", all of which can be considered as a response to the dissolution of marriage. All of this contributes to fact that the plaintiff, according to the opinion of the experts, events and the actions of others estimates as too threatening. On the other hand, the defendant was recorded to be impulsive and with the potential weakness of control, which together with the quality of depressed mood may result in inappropriate actions. The findings of the experts stated that in this case the increased interpretive tendency of the plaintiff undoubtedly caused a deterioration in relations between the defendants. Despite of these findings and the fact that due to the conclusion of a new marriage the defendant no longer lived in the same apartment, but was only occasionally visiting, the Supreme Cassation Court took the opposite view and judgment of Rev. 2844/10 of 26th May 2010 reversed the judgment of the first instance courts and imposed protective measures against domestic violence for plaintiff and forbade the defendant from entering the apartment where the plaintiff lives for a period of six months (with possibility of extension).

In the explanation of that decision of the Supreme Court of Cassation (Rev 2844/10), inter alia, is noted that "legal measures for protection are not only the punishment for the perpetrator of domestic violence. They also have a preventive effect because they admonish and warn the offender what legal consequences he can expect in case he continues to repeat his offense, and aim to prevent the recurrence of violent behavior". It appears that the Supreme Court of Cassation provided protection for plaintiff guided by the need for prevention of violence, although the trial court did not establish that violence. It is also unusual is that

the Civil Division of the Supreme Court of Cassation in its decision to "speaks the language" of criminal law.

This example of court decisions symbolically shows that Family law protection is understood as the dominant way to prevent domestic violence. That this is so also documents the fact that in the period from 2005 to 2011 on the basis of the surveyed 60 verdicts of the highest court of the Republic, the demand for protection against domestic violence in 57 (95%) cases had been filed as a basic claim (independently of the other claims). Only in three cases the request was submitted together with lawsuits in proceedings for divorce, the exercise of parental rights and the maintenance of children (Milikić, 2011). The question is what is achieved by such an isolated primary protection of family violence if there is no further legal response in the form of starting divorce proceedings or criminal proceedings against the perpetrator of violence. The legal response to domestic violence should be applied as ultima ratio – when it is not possible through activities of social welfare centres to affect the resolution of family conflict or when due to nature of disturbed family relationships the progression of violence can be expected. Is it sufficient in such cases that only legal protective measures against violence are imposed?

According to the indicators of social welfare centres, the number of recorded cases of domestic violence in Serbia is growing every year, with the most common victims are children under the age of 18 years and women, and violent members of the family are especially fathers (RZSZ, 2012). Such violence usually lasts a long time and cannot be effectively prevented by judicial protection measures which may last only up to one year, if the victim is forced to continue living with the abuser. Measures of protection against violence are not being executed, because no one is responsible for their execution. Possible indirect control of the social welfare is also absent, which could oversee relations in the family in the context of their authority even though they do not perform judicial measures, because they only have data on the measures for those cases for which they are the initiators of the procedure or the proponents of measures to protect against domestic violence (RZSZ, 2012). Therefore it is no surprise that the jurisprudence usually pronounces the prohibition of further harassment of plaintiff, and significantly less often other measures that involve control over approaching the victim and limitations of the right to the enjoyment of private property such as measure of eviction of the perpetrator from the victim's apartment or moving victim into an apartment (Petrušić & Konstantinović Vilić, 2010; RZSZ, 2012).

3 APPLICATION POSSIBILITIES OF MEDIATION

At first sight it would seem that the mediation and domestic violence are excluding each other. In a situation when confronted with delayed state reaction and the difficulties of proof of violence that occurs behind the eyes of the public and without witnesses (evidence "word to word"), a legitimate interest in ensuring effective protection against domestic violence is not exhausted with only launching a legal mechanism protection and punishment of the alleged perpetrator. Numerous cases of dysfunctional family relationships in which some

members had experienced violence, but still show a willingness to change their behaviour may be suitable for mediation, but the mediators should need to make a special effort and be very experienced in order to successfully perform their jobs. Even then, the mediators may be the first that can find out information about the history of abuse and to establish the existence of power and control, which suggests that it is not an isolated case of violence, but a continuous, when it would be advisable to look for other means of judicial protection from violence.

According to the criteria offered in social work practice (Girdner, 1990), mediation is not admissible in cases where people are unable to negotiate or cannot be excluded readiness of the abuser to seriously hurt their partner (for example, when earlier in the act of violence weapons has been used). Girdner (1990) also states that the mediation cannot be applied even in cases where the perpetrator has a need to control the abused or is frustrated by the idea that he cannot get whatever he wants, and when the victim confirms that they were abused, but is not ready to reveal the abuser or had accepted patterns of psychological abuse and is identified with the needs of the perpetrator that are seen as a primary and necessary.

With Girdner's (1990) criteria the Canadian experience also agrees, which does not give the right to expect that a close previous relationship of the perpetrator and the victim in any case justifies the use of settlement and reconciliation. This particularly will not be easy to implement in cases of repeated domestic violence or if there existed unequal relations between the offender and victim based on domination, tyranny and manipulation. In such cases, the victim, who is trying to forget his previous position and to terminate such a relationship does not want to be reminded of the circumstances under which each time had been repeatedly victimized while living with the perpetrator. For this reason, it is questionable whether in such cases they should insist on meeting victims and abusers and refer them to maintain mutual personal contacts (Gaudreault, 2005).

However, mediation should not be systematically excluded in all cases of recorded domestic violence, because it might be applied in those situations when it comes to facilitating violence incident nature, when there is a willingness among partners to overcome the problems and to mutually decide the fate of common life, the care of children, division of property etc. Mediation in such cases of dysfunctional family relationships may prevent future violence. This is useful when the partners decide to consensually terminate their relationship because it contributes to the peaceful atmosphere for making important decisions. Mediation could also be practiced in cases involving misdemeanours against public order or minor criminal offenses (carrying a penalty of up to three years, and which are prosecuted by private action or on the motion of the injured party). For example, for such misdemeanours, as it done in Greece with Act on confronting domestic violence from 2006, mediation could eliminate criminal proceedings (as stated Artinopoulou, 2010: 181–186). Similarity of legal systems of Greece and Serbia (both are built on the traditions of German variant of the continental legal systems) and similar social conditions make it acceptable to transplant this legal solution from Greek law to Serbian law. In such cases it should be carefully examined whether it is expedient to apply mediation. If the public prosecutor or

the court could do this assess, they need professional help of the guardianship, which is now employed ad hoc. Undertaking mediation must match the victim, her interests and willingness to engage in such practices should be crucial in a situation where she files a criminal complaint or otherwise initiates a criminal proceeding.

For now, the mediation was excluded for crimes of domestic violence. In all these cases in the period from 2007–2009, and in Serbia now, punitive repression was applied, which usually lead to the imposition of a suspended sentence or a brief prison sentence for the main form of crime of domestic violence under Article 194 of the Criminal code (CC RS, 2005, 2009, 2012, 2013, 2014) (Nikolić Ristanović, 2013; Statistical Office of the Republic of Serbia, 2014). It is a legally and technically deficient provision, which, like the legal definition of domestic violence under the Family Law (FL RS, 2005, 2011, 2015), under the consequence encompasses all forms of threats to physical and mental integrity, and even personal tranquillity of a family member. The application of these provisions in practice creates significant problems because of the difficulty in separation from other crimes, which affect the courts to act completely differently in similar cases (Jovanović, 2010). So, some may "go" unpunished, others with similar behaviour are to be punished for a misdemeanours against public order, and third for criminal offence of domestic violence.

Due to the broad criminal procedure, there are a "funnel" of crime so that the official statistics for 2013 show the criminal conviction for 40.5% of the accused for the crime of domestic violence is non-existent (RZS, 2013). Although we cannot exclude that this is largely because the victims changed their mind and withheld evidence in criminal proceedings, however, the question of what it is achieved when a conviction of the perpetrator is obtained? A suspended sentence in 2013 was imposed in 977 cases, accounting for 63, 8% of the total number of prisoners (1532), but it does not include the supervision of the conduct of a prisoner at liberty, or the measures of assistance and support, or eventually his mandatory referral to treatment rehab of violence (although it is possible to combine it with its security measures withdrawal from alcohol or narcotic drugs). Imprisonment was imposed in 533 cases (34.8%). For more frequent and imposing penalties partly contribute the fact that legally for the basic form of a crime of domestic violence it may be imposed a prison sentence that cannot be mitigated below a month. As in Serbia the post penal programs of care about prisoners are missing, the behaviour of the convicted person released from prison can be traced only through the possible activities of social work centres on the occasion of subsequent reports of disorder family relationships. In such circumstances it would be meaningful to review the legal description of the crime, to precise action for execution and to provide a consistent delineation of this crime and other offenses, with the removal of legal barriers in order to apply mediation as diversional measure, if it is justified by the circumstances under which the offenses were committed, the history of family relationships and personal characteristics of the offender and the victim. Of course, such programs should primarily serve to improve the position of victims.

For this to be achieved it is necessary to create organizational conditions that control the viability of the agreement reached with the provision of

efficient cooperation with the police, prosecution, courts and other state authorities. Also for practical view are instructive the Austrian model mediation *(Außgerichtlichtatausgleich)* and successful practice of NEUSTART (Pelikan, 2002, 2010). It would be necessary to popularize the wider public benefits and family court mediation.

4 CONCLUSION

Analysed data and examples from Serbia show that the legal framework for the use of mediation exists, but that fades interest for its application. Family mediation is usually used as part of civil proceedings, but it seems to be stopped halfway, after the initial euphoria, between 2001 and 2006 (which led to the amendment of domestic legislation, the establishment of the Centre for Mediation and Training of mediators). In criminal matters, mediation practically doesn't exist. It is noted in the Evaluation report of the European Commission for the Efficiency of Justice (CEPEJ) on 2014 year (data from 2012): efficiency and quality of justice, in which in table 6.3. (European Commission for the Efficiency of Justice, 2014: 151–152) data given for Serbia relating to 2006 (until the later years of data did not).

It is equally likely that a clear concept of development and organization is a major obstacle to the effective implementation of judicial mediation. The reason that mediation is "on the fringe" is that there is only one direction to combat domestic violence by applying criminal sanctions, and the protection of victims is achieved through judicial measures imposed in civil proceedings. From our perspective, this is neither sufficient, nor effective, because it is missing legal criteria to assess when a domestic violence should lead to litigation and when to criminal proceedings. Adopting mediation on a national level in the criminal justice system is prevented by the predominantly repressive orientation in the field of gender-bases violence. Mediation, as alternative procedure on the borders of criminal justice system, should offer victims an adequate choice according to her/his needs. It also prevents (informal) discretionary selection of criminal cases in police practice. Programs for conciliation and settlement of the offender and the victim in domestic violence cases can be applied only to a limited extent, but may be helpful in some cases to empower women victims and support some men to change (Pelikan, 2002, 2010). Examples of Austrian good practice could be a model for development activities Probation Service in Serbia.

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Specialization of Criminal Justice Authorities in Dealing with Cybercrime

Milana Pisarić

Purpose:

This paper deals with specialized cybercrime units within the criminal justice system as one of the key elements of proper response to cybercrime. The author emphasizes the need for the establishment and/or improvement of such an organization with specific powers within law enforcement and prosecution authorities as well as within courts, in order to tackle problematic issues raised by computer-related crimes, especially the ones concerning investigation and prosecution of offences committed against and/or by means of computer data and systems, and carrying out computer forensics with respect to electronic evidence in general.

Design/Methods/Approach:

The author analyses the relevant international legal framework and various national legislation chosen as examples of good practice in order to present the justification and purpose of specialization, types of specialized law enforcement units, their organization, functions, strategic and tactical responsibilities.

Findings:

Investigation and prosecution of cybercrime and forensic analysis of electronic evidence require specific skills within criminal justice authorities. Therefore, it is advisable to set up or consolidate police-type and prosecution-type cybercrime units with strategic and operational responsibilities and computer forensic capabilities within cybercrime units or as separate structures. As for judiciary, dealing with computer-related crimes requires particular knowledge and skills, and where it is compatible with the legal system of the respective country, the creation of specialized courts may be considered. In addition to the existing legal mechanisms for dealing with transnational crime, the creation of an international court or tribunal that would have jurisdiction over individuals who committed the most serious cybercrimes of global concern may also be a good solution in order to prevent serious cyber attacks from going unpunished.

Research Limitations/Implications:

The results presented in this paper are to be seen as de lege ferenda proposals for the improvement of the existing legislation related to organization and powers of authority vested in combating cybercrime.

Originality/Value:

Despite the existence of a significant number of essays dealing with cybercrime, not many of them are concerned with tactical and procedural issues of

investigation and prosecution of this specific kind of crimes. The results presented in this paper are de lege ferenda proposals for the improvement of the existing legislation related to organization and powers of authority vested in combating cybercrime. Accordingly, the value of this paper may be recognized in the analysis of legal solutions regarding law enforcement and prosecution response to computer-related crime, with the emphasis on specialization of authorities involved.

UDC: 343.3/.7:004

Keywords: cybercrime, investigation, prosecution, court, specialization

Specializacija organov za kazenski pregon za obravnavo kibernetske kriminalitete

Namen prispevka:

Članek obravnava specializirane enote za kibernetsko kriminaliteto znotraj kazenskopravnega sistema kot enega izmed ključnih elementov ustreznega odzivanja na kibernetsko kriminaliteto. Avtorji poudarjajo potrebo po vzpostavitvi in/ali izboljšanju takih organizacij s posebnimi pooblastili tako v okviru organov kazenskopravnega pregona kot tudi v okviru sodišč, da bi odpravili težave, ki se pojavljajo v zvezi s kaznivimi dejanji, ki so povezani z računalniki, še posebej tistimi, ki se tičejo preiskovanja in pregona kaznivih dejanj nasproti in/ali preko računalniških podatkov in sistemov ter izvajanja računalniške forenzike v zvezi z elektronskimi dokazi na splošno.

Metode:

Avtorji analizirajo relevantni mednarodni pravni okvir in različne nacionalne zakonodaje, izbrane kot primer dobre prakse z namenom predstaviti utemeljitev in namen specializacije, vrste specializiranih enot za kazenski pregon, njihovih organizacij, funkcij, strateške in taktične odgovornosti.

Ugotovitve:

Preiskovanje in pregon kibernetske kriminalitete in forenzična analiza elektronskih dokazov zahteva specifična znanja v okviru organov kazenskega pregona. Priporočljivo je oblikovati ali konsolidirati policijske in preiskovalne enote za kibernetsko kriminaliteto s strateškimi in operacijskimi odgovornostmi ter zmožnostmi za računalniško forenziko znotraj enot za kibernetsko kriminaliteto ali kot ločene strukture. Kar se tiče sodstva, delo s kaznivimi dejanji, povezanimi z računalniki, zahteva posebno znanje in sposobnosti ter, kjer je to združljivo s pravnim sistemom posamezne države, obravnavo oblikovanja specializiranih sodišč. Kot dopolnitev obstoječih pravnih mehanizmov za obravnavo mednarodnih kaznivih dejanj in v izogib nekaznovanja resnih kibernetskih napadov bi bila dobra rešitev ustanovitev mednarodnega sodišča ali razsodišča, ki bi imelo jurisdikcijo nad posamezniki, ki so storili najhujša kibernetska kazniva dejanja globalnega pomena.

Omejitve/uporabnost raziskave:

Rezultati, predstavljeni v tem članku, so predlogi de lege ferenda za izboljšave obstoječe zakonodaje, povezanih z organizacijo in močjo organov, pristojnih za boj proti kibernetski kriminaliteti.

Izvirnost/pomembnost prispevka:

Kljub obstoju velikega števila esejev na temo kibernetske kriminalitete jih veliko ne obravnava taktičnih in proceduralnih težav preiskovanja in pregona teh specifičnih vrst kaznivih dejanj. Rezultati, ki so predstavljeni v tem članku, so predlogi de lege ferenda za izboljšave obstoječe zakonodaje, povezanih z organizacijo in močjo organov, pristojnih za boj proti kibernetski kriminaliteti. Skladno s tem je vrednost tega članka mogoče prepoznati v analizi pravnih rešitev glede kazenskega pregona in odgovorov na kazniva dejanja, povezana z računalniki, s poudarkom na specializaciji vključenih organov.

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Ključne besede: kibernetska kriminaliteta, preiskava, pregon, sodišče, specializacija

1 INTRODUCTION

It is generally accepted that some form of regulation of cyberspace is required, but the issue at hand is which form this regulation should take. Regulation of cyberspace could be argued from one of the following four standpoints: the introduction of new laws, improvement of the existing laws, or the combination thereof, or otherwise the adoption of alternative forms of regulation. Although much of the monitoring, regulation, protection, and enforcement related to cybercrime is not the responsibility of state-controlled public police forces, while Internet Service Providers and users bear the primary responsibility for cleaning up cyberspace, it is necessary to mark the application of a legal model of governance by a body of substantive criminal law in order to deal with the most extreme forms of behaviour. As cyberspace has become a common aspect of human existence, the number of behaviours that could be defined as cyber crimes will not only increase, but the nature of their victimization will also expand.

To face the problem of policing and prosecuting cybercrime, the area of legislation requires constant updating of substantial and procedural criminal laws in order to make it clear which criminal activity in cyberspace is to be considered a cybercrime, and also to create a legal framework for its investigation. Cybercrime and cybercrime investigations pose significant challenges to law and law enforcement. There are many reasons for that. Challenges arisen from the context and scope of cyber crimes and technical expertise required to investigate them led to re-examination of police capacity to respond.

Creation or further consolidation of specialized cybercrime units is commonly recognized as the key element of the effective response to cybercrime. There is no single solution, which could be considered appropriate or best for all countries, as its creation and evolution depends on the needs of each particular country, based upon its legislation, reliance on IT, prevalence of different types of criminal activity and other matters.

Both law enforcement and prosecution authorities require a specialized response to the issues raised by cybercrime. Cybercrime is considered to cover offences against computer systems, offences by means of computer systems,

in particular those that have acquired a new quality through the use of ICT (according to the CoE Convention on Cybercrime – Council of Europe, 2001). Important evidence for any offence may be located on a computer, and even though this offence is otherwise unrelated to computer systems and not considered cybercrime as such, the criminal justice system needs to be able to recognize and handle electronic evidence in exercising digital forensics.

2 ROLE OF SPECIALIZED CYBERCRIME UNITS

The primary role of specialized cybercrime units may be divided into three functions: 1) investigating and/or prosecuting offences against computer data and systems; 2) investigating and/or prosecuting offences committed by means of computer data and systems; 3) carrying out computer forensics with respect to electronic evidence in general (Specialised cybercrime units: Good practice study, 2011: 4). Criminal justice authorities need to be able to deal with all three aspects: offences committed against computer data and systems (such as those defined in Articles 2 to 6 of the CoE Convention on Cybercrime – Council of Europe, 2001); offences committed by means of computers (such as those defined in Articles 7 to 10 of the CoE Convention on Cybercrime – Council of Europe, 2001), and other articles as well); electronic evidence on the computer related to any type of offence (Article 14 of the CoE Convention on Cybercrime – Council of Europe, 2001).

Specialized cybercrime units cannot be effective in isolation. The creation or consolidation of specialized cybercrime units should be part of an effective cybercrime strategy in which the police unit could be a driving force on the national level. Cybercrime often involves a combination of offences committed against and by means of computers, which is why different law enforcement and other services share a responsibility. Interagency cooperation is therefore essential, and a specialized cybercrime unit may provide technical support and know-how to other agencies.

In order for the criminal justice system to be capable of coping with such a large number of offences and cases, functions and responsibilities of law enforcement agencies specialized for cybercrime may include all or a combination of investigations, collection of data and forensic analysis, intelligence collection, analysis and dissemination assessment, and analysis of cybercrime phenomena, etc. Nevertheless, the role of a specialized unit depends on general police unit organization and its place within it, material and territorial jurisdiction of police units, and procedural powers and tools to be used by police units in their investigations or in specific activities. More precisely, the role is defined by the organization and functioning of a police unit, its jurisdiction (defined and clearly separated from other units), definition of the limits of jurisdiction between police units and collaboration and hierarchical relation between them, and staff positions in the unit (Specialised cybercrime units: Good practice study, 2011: 16).

3 TYPES OF SPECIALIZED CYBERCRIME UNITS

The investigation of cybercrime, forensic analysis of electronic evidence, and prosecution of cybercrime require specific skills. Therefore, criminal justice

authorities should be supported in creation or consolidation of: police-type cybercrime or high-tech units with strategic and operational responsibilities; prosecution-type cybercrime units; computer forensic capabilities within cybercrime units, or as separate structures; skills within the judiciary. The creation of specialized courts may be considered where this is compatible with the legal system of the respective country; interagency cooperation. This is essential due to the fact that cybercrime units are to cooperate with other police services (such as economic crime units, child protection units) and institutions (such as financial intelligence units, Computer Emergency Response Teams, and others).

Given the name and their place in internal organization, several categories of specialist units dealing with cybercrime may be recognized: 1) as scientific support units or forensic investigation units carrying out forensic examination of seized computer devices and data recovery; 2) as departments collecting intelligence on major cross-boundary investigations usually linked to terrorism or fraud (known as Specialist Investigations Departments or Intelligence and Specialist Operations); 3) as units with broader remit to investigate offences committed against computer systems and traditional crimes with high-tech elements; 4) as units which investigate child pornography cases (Jewkes, 2010: 540).

On the basis of the analysis of current types of cybercrime units, it appears that a cybercrime unit should be structured in three sections: 1) investigation; 2) data and information analysis; 3) computer forensics. One unit at the central level coordinating a number of field offices seems to be an efficient formula. However, the units should remain flexible enough to respond to the evolution of cybercrime and technology, and to changes in the environment in which they operate.

The following types of specialized cybercrime units are found: cybercrime units, high-tech crime units, computer forensic units, central units, crime-specific units, specialized prosecution units (Specialised cybercrime units: Good practice study, 2011: 5).

Cybercrime units. Cybercrime units investigate all types of cybercrime committed against and by means of computer data and systems, and also have computer forensic functions (e.g. specialized units within the police forces of Cyprus, the Czech Republic, France (Gendarmerie), Mauritius, Romania, or Spain) (Specialised cybercrime units: Good practice study, 2011: 13). The Spanish Cybercrime Unit was created according to the National Law 1/86, developing from a small group in 1995 to a brigade in 2000. It operates within Spanish Police as a specialized structure for investigating crimes against computer systems and crimes through computer systems. At present, it includes a central unit and specialized units consisting of 4–7 investigators in the field offices. The central unit has three sections: the first one, responsible for investigations related to crimes against person (child pornography, threats, etc.); the second one, responsible for investigations of economic crimes (frauds, piracy, hacking, etc.); the third one, responsible for forensic activities (related to the analysis and forensics of computer systems and computer data storage devices during their investigations) and authorized to coordinate territorial units (Specialised cybercrime units: Good practice study, 2011: 94).

High-tech crime units. High-tech crime units are mainly competent for investigating offences against computers (not other crimes committed through

computer systems, such as electronic payment frauds, Internet frauds), and they include computer forensic functions providing technical support to investigations carried out by other units or agencies.

In *Austria*, there is the Criminal Intelligence Service responsible for the investigation of crimes committed against computer systems, but not for crimes committed by means of computer systems (unlawful access, privacy of telecommunication, unlawful interception of data, damaging of data, interference in the functioning of a computer system, misuse of a computer program, falsification of data, fraudulent misuse of data processing), which are investigated by the Criminal Intelligence Service Austria Departments 3 and 7.

In *Belgium,* there is one Federal Computer Crime Unit (FCCU) at central level and 26 Regional Computer Crime Units (RCCU) at district level. All offences committed against computer systems and data (e.g. illegal access) are handled by the RCCU, whereas FCCU can support and assist them whenever they need specialized competences or centralized equipment. The FCCU is able to handle cases autonomously in the case of a need for an urgent intervention or attack on critical information infrastructure. FCCU/RCCU do not handle offences committed through or by means of computer systems (e.g. child pornography), but can provide support (sometimes to a very large extent) in forensic ICT analysis and internet investigations (Specialised cybercrime units: Good practice study, 2011: 63).

Computer forensic units. Computer forensic units are separate units responsible for collection and analysis of electronic evidence – they often have computer forensic functions, meaning that they analyse the evidence related to their own investigations or investigations of other services. For example, there is the "Forensics Unit" functioning within the Cybercrime Unit in Romania (Specialised cybercrime units: Good practice study, 2011: 19).

Central units. Central units are without investigative functions but are responsible for coordination and strategic and intelligence functions – the power of these units is limited to collection of information or assistance to other police structures in computer forensics, cybercrime investigations, or other types of criminal investigations (for example, in the United Kingdom, the Cybercrime Unit from SOCA has primarily intelligence function (collection of data), with the purpose of defining national policies and threat assessments, and initiating major investigations. In these police systems, the actual cybercrime investigation is a task of the local police, with the assistance of a specialized unit) (Specialised cybercrime units: Good practice study, 2011: 14).

Crime-specific units. Crime-specific units have been created to deal with specific types of crime: child pornography and other forms of sexual exploitation and sexual abuse of children, IPR-related offences, or specific types of fraud. For example, in the United Kingdom there is the CEOP - Child Exploitation Online Protection launched in 2006, which underlines the commitment of the UK police to stem the global Internet trade in child pornography. They have developed a proactive strategy based on specialist intelligence and technical expertise (Specialised cybercrime units: Good practice study, 2011: 14).

Specialized prosecution units. Serbia has established a department for fighting cybercrime within the Ministry of Internal Affairs, as well as the special

department within Higher Public Prosecutor's Office in Belgrade (the Law on Organization and Competence of Government Authorities for Suppression of High-Tech Crime, 2005, 2009) with nationwide competence and Special Prosecutor for High-Tech Crime in charge. Special Prosecutor's Office for High-Tech Crime was established in 2006 within the Higher Public Prosecutor's Office in Belgrade with jurisdiction over the territory of the Republic of Serbia. The specialized prosecutor's unit is authorized to: contribute to national cybercrime policies, draft internal procedures, coordinate field offices, prepare and implement training programs for police officers, participate in international judicial cooperation, and cooperate with international organizations and LEA. The Special Prosecutor's Office is managed by the Special Prosecutor for High-Tech Crime who is appointed by the Republic Public Prosecutor. The specialized prosecutor's unit consists of one prosecutor (Head of the Office), two deputy public prosecutors, two prosecutor advisers, and two administrative workers. The personnel has undergone basic training and continuously participates in training programs organized by the Judicial Academy of Serbia, cybercrime programs of the Council of Europe, OSCE, EUROPOL, U.S. DOJ, TAIEX, etc.

4 ESSENTIAL REQUIREMENTS FOR SPECIALIZED CYBERCRIME UNITS

There are some key considerations that have to be taken into account when "setting up a specialized cybercrime unit: the national legislation that provides the legal basis, the internal orders and regulations for the functioning of the unit, the police department to which the unit is attached, the premises of the unit (the personnel, training and equipment), the internal organization and structure" (Specialised cybercrime units: Good practice study, 2011: 16).

The performance of a specialized cybercrime unit depends to a large extent on the quality of its staff and determination and motivation of its leadership, cooperation with prosecutors and courts and other agencies at the domestic level, cooperation with the private sector, as well as international cooperation. However, personnel, equipment, and training are the main challenges that have to be kept in mind constantly.

4.1 Personnel

The selection of the right personnel to perform various functions within any specialist investigative unit is absolutely vital. Therefore, it is important to have in place a selection procedure for personnel which identifies those best suited for a role within that department. Essential personnel requirements to combat cybercrime reflect the basic functions of a cybercrime unit: investigation, prosecution, legislative assistance, education and/or public outreach, and training.

Investigators. Well-trained law enforcement officers are essential for conducting cybercrime investigations. Investigations include traditional crimes facilitated by the use of computer technology, as well as crimes in which

computers are used as an instrument. In addition to traditional skills, training and qualifications, specialized skills and knowledge of cybercrime technology and legal requirements are also needed. The officers need to have knowledge of computers, Internet, police investigations, legislation governing cybercrime, and foreign languages.

Depending on their function, they have specific qualifications – mostly in criminal investigation and ICT, and, depending on the size of the cybercrime unit and its jurisdiction and tasks, the selection process must take place within a reasonable period of time, and have as criteria the skills and integrity of candidates.

The structure of the cybercrime unit has to be considered and a distinction has to be made between the officers who perform investigations in various areas and the officers who, in addition to having knowledge of computers and legislation, must also possess subject-matter knowledge. For example, the personnel to investigate child pornography on the Internet will also have to possess knowledge of psychology and investigations related to minors, whereas those investigating intellectual property crime will have to possess knowledge of intellectual property rights. National units tend to employ more specialized personnel. In a local unit, a specialized generalist is often preferred. These are some of the specialized skills needed for all cybercrime investigations: ability to prepare and conduct search and arrest warrants for digital evidence; knowledge of how computers work in order to effectively interrogate the suspect and establish culpability of evidence found on his/her computer; willingness and capacity to receive continual specialized training and certifications in specialties such as digital evidence, computers, networks, and forensic analysis; specialized crime scene preservation and examination skills; working knowledge of the Internet; ability to work with representatives from other jurisdictions (National Center for Justice and the Rule of Law, 2007: 24).

Covert, proactive investigations require the investigator to "role-play". Investigators must be acquainted with various facets of popular culture and the "slang" used in e-mail and instant messaging communications to effectively pose as underage persons. Furthermore, investigators must be familiar with the typology of Internet predators.

Cybercrime prosecutors. Cybercrime prosecutors typically team with investigators and computer forensic examiners to investigate and prosecute cases. *Cybercrime Prosecutors o*versee operations of cybercrime unit or task force; advise investigators and computer forensic examiners regarding the amount and type of evidence necessary for arresting and conviction; develop forms, protocols, and procedures for the writing, execution, and return of search and arrest warrants. In order to do the former, c*ybercrime prosecutors have to possess the following essential skills:* 1) knowledge of cybercrime statutes and other relevant crimes; 2) familiarity with computer technology and computer forensics; 3) commitment to continued education in both legal and technical aspects of cybercrime prosecution (National Center for Justice and the Rule of Law, 2007: 26).

Computer forensic examiners. Virtually every criminal investigation involves some form of digital evidence or communications data, requiring investigators to seek the assistance or advice of the in-house specialist staff. Digital evidence and

communications data are integral to an ever increasing number of mainstream criminal investigations. Therefore, proliferation of and close linkage between digital and computer evidence and the work of prosecutors and investigators indicates a strong need for the in-house computer forensic examiners. There are actually two general roles within e-crime unit, which may be recognized: forensic analysis of digital evidence and network investigations. Forensic analysis of digital evidence means that the role of a technician is to secure and retrieve evidential material from digital media, mainly computers, to produce such evidence in the form which is admissible in the court, and to provide technical advice and support to the officers encountering such media during investigations into computer crime or where a computer or digital media have been used in the commission of such crime. The other role is conducting network investigations and operations into network-based criminal activity to detect high-tech crime, gathering and disseminating relevant and quality intelligence, providing technical advice and assistance to officers engaged in the investigation of high-tech crime, and producing evidence in the form admissible in the court (Association of Chief Police Officers, 2012: 5–6).

The role of this staff within specialized cybercrime unit has to be extended and developed in respect of their role and the skill base, which they require. They closely cooperate with investigators on issues such as preparation and execution of search warrants, devising surveillance schemes, and other issues related to technical aspects of an investigation. Their primary responsibility is for the analysis of digital evidence, and their functions include disk imaging, data recovery, data extraction, and system analysis. In doing that, they are responsible for the maintenance of hardware and software utilized to obtain and analyse digital evidence, for maintaining condition and security of forensic computer laboratory, and for maintaining procedures for handling and securing evidence in the forensic laboratory.

Due to the fact that computer forensic examiners should be able to provide testimony concerning technical aspects of data recovery and analysis, an important skill they need to have is the ability to testify in the court.

In staffing these experts, the following essential skills are required: extensive experience with computers, particularly in the law enforcement context; degree in computer science or related field is a plus; experience and certification with the design and maintenance of computers and computer networks; comprehensive knowledge of computer operating systems; training and certification in computer forensics; commitment to continued education in computer forensics.

In staffing the units with forensic experts, employing the right mix of staff and roles in a unit and finding the right individuals represent a challenge for any branch, and the following should be considered: 1) programmers: there is a need for quick-and-dirty one-time solutions on a daily basis, e.g. for extraction of non-standardized data using customized scripts; 2) analysts: close cooperation between cybercrime specialists and analysts has proven gainful, especially for intelligence purposes; 3) technicians: they offload the specialists by managing internal networks and equipment; 4) administrative personnel: offloading administrative duties from specialists will obviously lead to the most cost-effective

utilization of their expertise; 5) outsourcing/consultants, if it is legally possible to outsource investigative or forensic tasks (Specialised cybercrime units: Good practice study, 2011: 45).

4.2 Infrastructure

The costs associated with running a specialist investigative unit within a law enforcement agency, in terms of personnel, equipment, and training, represent a significant drain of resources, but the budget for the specialized unit is usually part of the general police budget. Tasks and priorities of the unit will determine the equipment and other necessary resources. Due to the rapid evolution of software and hardware on the one hand, and techniques for committing cybercrime on the other hand, the equipment needs to be at the cutting edge of technology and constantly updated. In order to create effective cybercrime investigative and prosecution capacity, specific hardware, software, physical space, and other components are needed or desirable. Primary needs involve forensic capacity – the ability to obtain, preserve, and analyse digital evidence. To accomplish its mission, cybercrime capacity demands a commitment of resources to infrastructure. In addition, the needs of investigators and prosecutors must be met. The quantity of items will vary, depending on the size and mission of the unit or task force. The necessary equipment and software should be related to computer systems investigations, digital computer forensic activities, undercover operations through the Internet, lawful access to computer systems, databases operation, and lawful interception of computer systems. Since these infrastructure needs constantly evolve and often exceed financial resources allocated to a police unit, the *minimum requirements* to set up an effective cybercrime unit have to be kept in mind. Accordingly, a budget allocated to this unit has to be based on personnel costs, costs of the necessary equipment and software, as well as the costs of using special techniques of investigation. The minimum equipment of the cybercrime unit, nevertheless adapted to the needs of the unit, should include: adequate space for computer equipment; secure storage for exhibits; sufficiently powerful computers for workers; covert Internet connections; necessary software and devices for forensically processing computer systems, and other devices (Association of Chief Police Officers, 2012: 15–16).

5 GOOD PRACTICE

Since the early 1990s, specialized units that investigate cybercrime and carry out computer forensics have been created in different countries, and they have been evolving ever since. As cybercrime and other types of crime involving electronic evidence are growing exponentially, it can be expected that more countries will establish such units, and that their size and scope of work will increase substantially in the future.

Three different approaches taken by state Attorneys General (AG) in the United States to create capacity to combat cybercrime will be presented as examples of good practice.

Dedicated In-House Cyber Crime Unit in Mississippi. AG office has statewide jurisdiction and arrest powers, and the authority to impanel a statewide grand jury to investigate and indict. Prosecutors from the Attorney General's office can try cases in any court in the state. A dedicated cybercrime unit is established within an AG's office (within Public Integrity Division, as the head of cybercrime unit reports to the Division head), and it has self-contained prosecution, investigative and forensics capacities. The Unit consists of one attorney (unit head), three investigators, and one forensics examiner (some investigators have become qualified to do forensic examinations as well). The Unit has an in-house computer forensics lab, which accepts cases for analysis from throughout the state. Considering the Unit's caseload and sources of cases, 40% of the cases are the unit's own investigations. The Unit has been working in 72 out of 82 state's counties, accepting cases involving any dollar amount – if it cannot take the case, the Unit refers the case to the Internet Crime Complaint Center. 36% of the cases are requests for computer forensics analysis received from a DA's office or local law enforcement, and the sole reason to deny forensic service is if forensics had previously started elsewhere. The rest (24%) are the requests for assistance from a DA's office or local law enforcement. The Unit has been funded from the following sources: Start-up funding from the National Center for Justice and the Rule of Law at the University of Mississippi (three years), as a sub grantee of the federal grant awarded to the NCJRL, Follow-on $300,000 grant from the Center for Computer Security Research at Mississippi State University. The Cyber Crime Unit also receives for its operations a portion of the legislative appropriations for the Attorney General's Public Integrity Division. There is no separate line item for the Unit (National Center for Justice and the Rule of Law, 2007: 17–19).

Statewide Cyber Crime Task Force Model in Maine. A task force model is a pooling of prosecution, forensics, and investigative resources from a variety of independent agencies. Lewiston, Maine Police Department promoted the idea and formed a partnership in 1999 with the following authorities: the Office of the Attorney General of Maine; Brunswick, Maine Police Department; Maine State Police and Portsmouth, Maine Police Department, and, lately, Maine task force has formed a partnership with Vermont and New Hampshire police to apply for and receive funding from OJJDP as Northern New England Internet Crimes Against Children (ICAC) Task Force. It includes members of local law enforcement, designated by their agency as responsible for investigating computer crime: three investigators and three computer forensics examiners and two AAGs from Maine AG Office provide legal support. MCCTF coordinates computer crime investigations statewide; conducts computer forensic examinations; responds to requests for assistance from other law enforcement agencies - *e.g.*, drafting subpoenas, contacting Internet Service Providers; conducts training programs for law enforcement agencies on investigation of Internet cases; conducts Internet safety programs for the public. Each member agency is responsible for cases within its own jurisdiction, and is trained in cybercrime investigative techniques, and encouraged to perform outreach on Internet safety. When first established, it received about 20 cases a month from the National Center for Missing and Exploited Children (NCMEC), and the cases of Internet Crimes Against Children

(ICAC) are still its priority, representing 80% of its workload (National Center for Justice and the Rule of Law, 2007: 19–22).

New Hampshire – Model of Distributed Forensics/Prosecution of Cybercrime. This model was structured in order for local prosecutors and investigators to handle cybercrime cases instead of the AG office. In 2003, New Hampshire AG invited state decision-makers to a meeting to develop a plan to address cybercrime, get consensus, and set up task force. After all task force members were asked to identify point person and complete survey of needs, law enforcement task force members established a plan to meet quarterly to discuss status of computer crimes in their jurisdictions. Implementation of the plan means that forensic examiners at state lab receive and image devices, run verifications and indexing, and store indexed images on Storage Area Network. Using viewing stations, local investigators ("case agents") access forensic images via secure, remote access to forensic machines, and conduct analysis on read-only prepared media (National Center for Justice and the Rule of Law, 2007: 22–24).

6 CONCLUSION

Cybercrime requires a specialized response by criminal justice authorities. Law enforcement authorities and prosecution services have to be able to investigate and prosecute offences against computer data and systems, offences committed by means of computers, as well as electronic evidence in relation to any crime. Although there is no single solution to the creation or further strengthening of specialized cybercrime units that would be recognized as appropriate or best for all countries, due to the fact that their creation and evolution depends on the needs of each particular country, based on its legislation, reliance on IT, prevalence of different types of criminal activity, and other matters, good practice could be found in comparative law. With the inevitable growth of the number of crimes committed by computer generated electronic evidence, special cybercrime units will not be able to handle on their own all the offences committed against or by means of computer systems, or conduct the analysis of electronic devices related to any crime. Accordingly, it would be advisable to establish a form of cooperation in which those specialized units would assist other police units and provide them with at least basic know-how in cybercrime investigation and securing electronic evidence.

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Harmonization of the Police Law of the Republic of Serbia with the European Standards of Human Rights Protection

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Purpose:

Universality of human rights as part of natural and inalienable civilization values makes the rights a current issue of scientific treatment from various aspects. Legal regulation of human rights has both international and national component. On the other hand, governmental law-enforcement organizations play a very significant role in the realization, implementation and protection of human rights. A significant segment of the national legislation compliance belongs to the harmonization of laws and other state regulations with the European standards concerning human rights. With this work authors tried to realize the opportunities for further harmonization of police regulations in Serbia related to the field of human rights in accordance with European standards.

Design/Methods/Approach:

The authors use the method of analyzing expert literature, laws, international regulations and legal sources, as well as the descriptive method, the method of analysis and synthesis, the inductive-deductive method, and the compilation method.

Findings:

Serbia is obliged to comply with the laws of the European Union as part of the *Stabilization and Association Agreement. The overall harmonization of law will certainly require harmonizing law-enforcement laws and provisions. The current Law on Police* will very quickly be replaced by a new legislature in that, inter alia, pay special attention to compliance with its provisions with European human rights standards.

Originality/Value:

The article is a comprehensive, critical and presents a detailed analysis of the situation and proposals for harmonization of police regulations with European human rights standards. With regard to the process of Serbia joining the European Union conclusions expressed office may be relevant to the preparation of accession negotiations in the chapters dealing with such problems. The paper also aims at preparing a new impetus to the Police Act of the Republic of Serbia on issues related to normative regulation of human rights performance.

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Keywords: harmonization, human rights, police, organization, standards, Serbia

Usklajevanje Zakona o policiji Republike Srbije z evropskimi standardi varovanja človekovih pravic

Namen prispevka:

Zaradi univerzalnosti človekovih pravic kot dela naravnih in neodtujljivih civilizacijskih vrednot so pravice stalno podvržene znanstveni obravnavi z različnih vidikov. Pravna ureditev človekovih pravic vsebuje tako mednarodno kot nacionalno komponento. Vladne institucije kazenskega pravosodja pa imajo zelo pomembno vlogo pri realizaciji, implementaciji in varstvu človekovih pravic. Pomemben segment skladnosti nacionalne zakonodaje vključuje usklajevanje zakonov in drugih državnih predpisov z evropskimi standardi varstva človekovih pravic. V prispevku avtorji poskušajo ugotoviti, kakšne so z vidika človekovih pravic možnosti za nadaljnjo uskladitev srbske policijske zakonodaje z evropskimi standardi.

Metode:

Avtorji uporabljajo metodo analize strokovne literature, mednarodnih predpisov in pravnih virov, opisno metodo, metodo analize in sinteze, induktivno-deduktivno metodo ter metodo kompilacije.

Ugotovitve:

Srbija je v okviru sporazuma o stabilizaciji in pridruževanju dolžna ravnati v skladu z zakonodajo Evropske unije. Splošna uskladitev zakonodaje bo gotovo terjala usklajevanje zakonov in predpisov s področja kazenskega pravosodja. Sedanji Zakon o policiji bo zelo hitro nadomeščen z novim, pri čemer bo morala biti posebna pozornost, med drugim, namenjena usklajenosti določb zakona z evropskimi standardi človekovih pravic.

Omejitve/uporabnost raziskave:

Prispevek je izčrpen in kritičen ter predstavlja podrobno analizo stanja in predloge za uskladitev policijske zakonodaje z evropskimi standardi varovanja človekovih pravic. Glede na to, da je Srbija v procesu pridruževanja Evropski uniji, so ugotovitve prispevka lahko uporabne za pripravo na pristopna pogajanja v poglavjih, ki se ukvarjajo s tem področjem. Prispevek utegne znotraj Zakona o policiji Republike Srbije vzpodbuditi iskanje odgovorov na vprašanja, povezana z normativno ureditvijo zagotavljanja človekovih pravic.

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Ključne besede: usklajevanje, človekove pravice, policija, organizacija, standardi, Srbija

1 INTRODUCTION

Most often we can hear or read about human rights that they are universal, natural rights inherent to all human beings by birth, whatever their gender, race, religion,

social or any other status. These rights are not subject to any kind of restrictions and no one can be deprived of them, except in cases explicitly stipulated by law. However, human rights, apart from their universality and other characteristics, can be and are subject to violation. We can agree with the assertion that human rights are, beyond any doubt, one of the biggest legal and social and political ideas in the history of ideas and probably the biggest legal and social and political invention and practical *novum* of modernism (Hasanbegovic, 1997).

The rapid development of human rights is a step forward in comparison to classical international law, primarily due to the recognition of the international legal subjectivity of an individual, as well as to the emergence of a kind of global civil society. Nevertheless, a question can be raised whether the last decade has seen a certain crisis in the development of the human rights project. Namely, the modern human rights concept has been criticized that it tends too much to impose the cultural patterns of the western societies, specifically of the USA and the EU. Unfortunately, the concern for the respect of human rights has been misused for political and propaganda purposes. Human rights promotion should represent an inseparable segment of the fight for the rule of law everywhere and should contribute to double standard avoidance concerning human rights protection. Therefore, in order for the human rights project to develop further in all of its aspects, we should think about what has been done, and what to do in the future in the field of human rights both on the national and global level. Especially, we find it necessary that at the normative level, at least when it comes to the most important segments of human rights protection, the domain of police regulations should promptly be harmonized with the unified international standards. This paper tends to give a little contribution to the tendency of the human rights project to continue its development especially in the area of harmonizing national police regulations with the EU standards.

2 INTERNATIONAL REGULATIONS ON HUMAN RIGHTS PROTECTION

Contemporary law recognizes the area of human rights protection as an integral part of every legal system. There is a general consent that the first written source containing the norms on human rights is Magna Charta Libertatum from 1215. In the document, human rights protection was designed as a barrier against the ruler's arbitrariness, that is, the arrogance of the state authority. Of course, one should bear in mind that the Magna Charta Libertatum guarantees individual rights and freedoms only to a small circle of people, the aristocracy, but anyway, it was the beginning of human rights protection which will, in the last decade of XX century, culminate in the destruction of the socialist part of the world concerning the issue of human rights respect along with other causes. The contents of the Great Charter of the Liberties (ibid.) initiated the adoption of subsequent legal regulations which introduced the general principles of individual freedoms and rights protection (Habeas Corpus act), with further development of the school of natural law, and, as a final social consequence at that time, came the bourgeois revolution in France and the Declaration of the Rights of Man and of the Citizen in 1789.

Human rights are regulated and protected by international conventions. Modern history of human rights starts after World War II with the adoption of the Charter of the United Nations (1945). The introduction of human rights into international law represented an answer to serious violations of humanitarian principles before and during World War II (Hartwig, 2009). The document that paved the way for human rights development and provided foundation for a new international legal order after the end of World War II is The Universal Declaration of Human Rights adopted by the UN General Assembly (United Nations [UN], 1948). However, it should be noted that the Universal Declaration was adopted as a non-binding document of the General Assembly. One of the reasons for this was determining the relationship issues between human rights as international law norms and principles of non-interference in the internal affairs of States from Article 2, par. 7 of the UN Declaration (ibid.). Mandatory application of the Universal Declaration came through the International Covenant on Civil and Political Rights (UN, 1966a) and the International Covenant on Economic, Social, and Cultural Rights (UN, 1966b). With the adoption of these treaties, human rights have definitely become a part of the binding international legal order. It can be said that the Universal Declaration formed part of a wider reorganization of the normative legal order of the post war international relations designed with the purpose to create a bulwark in the defence of barbarism (Ignatieff, 2001).

The UN (1948) Universal Declaration of Human Rights represented a foundation for passing the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe (1950a) (hereinafter Convention, 1950a). When the Convention (1950a) was put into effect in 1953, the Council of Europe (1950b) adopted 13 Protocols with the aim of expanding protection, and Protocol 11 envisaged the formation of the European Court of Human Rights in Strasbourg (Council of Europe, 1950b), which is nowadays the synonym for international judicial protection of human rights and freedoms. In addition to the mentioned documents, we would also like to mention the UN (1982) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, 1987), the Convention on the Political Rights of Women (UN, 1952), the Convention on the Rights of the Child (United Nations Human Rights, 1989), Charter of Fundamental Rights of the EU (European Parliament, Council of the European Union, & European Commission, 2000).

The listed conventions and other international acts represent part of political and legal standards adopted and implemented by the majority of states, including the Republic of Serbia, into their national legislation, thus taking responsibility for the provision and implementation of human rights and freedoms. In this very context, among others, the greatest responsibility for the proper application of the law lies with the police and its agencies.

International unification of human rights and freedoms called for the unification of police conduct standards. Council of Europe (1979), that is the Parliamentary Assembly of the organization, in that sense, adopts the Declaration on the Police, which stipulates ethical standards of conduct in the police, status,

rights and obligations of the police officer and police competences in emergency situations and in the cases of occupation by a foreign power. The General Assembly of UN with its resolution no. 34/169 adopts the Code of Conduct for Law Enforcement Officials (UN, 1979) based on ethical and professional conduct according to international acts on human rights protection and criminal justice standards. The Code belongs in the category of instruments which give governments authoritative guidelines that relate to criminal justice and human rights issues, and stipulate responsibility for police work with full respect for human dignity and restraining the use of force to the cases where it is absolutely necessary for achieving legitimate goals of law enforcement.

In the process of unification of human rights and freedoms, EU regulations play an important role and they represent a particular and authentic right, if we exclude for the moment the discussion on the legal nature of the right. The police and judicial cooperation between the EU member countries, as well as between the EU and other countries, has the ultimate purpose of creating an area of freedom and safety. Of course, the objective of the cooperation is ensuring the internal market openness, the quality and conditions for economic growth of the EU. The means for the realization of these objectives are defined as follows (Miler, Kainer, & Graf, 2005):

- Enhancing the cooperation between the police, customs and other competent bodies of the member countries and involvement of Europol.
- Stronger cooperation and data exchange between judicial authorities.
- Harmonization of criminal and other laws in the member countries in the areas of law-enforcement and justice.

The Republic of Serbia is a member of almost all of the treaties on human rights adopted by the UN. So, generally accepted rules of international law and ratified international treaties (International Treaties, 2008), are an integral part of the legal system in the Republic of Serbia and applied directly according to constitutional norms (Constitution of the Republic of Serbia, 2006: article 16, par. 2) (hereinafter Constitution). The Constitution (2006) also guarantees the direct implementation of human rights guaranteed by the generally accepted rules of international law. UN membership obligates Serbia concerning the bodies, which are in charge of control and monitoring of meeting the commitments from the membership and ratified conventions on human rights. Concerning the fulfilment of the international commitments, there are allegations that Serbia is late, especially in reporting to the UN treaty bodies, or the criticism is about report incompleteness (Human rights in Serbia 2013, 2014). In that sense, there is a need for regular reporting of the UN committee on the application of the ratified international conventions, as well as the need for regular keeping of all the records necessary for fulfilling the obligations of reporting to the UN treaty bodies.

Serbia has also signed numerous instruments for human rights protection. With accepting the membership in the Council of Europe (2003), it also took the obligation to ratify the UN (1948) European Convention of Human rights and to adjust the national legislation with this document and practice of the European Court for Human Rights. The European Convention of Human Rights and Fundamental Freedoms (Council of Europe, 1950a) was ratified by the former

State Union of Serbia and Montenegro in 2003 along with all the protocols. The same year the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, 1987) was ratified. The following conventions have also been ratified: the Council of Europe (2005a) Convention on Action against Trafficking in Human Beings, the Council of Europe (2005b) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2007) and the Council of Europe (2005c) Framework Convention on the Value of Cultural Heritage for Society, as well as the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (UN, 1968).

3 REFORM PROCESSES IN THE POLICE OF THE REPUBLIC OF SERBIA

Law-enforcement is an important element of every state. At the same time, it is also an ultimate protection of the state and its citizens against the phenomena that violate the order of relations defined by law. Therefore, the law-enforcement is a mirror of the society from which it originates and develops.

Social changes in Serbia in the year of 2000 caused the police to adapt to new challenges in building a modern state structure. The police reform process has started and, at the same time, the creation of a modern and rational service that will guarantee the citizens the safety of life and property, the state of stable peace and order and efficient crime prevention and detection.

The most important goals of the reform processes in the police of Serbia were depolitization, decriminalization, professionalization, modern organization of pro-European provenience, etc. (Ministry of the Interior of the Republic of Serbia, 2003). The existing domain of internal affairs has been divided into security and information and police functions.

One of the proclaimed police reform goals was the harmonization of national regulations in the area of the police law with the EU legislative. Also, the reform included the transformation of the police according to the universal 'community policing' concept along with building trust and cooperation between the police and citizens, which inevitable demanded a higher degree of openness to the public and the control of police work.

With the accession to the Council of Europe and ratification of relevant conventions, Serbia has assumed international obligations that required changing normative regulations related to police and security affairs. The need for redefining police affairs, powers and implementation of the European Code of Police Ethics (Council of Europe, 2001b) emerged, along with assuming parliamentary and other control of police work. That is how the following laws were adopted in the reform process: the Code of the Criminal Procedure (2011, 2012, 2013, 2014), Law on Security Information Agency (2002, 2009, 2014) (BIA), Law on Police (2005, 2009), Guidelines on police ethics of the Ministry of the Interior of the Republic of Serbia (2003) and the Code of Police Ethics (2006). By adopting these regulations and documents, the international standards of police work have been implemented in

positive legislation. Along with the reform processes, the Ministry of the Interior has made valuable contacts in international cooperation, at the ministerial and other levels. At the operational level, the police has enhanced the cooperation with foreign and international police force complying with international standards and regulations.

In line with the cooperation and according to law, the police exchanges data and information, undertakes cooperative action in countering terrorism, organized crime, illegal migrations and other forms of international crime and breaches of security boundaries. Also, the strengthening of the cooperation allows certain police activities abroad through coordinated efforts with law-enforcement in other countries.

The Law on Police (2005, 2009: Article 4) has prescribed the opportunity to perform law-enforcement and other missions abroad at the request of international organizations or through international agreements to which Serbia is a signatory.

4 THE PRINCIPLES OF POLICE POWER APPLICATION IN PERFORMING LAW-ENFORCEMENT FUNCTIONS

One of the most important moments in the reform of the Serbian police is certainly passing the Law on Police (2005, 2009) through which provisions most of the European standards dealing with law-enforcement performance were adopted.

When it comes to the performance of law-enforcement duties, the Law on Police (2005, 2009) regulates that the police shall observe international standards of law-enforcement procedures, especially the requirements pursuant to international regulations and official documents referring to the following: the responsibility to serve the public, to follow the law and combat unlawful activities, to respect human rights, to proceed without discrimination in the performance of police functions, to practice restraint in the means of enforcement, to prohibit torture and inhuman or degrading treatment, to aid and assist victims, to safeguard confidential information, to disobey unlawful orders, and to resist bribery and corruption. The Law also prescribes that the conduct of law-enforcement officers does not violate or fall short of European standards of police procedure (Law on Police, 2005, 2009: Article 12).

This compliance with European and other international police standards is also clearly stated in the part dealing with the principles of law-enforcement functions (Law on Police, 2005, 2009: Article 11):

- Following the law in everyday work as the main principle of every modern state.
- Proportionality in the use of police powers and force.
- The principle of subsidiarity i.e. working to achieve the least harm.
- Professionalism and cooperation.

In exercising their power, police officers have to respect the principles of impartiality and non-discrimination offering legal protection and humane treatment to every person in need showing respect for their human rights. Authorized officers shall proceed in a humane way and respect the dignity, good

reputation and honour of every individual as well as other fundamental human rights and freedoms, favouring the rights of the endangered person over those of the person violating such rights, and mindful of the rights of third parties. In exercising police powers, police officers shall enable access to licensed medical attention when a person subject to such powers requests it.

All the above mentioned is in accordance with the following: the European Convention for the Protection of Human Rights and Fundamental Freedoms – prohibition of torture and discrimination (Council of Europe, 1950a), Protocol No. 12 to the Convention – general prohibition of discrimination (Council of Europe, 2000); and the Charter of Fundamental Rights of the European Union – protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment and prohibition of discrimination (European Parliament, Council of the European Union, & European Commission, 2000).

Defining the principle of proportionality, the law clearly states that police powers shall be applied in proportion to the need and not cause greater harm than would have occurred had such powers not been applied. Authorized officers using enforcement measures must safeguard human life, cause the least possible injury or material damage, and ensure that any injured parties receive aid and that their relatives are notified without delay.

The application of the principle of proportionality is a serious task, which requires clearly set and realistic criteria. This is especially true when it comes to the use of firearms. In the case of firearms, there has to exist a rational relationship between ends and means. This is so because it is expected that the use of firearms will lead to the achievement of a certain goal, and that the damage caused by the weapon's use is not disproportionate to the benefits society gains.

In the performance of their duties, the law-enforcement officers' duty is to take all necessary measures in order to protect the life, rights and integrity of citizens and their property. A police officer serves his or her community protecting everyone against unlawful actions and has to act humanely respecting the dignity, good reputation and honour of every individual and other fundamental human rights and freedoms. A police officer is also obliged to report to his immediate superior informing him of the information he has gathered in his police work either by using the official powers or in some other way.

Such standards in law-enforcement power functioning are in accordance with the Charter of Fundamental Rights of the European Union – protection of human dignity, prohibition of torture and inhuman or degrading treatment or punishment (European Parliament, Council of the European Union, & European Commission, 2000).

The Law on Police (2005, 2009) contains many other provisions relating to other international police standards such as the protection and respect of human rights whereby police officers have to proceed in accordance with law and other regulations respecting the standards set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950a), the Basic UN Principles on the Use of Force and Firearms by Law-Enforcement officials, the European Code of Police Ethics and other official (UN, 1990) international documents relating to the police. Before exercising police

powers, the authorized officers have to determine that all conditions have been fulfilled as provided by law.

A person subject to police powers has the right, whenever possible and if that does not jeopardize the law-enforcement action, to be duly informed of the grounds for the exercise of such powers; to be allowed to explain circumstances the person considers relevant; and to be informed of the identity of the police officer, while the police officer has the duty to show his identification. A person subject to police powers has the right to request the presence of a trusted third party.

Serbia's efforts to harmonize its police regulations with European standards will be considered in the three following areas: protection of the right to life, prohibition of torture and protection of personal data.

4.1 Enforcement Measures and their Use and Protection of the Right to Life

Protecting the life, rights, freedoms and integrity of citizens and using enforcement measures upholding the rule of law is all in the domain of work of police officers who have a wide range of standardized powers at their disposal. In Serbia such powers are prescribed first of all by the Law on Police (2005, 2009) and by other laws and regulations relating to deprivation of freedom, detention, prevention, detection of and solving criminal offenses, and use of enforcement measures, especially of firearms.

The current Constitution of the Republic of Serbia (2006) states that human rights (Right to life) are inalienable and abolishes the death penalty. This is in accordance with Article 3 of the Universal Declaration on Human Rights (UN, 1948) and Articles 6.1 and 9.1 of the International Covenant on Civil and Political Rights (UN, 1966a). Also, according to Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950a) everyone's right to life shall be protected by law and no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or in action lawfully taken for the purpose of quelling a riot or insurrection. Protocol No. 6 (Council of Europe, 1983) to the Convention relating to abolition of the death penalty states that the death penalty shall be abolished and that no one shall be condemned to such penalty or executed. The Charter of Fundamental Rights of the European Union (European Parliament, Council of the European Union, & European Commission, 2000) also emphasizes that human rights are inalienable and that no one shall be condemned to death penalty or executed. It is regulated by the current law that in the performance of their duties, the law-enforcement officers who have police powers to use enforcement measures that could lead to death are authorized officers working in the Ministry of the Interior or in the Security and Information

Agency (the Agency), prison officers in correctional facilities and individuals working in private security. In other words, unless otherwise provided by law, law-enforcement officers are authorized to use firearms that could lead to death.

The Law on Police (2005, 2009) lists the circumstances which allow the use of force as well as the manner and scope in which it may be used depending on a situation. It is up to the state and the police to clearly and precisely define the rules, selection, education and training of their officers ensuring that they act properly in each of the given situation.

In 2013, irregularities or unjustified use of firearms by police officers employed in the Ministry of the Interior were rare. Still, there were several incidents when police officers off duty used firearms, which led to wounding and death of third parties. Three members of the Gendarmerie faced charges of killing three people and attempting murder of another one while being off duty. It seriously undermines the authority and people's trust both in the state and in the police if law-enforcement officers break the law either on or off duty.

4.2 Prohibition of Torture and the Right to Liberty and Security of Person

International standards and Constitutional Provisions expressly prohibit torture providing that every detained individual has the right to receive a humane treatment while any kind of violence or forced confession is prohibited.

The provisions of the Criminal Law provide that maltreatment or abuse is any kind of coerced false confessions, torture and harassment, although it may be sanctioned by applying other criminal offenses (for example physical injury and great bodily harm). Not wishing to start a debate on this legislative solution, we still have to point out that there are certain disputable or problematic issues when it comes to torture. This is so because in some cases it is difficult to classify certain acts into certain categories as they are not sufficiently or adequately defined. On the other hand, there is also the problem of punishment policy which seems to be uneven.

It is of special interest to consider how the law regulates the situation when a law-enforcement officer is *suspected* of having committed torture. According to the report on Human Rights in Serbia 2013 (2014), issued by Belgrade Centre for Human Rights which we gained by the Bureau for information of public importance, the Service of Internal Control (an organizational unit of the Ministry of the Interior), received 507 accusations relating to excessive or unlawful use of coercion, torture, inhumane or degrading treatment and the communication full of disrespect for the citizen's dignity. This covers the period from October 1st 2012 to November 1st 2013 and 23 of these 507 allegations proved grounded. In this period the Service of Internal Control filed 9 lawsuits against 11 police officers. Although both constitutional and legislative provisions prohibit that a court renders a decision based on the evidence contrary to constitutional principles or international agreements, it is not clear how much this prohibition is really applied in practice. This is even more alarming when we consider that there have been two cases when the European Court of Human Rights ruled that the right to a fair trial

was violated due to forced confessions. Our point of view is that the existing laws relating to the protection of human rights and law-enforcement powers meet the international and European standards, but the state lacks efficient and effective out-of-court mechanisms that would solve the cases when police officers, state and public officials and correctional facility employees are accused of torture.

Article 5 of the European Convention on Human Rights (Council of Europe, 1950a) provides that everyone has the right to liberty and security of person. It further defines the lawful detention and arrest of a person and all other rights everyone arrested or detained have. If compared to the provisions of the Convention (1950a), the laws and regulations of the Republic of Serbia adopted all relevant European standards relating to the status and treatment of people arrested or detained. In practice, however, there are many problems especially with the police detention. In most cases there are two critical issues: the existing accommodation is inadequate to house the detained people, and the length of detention is violated due to a delay in official investigation activities, which violates the detained person's right to a defence.

4.3 Protection of Personal Data and Protection of Privacy

The Constitution (2006) provides that any gathering, storing, processing and using of personal data shall be done strictly according to the law. The Law on Personal Data Protection (2008) plays the key role in human rights protection. However, a large number of provisions of the existing law do not meet the standards of current European documents, especially the provisions set by Directive 95/46 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and the free movement of such data (European Parliament, Council of Europe, 1995). Besides, the current law does not even consider some of the very significant areas relating to personal data protection such as: video surveillance, direct marketing, security checks and biometric data. All this is very important for personal data protection but is not regulated by law and can lead to the abuse or violation of the right to privacy. This was the reason why the Commissioner for Information of Public Importance and Personal Data Protection submitted the Model Law on Personal Data Protection to the Government. The public discussion ended last month and is yet to bee seen whether new legal solutions will improve the quality and regulate this delicate field of human rights.

In September 2005 Serbia signed and ratified Convention 108 adopted by the Council of Europe — Convention for the Protection of Individuals with regard to automatic processing of personal data (Council of Europe, 1981). In October 2008 Serbia signed and ratified Additional Protocol to the Convention for the protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows (Council of Europe, 2001a).

The Ministry of the Interior deals with and uses the largest amount of data in Serbia. According to the existing regulations, it is prohibited to use any personal data if contrary to that provided by the Law on Police (2005, 2009) and other laws regulating personal data protection. The police shall respond within 60 days to a

request from a party whose personal information is on file with law-enforcement and make disclosure, excepting information which the subject has personally supplied by law. The police may adopt an official decision declining to provide the information if disclosure would compromise the fulfillment of a task, the conduct of statutory proceedings, or the safety of persons and property, or could damage the interests of third parties. The decision shall state the reason and be verbally communicated to the requesting party. These provisions are in compliance with Article 8 of EU Charter of Fundamental Rights (European Parliament, Council of the European Union, & European Commission, 2000).

From October 2012 to March 2013 a research on the implementation of the Law on Personal Data Protection (2008) in practice was carried out. The research was supported by the USAID Program for Judicial Reform and Government Accountability and the Delegation of the European Union to the Republic of Serbia, and its aim was to examine whether selected personal data collectors comply with the provisions of the Law on Personal Data Protection (2008) and whether they improve their internal procedures for personal data processing in order to protect the privacy of their customers, clients and employees. The results showed that the implementation was incomplete in practice (Protection of Privacy in Serbia, 2013). The local precincts and regional police departments were contacted with a request to explain how they processed personal data the Ministry had been given for the purposes of issuing identity cards and passports. The replies were satisfying with regard to the contents, but the problem was that a number of departments had filled in the forms on their own while the others had sent the forms to the Bureau for information of public importance. Therefore, these different practices require unification, which can only be regulated by additional laws and regulations.

5 CONCLUSION

The Universal Declaration of Human Rights (UN, 1948) represents the first global expression of rights to which all human beings are inherently entitled and embodies people's constant desire and aspiration to protect human dignity of every individual. From its adoption onwards, efforts have been made to protect, improve and promote human rights on both the global and all other levels. This has created a new system of human rights protected by internationally accepted standards and norms.

The Republic of Serbia is obliged to comply with the laws of the European Union as part of the Stabilization and Association Agreement (Government of Republic of Serbia, 2008). The overall harmonization of law will certainly require harmonizing law-enforcement laws and provisions.

Any kind of law reform pertaining to the protection of human rights as defined by international regulations has to be analysed carefully. We also think that any changes to these laws especially when it comes to changing or shifting the law-enforcement powers, deserves thorough public discussion.

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Legal Analysis of Public Authorities of Chamber for the Development of Slovenian Private Security – *de lege lata* and *de lege ferenda*

Iztok Rakar, Bojan Tičar

Purpose:

This paper examines the development of delegation of public authorities to the Chamber for the Development of Slovenian Private Security. Based on an evaluation of past and present experiences, the authors set guidelines for future legal regulation and administrative practice.

Design/Methods/Approach:

The research presented here is based on an analysis of legal regulation and theory of public authorities, of the case law of the Constitutional Court of the Republic of Slovenia, and of the administrative inspection reports on implementation of public authorities of former Chamber of the Republic Slovenia for Private Security.

Findings:

Public authorities are institutes of Slovenian constitutional and administrative law. An analysis of sector-specific laws shows that a variety of administrative tasks is delegated to subjects of public and private law (e.g., public enterprises, chambers and individuals).

In practice, the delegation of public authorities poses several major problems: *ex ante,* justifications of delegation are very vague and not supported by analyses, while *ex post* evaluations of delegation are non-existent and supervision of the implementation of public authorities is insufficient. In practice, supervision is mainly the result of malpractice as identified by random checks or the media, and not the result of systematic activity.

The public authorities of professional chambers present a special problem. Public authorities of the former Chamber of the Republic Slovenia for Private Security pertaining to the licensing and professional supervision of members of the chamber have been withdrawn based on findings by administrative inspections.

Research Limitations/Implications:

The research is limited to Slovenia, but the findings are relevant for other "young democracies" in the region and of potential interest to Western European democracies.

Originality/Value:

The analysis addresses key problems in delegating and implementing public authorities, evaluates the results of experiences, and offers possible solutions.

UDC: 351.746.2(497.4)

Keywords: public authorities, private security, chamber, case law, constitutional court, Slovenia

Pravna analiza javnih pooblastil Zbornice za razvoj slovenskega zasebnega varovanja – *de lege lata* in *de lege ferenda*

Namen:

Članek analizira razvoj podeljevanja javnih pooblastil Zbornici za razvoj slovenskega zasebnega varovanja. Na podlagi ocene preteklih in sedanjih izkušenj avtorja predlagata smernice za bodočo pravno ureditev in upravno prakso.

Metode:

Članek temelji na analizi predpisov, pravne teorije, sodne prakse ustavnega sodišča in poročil upravne inšpekcije.

Ugotovitve:

Javno pooblastilo je v slovenskem pravnem redu institut ustavnega in upravnega prava. Analiza področne zakonodaje kaže, da se z javnim pooblastilom prenašajo zelo različne upravne naloge na pravne subjekte javnega in zasebnega prava (npr. javna podjetja, zbornice in posameznike).

Podeljevanje javnih pooblastil ima v praksi številne pomanjkljivosti: *ex ante* gledano so obrazložitve razlogov za podelitev javnih pooblastil zelo splošne in ne temeljijo na analizah, *ex post* gledano pa se ne izvaja evalvacija podeljenih javnih pooblastil, nadzor nad njihovim izvajanjem pa je pomanjkljiv. Nadzor je v praksi večinoma rezultat nepravilnosti, ugotovljenih na podlagi naključnih nadzorov ali objavljenih preko medijev, ne pa sistematične aktivnosti.

Javna pooblastila zbornic z obveznim članstvom predstavljajo poseben problem. Javna pooblastila nekdanje Zbornice Republike Slovenije za zasebno varovanje, ki so se nanašala na podeljevanje licenc in strokovni nadzor, so bila odvzeta zaradi nepravilnosti, ugotovljenih v okviru nadzora upravne inšpekcije.

Omejitve/uporabnost raziskave:

Raziskava je omejena na Slovenijo, rezultati pa so relevantni tudi za druge države iz skupine t. i. mladih demokracij s tega območja, potencialno pa tudi za države Zahodne Evrope.

Izvirnost/pomembnost:

Analiza se nanaša na ključne probleme podeljevanja in izvajanja javnih pooblastil, ocenjuje njihovo prakso in ponuja možne rešitve.

UDK: 351.746.2(497.4)

Ključne besede: javno pooblastilo, zasebno varovanje, zbornica, sodna praksa, ustavno sodišče, Slovenija

1 INTRODUCTION

The public and the private sector do not exist in isolation, but rather interact and cooperate in many forms. One of these forms is so-called public authority. In Slovenia, public authority refers not only to the private sector, as it also encompasses legal entities of public law. One example of the latter are professional chambers with mandatory membership. The aim of this paper is to present the legal regulation and administrative practices of public authorities in Slovenia by using the case Chamber for the Development of Slovenian Private Security.

The public authority to perform certain tasks or duties of state or municipal administration (hereinafter: a public authority) can be granted by law or based on law to a natural person or legal entity that is not an organizational part of state or municipal administration.

From a historical perspective, the transfer of the performance of administrative tasks or duties outside the state administration is linked to the provision of public services in countries with a developed capitalist economy at the end of the 19th century. Public service providers were vested with public authorities in order to ensure that public services could be provided more effectively (Pirnat, 1988).

In Slovenia, a public authority is a constitutional category.[1] The Constitution of the Republic of Slovenia of 1991 with amendments (hereinafter: the Constitution) determines that by law or on the basis thereof, legal entities and natural persons may be vested with the public authority to perform certain duties of the state administration (Article 121 of the Constitution, 1991).[2]

The State Administration Act of 2002 with amendments (hereinafter: ZDU-1) determines that individuals and legal entities under public and private law may be vested with a public authority to perform administrative tasks or duties in the following instances: 1) if thereby more efficient and expedient performance of administrative tasks or duties is provided in comparison to the performance of such tasks by public administration bodies, especially if the performance of such administrative tasks or duties can be entirely or for the most part financed by administrative or user fees; or 2) where permanent and immediate political supervision of the performance of tasks or duties is not necessary or appropriate due to their nature. In the exercise of such a public authority, public authority holders possess the rights and duties of public administration as provided by laws and other regulations.

The Local Self-Government Act of 1993 with amendments (hereinafter: ZLS) takes a similar view of the matter: a municipal regulation may stipulate that a public authority is vested in a public corporation, a public institution, a public agency, a public fund, some other legal entity, or an individual in order for this entity or person to perform individual administrative tasks or duties from the original competence of the relevant municipality if in doing so the more efficient

1 *In comparative law, this is rare (Pirnat, 2001).*

2 *Other provisions of the Constitution (1991) also refer to public authority holders and consider these entities when they perform these duties to be equivalent to state authorities and local community authorities, and when the legal acts which they issue while performing these duties are to be equivalent to the legal acts of state authorities (Articles 2, 22, 25, 26, 64, 120, 121, 153, 155, 157, 159 and 160 of the Constitution, 1991).*

and expedient performance of tasks or duties is provided for, and especially if the performance of such tasks or duties can be entirely or for the most part financed by user fees. If a law allows more than one legal entity or individual to apply for a public authority in this manner, selection should be made based on open competition. In exercising a public authority, public authority holders have the rights and duties of the municipal administration. In reference to the above, the General Administrative Procedure Act of 1999 with amendments (hereinafter: ZUP) determines that the public authority to conduct procedures and decide in administrative matters from the original competence of a self-governing local community is to be granted by an ordinance issued by the council of the self-governing local community (see also Kovač, 2006, 2007).

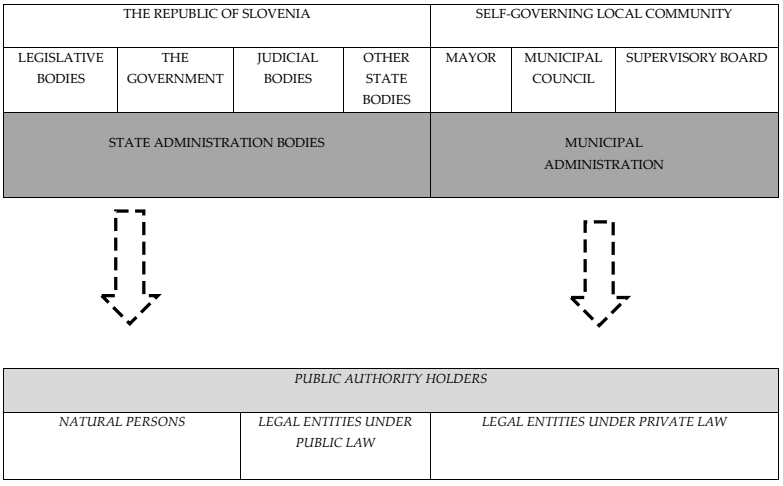


Figure 1: Public authority

It follows from the constitutional and statutory regulations that a public authority has the following elements:

1) the substance of the public authority,
2) the public authority holders,
3) the procedure for granting the public authority,
4) the reason for granting the public authority, and
5) the relationship between the public authority holders and the users of the service.

2 THE SUBSTANCE AND HOLDERS OF PUBLIC AUTHORITIES IN THE REPUBLIC OF SLOVENIA

Neither the Constitution (1991) nor the ZDU-1 (2002) precisely determine which type of administrative tasks or duties may be transferred by granting a public authority; however, it clearly follows from the constitutional provision that not all administrative tasks or duties can be transferred. At first glance, the ZLS (1993) seems somewhat more precise, as it limits public authorities to the so-called original duties of self-governing local communities. On the other hand, it also fails

to provide an answer to the question of which types of administrative duties this entails, except for the duty to conduct administrative procedures. An overview of the relevant sector-specific legislation shows that public authorities comprise very diverse types of tasks or duties, from conducting and deciding in administrative procedures to carrying out professional training (Krivec, 2013). In our opinion, this is due to different standpoints of Slovene legal theorists (Rakar, 2004b; Šturm, 2002; Virant, 2009) and case law of Constitutional Court of the Republic of Slovenia, too.

According to the literature (e.g., Šturm, 2011: 1) not all types of administrative tasks or duties can be transferred, and 2) all administrative tasks or duties of a certain body cannot be transferred as a whole. The case law of the Constitutional Court of the Republic of Slovenia has developed from a narrower to a broader interpretation of the substance of public authority. Krivic (2000) concludes that the Constitutional Court at first primarily interpreted public authorities in the narrowest sense, from the perspective of administrative law, as the issuance of official individual legal acts, and subsequently adopted a broader interpretation, in the sense of the performance of other authoritative as well as unauthoritative tasks or duties of administration.

The Constitution (1991: Article 121) determines that legal entities and natural persons may be vested with public authority.[3] The ZDU-1 (2002) determines the same and specifically mentions public agencies. The ZLS (1993) is more precise, as it specifies public corporations, public institutions, public agencies, public funds, other legal entities, and individuals as possible public authority holders.

Neither the Constitution (1991) nor the ZDU-1 (2002) and ZLS (1993) determine who may not be a public authority holder.[4] About natural persons, restrictions are determined in the relevant sector-specific legislation and mostly refer to requirements regarding citizenship, a clean criminal record, and qualifications to perform certain activities. There are also certain restrictions in the case of legal entities, which primarily apply to legal entities under private law. In the case of legal entities under public law, the situation is different, as a certain portion of these legal entities are established precisely for the purpose of performing tasks or duties on the basis of a vested public authority (e.g., public regulatory agencies), whereas other legal entities under public law are vested with various public authorities because the easier or more expedient performance of the public tasks or duties is the reason they were established (e.g., public institutions performing public services). Regarding the above, self-governing local communities must be excluded from being public authority holders because they are already regulated as such by the Constitution. The transfer to self-governing local communities of the performance of certain tasks or duties performed for the state (so-called transferred duties in the sense of Paragraph 2 of Article 140 and Paragraph 3 of Article 143 of the Constitution, 1991) is therefore not a public authority (Kovač, 2006: 246–250).

3 *Before the amendment in 2006, the provision on public authority holders was somewhat unclear and certain inappropriate terms were applied (e.g., self-governing communities, enterprises, other organisations, and individuals).*

4 *The same, for instance, applies to the German regulation (see Rakar, 2006; Weisel, 2003).*

In practice, typical examples of public authority holders include social service agencies, professional chambers with mandatory membership, public agencies, organizations that perform technical inspections, and ski slope inspectors.

The fact that a public authority is granted by law entails that the law determines not only the tasks or duties to be performed, but also the individual public authority holders. Such a manner of determining public authority holders does not cause problems in practice if only one entity holds a public authority and the public authority is granted for a longer period of time. The situation is different, however, in cases where there are several public authority holders, e.g., in cases where a public authority is vested in a number of natural persons. Therefore, the Constitution (1991) also allows a public authority to be granted by law, which entails that the law must determine 1) the duty or duties, 2) the body granting the public authority, 3) the procedure for granting the public authority, and 4) the requirements that public authority holders must fulfil. In such instances, the public authority is vested in a specific holder by a decision issued in an administrative procedure. In cases where the nature of the matter allows a public authority be granted to only a limited number of legal subjects, all legal subjects must be able to apply for the authority under equal conditions, as otherwise the constitutional principle of equality before the law would be violated (Pirnat, 2001: 278). Accordingly, the ZDU-1 (2002) states that the selection must be made based on open competition if a law allows more than one legal entity or individual to apply for a public authority.

Public authority holders cannot transfer or waive a public authority, as a public authority is the right and duty to perform a specific administrative task or duty (Kovač, 2006: 175). The state may revoke a public authority in the event that the public authority holder is no longer able to fulfil the requirements for the public authority or due to violations when performing the prescribed tasks or duties.

It follows from the ZDU-1 (2002) that the main reasons for granting a public authority are the following: 1) more efficient and expedient performance of administrative tasks or duties is provided in comparison to performance by administrative bodies, especially if the performance of administrative tasks or duties can be entirely or for the most part financed by administrative or user fees, and 2) permanent and immediate political supervision over the performance of tasks or duties is not necessary or appropriate. Pirnat (2001) is of the opinion that the second reason is not clear and underlines that the reasons for vesting a public authority can be the following: 1) the need for efficiency, competent performance, and economic rationality, 2) the need for self-regulation, and 3) the need to ensure independent management. In addition, he emphasizes that the provisions of the ZDU-1 (2002) should only be applied as guidelines and that the relevant legislation based on which a public authority is granted may specify a different reason for granting it.

To summarize the above, the granting of a public authority may be said to entail a tendency towards greater quality and independence in the performance of administrative tasks or duties. The purpose of granting a public authority can be neutrally defined as better performance of administrative tasks or duties and

better functioning of the administrative system. These two potential benefits are not necessarily mutually connected, but this does not mean that improvements in the performance of administrative tasks or duties must be given absolute priority. We feel that the contrary is true, and priority should be given to the improvement of the functioning of the administrative system as a whole.

The relationship between the state and public authority holders is regulated by public law. Certain implementation issues (mostly of a financial nature) can, as an exception, be regulated by a contract, as it was the case with The Chamber of Republic of Slovenia for Private Security in 1990's when Ministry of the Interior co-financed the implementation of public authorities by the chamber.

The state defines the substance of and procedure for vesting a public authority, requirements regarding the authority, and the public authority holders, and supervises the operations of the latter. A ministry carries out supervision over the legality of general and individual legal acts issued for the exercise of public authority (Article 72 of ZDU-1, 2002). A body specified by law decides on an appeal against a decision issued in the first instance by a public authority holder; if the law does not specify such a body, the ministry that has subject-matter jurisdiction decides on the appeal (Article 232 of ZUP, 1999). The competent ministry for administration exercises supervision over the implementation of regulations on administrative functioning (Article 73 of ZDU-1, 2002). The legality of final individual administrative acts is decided on by the administrative court in its procedure for the judicial review of administrative acts (Article 1 of the Administrative Dispute Act of 2006), while the Constitutional Court decides on the conformity of general acts issued for the exercise of public authority with the Constitution (1991), laws, and regulations. The Constitutional Court also decides on violations of human rights and fundamental freedoms by individual legal acts of public authority holders (Article 160 of the Constitution, 1991). The Human Rights Ombudsman also ensures the protection of human rights in relation to public authority holders (Article 1 of the Human Rights Ombudsman Act of 1993).

It is essential for the relationship between public authority holders and users of services that the former have the same rights and duties as the state administration (Article 15 of ZDU-1, 2002) – this primarily entails the duty to respect human rights and fundamental freedoms and the principles that apply to the functioning of state administration. On the other hand, the users of services must be informed of their rights and of the functioning of the public authority holders, and must be given the opportunity to voice their observations and suggestions.

3 PUBLIC AGENCIES AND PROFESSIONAL CHAMBERS AS PUBLIC AUTHORITY HOLDERS

Agencies and other independent regulators are a typical form of public governance found all over the world, especially since the 1990s, when the OECD began heavily promoting them (Kovač, 2012: 157). In Slovenia, public agencies are legal entities of public law regulated by organic law (the Public Agencies Act [ZJA], 2002) and sector-specific legislation (e.g., the Private Security Act [ZZasV],

2003). The first public agencies were established in the early 1990s as independent regulators (e.g., the Securities Market Agency in 1994); later, their numbers grew rapidly (Kovač, 2012; Rakar, 2004a).

Professional chambers with mandatory membership are form of self-regulation. They are established by law and have status of legal entities of public law. In Slovenia they are not regulated by organic law but by sector-specific laws (e. g. the Medical Practitioners Act [ZZdrS], 2006). According to the literature (Kovač, 2006; Virant, 2009), there are two main reasons for establishing chambers of this type: 1) the state provides itself with a representative partner for coordinating or mediating matters that affect members of the chamber, and 2) delegating public authorities. Usually these chambers have the following public authorities: 1) issuing permits or licenses, 2) keeping records, and 3) supervision of performance of members (including disciplinary measures). Delegation of public authorities has its benefits (e.g., enhanced efficiency) as well as its risks – a chamber could perform delegated tasks in the interest of its members and not in the public interest (Virant, 2009: 124).

4 CHAMBER FOR THE DEVELOPMENT OF SLOVENIAN PRIVATE SECURITY

4.1 Introduction

Private security activities entail protecting people and property from destruction, damage, unlawful misappropriation or other harmful effects. These activities constitute the provision of security activities, the rights to which are conferred by the police. The systemic regulation of private security provides for state-regulated protection where it can be effectively and fully guaranteed – police tasks may therefore be entrusted to private security. Private security means that private market actors sell security services to third parties. Security is a fundamental human right. In order to protect the fundamental rights of third parties, the implementation of these activities is limited (Gostič & Kečanovič, 2004: 17–32).

Private security is regulated economic activity which is limited to a certain area (guarded area) and to provision of services for private purposes. The state assignes the providers of these services certain duties, rights and powers by which they may legitimately interfere with human rights and freedoms in the public interest. Private security has developed very quickly in recent years. It started to take on more and more complex tasks, so that its development has taken place both in quantitative and qualitative terms (Modic, Lobnikar, & Dvojmoč, 2014: 232).

The formal beginning of Slovenian private security dates back to 1994 when the Private Protection and Obligatory Organization of Security Services Act was adopted (Modic et al., 2014: 233–234). Private security has gradually become a player in the security market, and the Chamber of the Republic of Slovenia for private security an example of organized interests in the development of security policies, together with the Ministry of the Interior and the strongest Private Security firms (Sotlar, 2001).

The Slovenian private security sector developed through at least three periods, i.e., 1) privatisation of security (1994–2003), 2) consolidation of private security (2003–2007) and 3) policisation of the private security sector (2007–2009) (Sotlar & Meško, 2009: 269). From 2011 to the present, a strong regulation phase is observed (Modic et al., 2014: 235).

The main challenges of contemporary policing in Slovenia remain co-operation between the various organizations of the plural policing family, unification of standards in the field of various policing organizations' powers, and the issue of supervision over their activities (Modic et al., 2014: 217).

4.2 Legal Regulation

In Slovenia, private security was initially regulated by the Private Protection and Obligatory Organization of Security Services Act of 1994 (hereinafter: ZZVO). This ZZVO (1994) was replaced by the Private Security Act of 2003 (ZZasV) and later by the Private Security Act of 2011 (hereinafter: ZZasV-1).

ZZVO (1994) transformed the existing Chamber of Professional Security Services (a legal entity of private law) into the Chamber of the Republic of Slovenia for Private Security, a legal entity of public law[5] with mandatory membership[6] and the following public authorities:[7] 1) issuing and revoking licenses for the provision of private security activities and 2) prescribing and implementing examinations (both types of tasks are to be performed with the consent of the Ministry of the Interior – see Articles 5 and 6).[8] The ZZVO (1994: Article 22) stipulated that the supervision of the implementation of the Act is the authority of the Ministry of the Interior and of the Chamber. If the Ministry determines that a private security provider no longer fulfills the conditions laid down by the Act, it revokes its consent to the license.

According to ZZasV (2003: Article 8 and 9), the Chamber of the Republic of Slovenia for Private Security was a legal entity of public law with mandatory membership. From 2003 to 2007, it performed the following tasks as public authorities: 1) implementing professional education programs, 2) providing

5 *There was no explicit provison in the Act, but this follows from mandatory membership and other legal characteristics.*

6 *This is not a violation of the constitutional right of assembly and association (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12 of 3. 4. 1997).*

7 *The Constitutional Court ruled that the process of the transformation of the Chamber was not in accordance with the Constitution (1991) and, consequently, neither was the delegation of public authorities (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12 of 3. 4. 1997). As a result, the ZZVO (1994) was later amended - the legislator clearly expressed its intention to grant the previous Chamber the status of legal entity of public law with the public authorities provided by the law (Act Amending Private Protection and Obligatory Organization of Security Services Act [ZZVO-B] of 1998; Decision of the Constitutional Court of the Republic of Slovenia No. U-I-117/98 of 21. 5. 1998).*

8 *Besides these explicitely defined tasks, there were other tasks that were part of public authorities due to their legal nature, e.g., supervising the work of members, monitoring and reviewing the work of the members, adopting a code of professional ethics and taking action in the event of its violation, and keeping several kinds of records (Decision of the Constitutional Court of the Republic of Slovenia No. U-I-305/94-12; Kovač, 2006: 329). In the field of private security, there are two types of public authorities – those of the Chamber and those of the subjects who perform private security activities holders of a license.*

staff, material and spatial conditions and equipment for the implementation of professional education programs, 3) keeping a record of professional education, 4) preparing proposals for catalogs of standards of professional knowledge and skills in accordance with the law governing national vocational qualifications, and 5) proposing members for the verification and certification of national vocational qualifications and performing other tasks stipulated by the law regulating national vocational qualifications. The Chamber was obliged to annualy report on the performance of its public authorities; the minister was obliged to regulate the performance of the public authorities (Rules governing the exercise of public authorities in the field of private security, 2004), and the Ministry of the Interior was obliged to oversee their performance (Article 12 and 14 of the ZZasV, 2003).

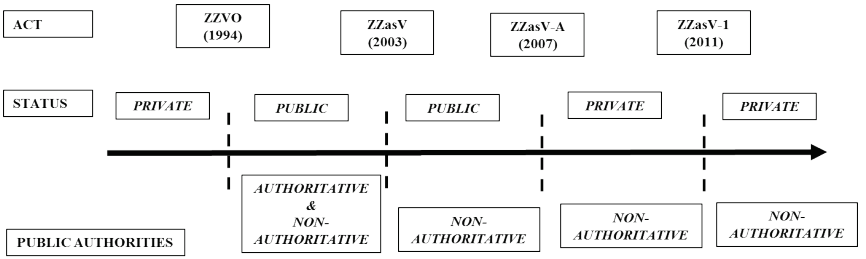
A 2007 amendment to the Act Amending Private Security Act [ZZasV-A] (2007) abolished the Chamber as a legal entity of public law. ZZasV-A (2007) stipulated that members of the Chamber may, within 12 months after the entry into force of the Act, take 1) a decision on the transformation of the Chamber into a chamber in accordance with the law regulating the status and functioning of chambers of commerce, or 2) a decision to abolish the Chamber. ZZasV-A (2007) also withdrew delegated public authorities, listed in the paragraph above (Article 12 of ZZasV) – these tasks were transferred to the Ministry of the Interior (Articles 7, 8, and 42). However, ZZasV-A (2007) determined that professional training and development tasks may be 1) delegated as public authorites to an individual (natural person) or legal entity (legal person) on the basis of open competition, provided these persons fulfill the prescribed conditions (Article 8) or 2) performed by the legal successor of the Chamber, provided it fulfills the prescribed conditions (Articles 8 and 42).

Currently, the Chamber for the Development of Slovenian Private Security (hereinafter: the Chamber) is a legal entity of private law with voluntary membership. According to ZZasV-1 (2011), chambers are one possible form of professional interest groups which advocate the interests of their members, regulate their internal relations, and care for the professionalism and ethics of membership (Article 9). Chambers and other forms of associations may obtain the status of representativeness. The Chamber obtained this status in 2011 by a Decison of the Ministry of the Interior No. 250-432/2011/2-143-08 of June 6th 2011.

The status of representativeness enables its holder to perform certain tasks in the public interest on the basis of delegated public authority. These tasks include: 1) proposing the content of occupational standards and catalogs of knowledge and skills in accordance with the regulations governing national vocational qualifications, education programs, and professional training and care for the development of the education and professional training of security personnel, 2) proposing the content of standards in the private security sector, 3) regularly informing license holders and clients of updates to standards and providing them with the necessary explanations, 4) giving opinions in procedures for recognizing professional qualifications and proficiency to perform tasks in the field of private security, 5) issuing recommendations on quality and professional criteria for security personnel who perform tasks in accordance with the ZZasV-1 (2011) and determining their compliance with professional supervision, 6) preparing joint

reports on the use of measures by security guards, and 7) conducting expert control over the implementation of internal training for license holders (Article 10). The Ministry of the Interior delegates each of these tasks through a decision issued in the administrative procedure. The Chamber performs all the abovementioned tasks and is in this respect a holder of public authorities (http://www.zrszv.si/).

Figure 2: Changes of status of the Chamber and its public authorities



It follows from this overview of the legislation that major changes occured in respect of the status of the Chamber (from legal entity of private law to legal entity of public law and back) and its public authorities (withdrawal of authoritative administrative tasks – e.g., granting licenses) (Figure 2). The main reason for the changes to public authorities were serious breaches of rules uncovered during reviews of administrative inspections in the period between 2001 and 2003.[9] It was found out that 1) the Chamber did not issue licenses by way of administrative procedure as regulated by ZUP, 1999) the Chamber set additional conditions that were not provided by law, and 3) decisions on issuing licenses were taken by the holders of licences (i.e., by direct competitors) (Kovač, 2006).

5 DISCUSSION AND CONCLUSIONS

Licensing is undoubtedly a so-called administrative matter (ZUP, 1999: Article 2) and, consequentely, has to be carried out as an administrative procedure regulated by the ZUP. The ZZVO (1994) lacks an explicit provision on the use of the ZUP (1999), and this could be posited as one reason for the numerous procedural breaches established by the administrative inspection. On the other hand, it is hard to believe that the Chamber was not acquainted with all the relevant rules prior to and after it had begun delegating this public authority. This finding shifts the focus onto supervision of the implementation of public authorities. In our opinion, the system of supervision of the implementation of public authorities is adequate – it is complex and involves 1) formal internal mechanisms (administrative inspection) and formal external mechanisms (legal remedies – courts), as well as 2) informal or *sui generis* external mechanisms (the Ombudsman, the Court of Audit). The problem obviously lies in the implementation of supervision. The use of legal remedies in most cases depends on the will of the party of the administrative procedure. In other cases, supervision depends on internal inspection, which in turn depends on the availabiltiy of resources (especially human and financial)

9 *It is interesting that this reason is not mentioned in the ZzasV (2003) bill.*

and, importantly, on initiatives from interested parties. Namely, annual reports of administrative inspection reveal that in almost all cases, supervision commenced on the initiative of an interested party. Conversely, if there is no initiative, there will, probably, be no supervision. In our opinion, one possible solution is mandatory supervision of statutorily defined entities with public authorities, in particular those that perform especially delicate tasks.[10]

In line with the above, we agree with Kovač (2006) that inadequate legislation and a lack of monitoring and supervision by the ministry led to breaches of the law.[11] The question, however, is whether the withdrawal of public authorities resulted in enhanced effectiveness of the administrative system[12] and – equally or even more important – what the gains of stakeholders in the field of private security are.

The analysis of the development of the legal regulation of the public authorities of the Chamber for the Development of Slovenian Private Security clearly reveals a number of problems inherent in public authorities as legal and administrative institutes in Slovenia: 1) defining the substance, 2) determining the holder, 3) performing supervision, and 4) *ex-post* evaluation. In our opinion, these problems are a consequence of the different standpoints of legal theorists as reflected in the provisions of sector-specific legislation and the case law of the Constitutional Court, and the absence of careful monitoring, supervision, and evaluation of the performance of public authorities (Cf. Modic et al., 2014: 235, 237). All these findings indicate possible improvements, both in general and also, to a considerable degree, in the specific case of the Chamber for the Development of Slovenian Private Security.

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10 *The provisions of the Court of Audit Act of 2001 and 2012 could serve as an example.*

11 *The problems of self-regulation of professional chambers are acknowledged by the Slovenian government, which, in 2014, adopted a programme for the prevention of corruption, reacting to the findings by the Commission for the Prevention of Corruption of the Republic of Slovenia in 2013.*

12 *The problem is that there are no indicators for the evaluation of the effectiveness of the administrative system (Kovač, 2012). Additionally, legislative practice shows that justifications for the delegation of public authorities are very general and vague, while the administrative practice shows that usualy no ex-post evaluation of the achieved goals of the delegation takes place.*

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Specialization of Criminal Justice in Dealing with Organized Crime and Juvenile Delinquency in the Republic of Serbia

Tatjana Bugarski

Purpose:

The subject-matter of this paper are certain forms of specialization of criminal courts in the Republic of Serbia in proceedings against organized crime as well as in juvenile proceedings due to the specificities of the offenders of these crimes. This paper addresses the issues related to the subject-matter jurisdiction of criminal courts and quantitative and qualitative composition of court panels. In addition, special attention is paid to the role of the court under the new Criminal Procedure Code adopted in Serbia in 2011, the principle of free evaluation of evidence, and reasonable need for certain forms of specialized criminal courts.

Design/Methods/Approach:

The author analyses the existing regulations related to the subject-matter jurisdiction of criminal courts, quantitative and qualitative composition of court panels, specialization of criminal justice and compliance with generally accepted legal standards. The concept of the paper is based on comparative method and, in this sense, the author analyses the existing legal standards in certain countries as good examples to indicate the feasibility of specialization of criminal courts in certain cases.

Findings:

The specificities of certain forms of crime, as well as the specificities of certain perpetrators require not only modification of criminal proceeding but also specialized criminal courts. This specialization includes possession of certain knowledge, skills and, above all, experience of professional judges and jurors participating in such proceedings. The need for specialized courts proved to be essential when it comes to criminal proceedings against organized crime, due to the specificity of the manifestation of this form of criminality, as well as the specificity of criminal procedure, which represents a kind of modification of general criminal procedure. Furthermore, when it comes to criminal proceedings against juveniles, specialization of criminal courts is primarily determined by characteristics of the perpetrators, i.e., minors. The justification of specialization of criminal courts in these procedures is reflected in criminal procedures conducted in effective, lawful, and professional manner.

Originality/Value:

The issue of judicial reform, organization, composition and specialization of criminal justice is a permanent issue, and yet professional and scientific works do not pay enough attention to it. For this reason, any coverage of this topic represents a contribution to this field of study. The results presented in this work are proposals *de lege ferenda* for improving the existing regulations related to this topic.

UDC: 343.1:[343.341+343.915](497.11)

Keywords: courts, court panels, specialization, criminal procedure, organized crime, juveniles, Serbia

Specializacija kazenskega pravosodja pri obvladovanju organizirane kriminalitete in mladoletniškega prestopništva v Republiki Srbiji

Namen prispevka:

Tema prispevka je predstavitev določenih oblik specializacije kazenskih sodišč v Republiki Srbiji v postopkih proti organizirani kriminaliteti in postopkih zoper mladoletnike. V prispevku so obravnavana vprašanja v zvezi s pristojnostjo kazenskih sodišč ter kvantitativne in kvalitativne sestave porote. Hkrati je posebna pozornost namenjena vlogi sodišča v okviru novega Zakonika o kazenskem postopku, sprejetega v Srbiji leta 2011, načelu proste presoje dokazov in razumski potrebi po določenih reformah specializiranih kazenskih sodišč.

Metode:

Avtorica je analizirala obstoječe predpise, ki se navezujejo na pristojnost kazenskih sodišč, kvantitativno in kvalitativno sestavo porote ter specializacijo in skladnost kazenskega pravosodja s splošno sprejetimi pravnimi standardi. Koncept prispevka temelji na primerjalni metodi, s katero je avtorica analizirala dobre primere obstoječih pravnih standardov v nekaterih državah, ki kažejo na izvedljivost specializacije kazenskih sodišč.

Ugotovitve:

Posebnosti določenih oblik kriminalitete, kot tudi posebnosti nekaterih storilcev kaznivih dejanj, zahtevajo ne le spremembo kazenskega postopka, temveč tudi specializacijo kazenskih sodišč. Ta specializacija vključuje posedovanje določenega znanja, spretnosti in predvsem izkušnje poklicnih sodnikov in porotnikov, ki sodelujejo v teh postopkih. Potreba po specializiranih kazenskih sodiščih v primerih postopkov zoper organizirano kriminaliteto se je zaradi specifičnosti manifestacije te oblike kriminalitete in specifičnosti kazenskega postopka, ki predstavlja nekakšno spremembo splošnega kazenskega postopka, pokazala kot ključna. Poleg tega je specializacija kazenskega sodišča v primeru kazenskega postopka zoper mladoletnika določena na podlagi značilnosti storilca (mladoletnika). Upravičenost specializacije kazenskih sodišč v navedenih postopkih se odraža v samih kazenskih postopkih, ki se izvajajo v učinkovito, zakonito in strokovno.

Izvirnost prispevka:

Vprašanje reforme pravosodja, organizacije, sestave in specializacije kazenskega pravosodja predstavlja večno perečo temo, ki pa ji strokovna in znanstvena dela ne posvečajo dovolj pozornosti. Posledično vsako delo, ki pokriva to temo, predstavlja prispevek na področju te študije. Rezultati, predstavljeni v tem delu, so predlogi *de lege ferenda* za izboljšanje obstoječih predpisov v zvezi s specializacijo kazenskega pravosodja.

UDK: 343.1:[343.341+343.915](497.11)

Ključne besede: sodišča, porota, specializacija, kazenski postopek, organizirana kriminaliteta, mladoletniki, Srbija

1 INTRODUCTION

The state holds the right which at the same time represents its duty to "[…] respond by virtue of criminal sanction to the breach of legal system made by criminal offence for the purpose of protecting the legal system, usually expressed by the formula that the state holds the right to file criminal charge and undertake all other pertaining acts against the perpetrator of the criminal offence" (Vasiljević, 1971: 1). The realization of these rights leads to the fact that the first function of the state related to the crime consists of prescribing criminal offences and sanctions, and is followed by the second function, also exclusively held by the state, of investigating through its authorities, i.e., courts, the existence and scope of criminal charge filed by the authorized prosecutor, excluding any private reaction to the committed criminal offence. Criminal justice system, when observed objectively and in its basic function, is a state activity with the purpose of applying criminal legislation in force to the case in question during the criminal procedure, and through the criminal courts (Vasiljević, 1971). Courts as one of the basic elements of criminal justice system represent the main subject-matter of this essay, particularly their specialization in the Republic of Serbia, with overview of some specific solutions in other countries.

The network of courts in the Republic of Serbia is based on the principle of unity of justice system (both civil and criminal), represented by the fact that judges are elected for the court they judge in, and not for judging in criminal or civil matters. The courts are state authorities, independent and autonomous in their work, performing one of the oldest state functions, the judicial function within which they have their jurisdiction. Judicial power is based on the principle of legality, which implies independence in their work. The principle of court independence finds its justification in social importance of judicial function, since courts protect the legal system and secure the rule of law, which may be accomplished only by means of a court, which is impartial both as to the parties and as to the subject-matter of the dispute (Grubač, 2009). There are numerous measures securing the independence of courts provided for this purpose (Grubač, 2009). Pursuant to the Constitution of the Republic of Serbia (2006) (hereinafter Constitution) „independence and autonomy of courts are the principles setting the general position for the frame status of the courts in constitutional system"

(Pajvančić, 2009: 189). Apart from these principles, the status of courts in Serbian constitutional system is determined by other principles such as: the principle of public hearing held before the court, principle of participation of judges and lay judges during the process, and existence of trial panels of judges.

Courts adjudicate in accordance with the Constitution (2006), laws, and other general acts specified by law, generally accepted rules of international law, and ratified international treaties (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 1, Paragraph 2). Judicial authority is also independent from legislative and executive authority (Law on Organization of Courts, 2008: Article 3, Paragraph 1). There are two types of courts in the Republic of Serbia (Constitution of the RS, 2006: Article 143): courts of general jurisdiction and courts of special jurisdiction, while the law regulates their foundation, organization, jurisdiction, structure, and composition. The Constitution (2006: Article 143, Paragraph 3) does not allow the foundation of provisional courts, courts-martial, or extraordinary courts. The courts of general jurisdiction are the following: basic courts, high courts, appellate courts, and the Supreme Court of Cassation, while the courts of special jurisdiction are: commercial courts, the Commercial Appellate Court, minor offences courts, the High Minor Offences Court, and the Administrative Court. The Supreme Court of Cassation is the court of the highest instance in the Republic of Serbia, with seat in Belgrade (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 11).

2 SUBJECT-MATTER JURISDICTION OF CRIMINAL COURTS

The right and duty of the court to adjudicate is established by the law and represents its jurisdiction, which may be subject-matter jurisdiction, territorial, and functional. Subject-matter jurisdiction and functional jurisdiction have been regulated by the Law on Organization of Courts (2008, 2009, 2010, 2011, 2013: Articles 22–31), while the Criminal Procedure Code contains the criteria for territorial jurisdiction (2011, 2012, 2013, 2014: Articles 23–29).

Subject-matter jurisdiction represents the right and duty of a particular court to adjudicate certain criminal offence, and is divided into subject-matter jurisdiction of the courts of first instance, subject-matter jurisdiction of the courts of second instance, and subject-matter jurisdiction of the Supreme Court of Cassation. Basic courts adjudicate in the first instance in connection with criminal offences punishable by a fine or imprisonment of up to ten years and ten years prescribed as the principal penalty, unless some of these offences fall under the jurisdiction of another court. A high court in first instance adjudicates in connection with criminal offences punishable by imprisonment of more than ten years prescribed as the principal penalty and in juvenile criminal proceedings. In addition, a high court adjudicates in connection with criminal offences against humanity and other values protected by international law; criminal offences against the Army of Serbia; disclosure of state secrets; disclosure of official secrets; criminal offences prescribed by the law regulating secrecy of information; incitement to change the constitutional order by use of force; provoking national, racial, and religious hatred and intolerance, violation of territorial sovereignty; conspiracy

for anti-constitutional activity; damaging the reputation of the Republic of Serbia; damaging the reputation of a foreign state or an international organization; money laundering; violation of law by judges, public prosecutors or their deputies; endangerment of air traffic safety; murder in the heat of passion; rape; copulation with a powerless person; copulation by abuse of authority; abduction; trafficking in minors for the purpose of adoption; violent conduct at sports events; accepting bribes; abuse of position by a responsible person (Criminal Code, 2005, 2009, 2012, 2013, 2014: Article 234); misfeasance in public procurement (Criminal Code, 2005, 2009, 2012, 2013, 2014: Article 234a, Paragraph 3). A high court shall decide in the second instance on appeals against decisions taken by basic courts on imposing measures to secure presence of defendants and for criminal offences punishable by fine and imprisonment of up to five years (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 23, Paragraph 2).

Appellate courts decide on appeals against decisions of high courts and decisions of basic courts in criminal proceedings, unless a high court holds the jurisdiction to decide on the appeal concerned. The Supreme Court of Cassation decides on extraordinary legal remedies filed against decisions of courts of the Republic of Serbia and in other matters set forth by law.

3 NUMBER OF JUDGES AND COMPOSITION OF TRIAL PANELS

One of the highly important questions related to the organization and functioning of courts is the question referring to the number of judges and composition of trial panels. Pursuant to the Constitution of the Republic of Serbia (2006: Article 142, Paragraph 6), a court may adjudicate within the panel, while a single judge may adjudicate only in particular matters. Also, the Constitution (2006: Article 142, Paragraph 5) provides that the judges participate during the trials, but allows for the participation of lay judges, while the law regulates in detail in which courts and in which cases only professional judges shall participate, and in which lay judges shall sit alongside professional judges.

The Criminal Procedure Code (2011, 2012, 2013, 2014) provides that the sole judge adjudicates in summary proceedings (proceedings against adult perpetrators of criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty), fully justifiably extending the application of provisions regulating summary proceedings as compared to the Criminal Procedure Code (2011, 2012, 2013, 2014). However, the shortcoming of the Criminal Procedure Code (2011, 2012, 2013, 2014), displaying inconsistency with the very nature of summary proceedings, is the option of applying the provisions on summary proceedings before the Special Department of the Higher Court in Belgrade. This provision directly annuls the very purpose of these departments (Bejatović, 2013: 26). Furthermore, taking into consideration that the criminal charge by the private prosecutor is reserved only for lesser criminal offences, in which the facts of the case are usually simple and clear, there is no justification to proceed with these offences in regular, general procedure, which should be reserved only for serious criminal offences. This course of action creates a blockage and clogs the justice system. Therefore, it would be acceptable to provide that the

provisions on summary proceedings are also to be applied to criminal offences prosecuted by private prosecutors, and that summary proceeding may not be carried out for criminal offences prescribed by special laws which include the participation of the public prosecutor of special jurisdiction (Bugarski, 2013).

Although the sole judge in a procedure represents an exception to the rule that the court adjudicates in trial panel, it is important to note that, as per statistic data, summary proceeding in the Republic of Serbia is carried out in almost 2/3 of the total number of cases, meaning that the sole judge (who is always a professional judge) actually adjudicates in a much larger number of cases than does the trial panel.

The panel of judges proceeding in the first instance in regular, i.e. general proceedings (proceedings against adult perpetrators of criminal offences punishable by a term of imprisonment exceeding eight years prescribed as the principal penalty) may be set in the form of a small panel (consisting of three judges) and grand panel (consisting of five judges). The qualitative structure of court panels refers to structure of judges in panel itself, i.e., to professional judges and lay judges. The small panel (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 1), consisting of one judge and two lay judges, adjudicates for criminal offences punishable by a term of imprisonment exceeding eight years and up to twenty years. The grand panel (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 2), consisting of two judges and three lay judges, adjudicates in the first instance for criminal offences punishable by a term of imprisonment ranging from thirty to forty years.

The second instance court (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 2) adjudicates in panels consisting of three judges, unless the Criminal Procedure Code (2011, 2012, 2013, 2014) stipulates otherwise, and in panels consisting of five judges for criminal offences punishable by a term of imprisonment ranging from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction. The third instance court (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 3) adjudicates in panels consisting of three judges, unless the Criminal Procedure Code (2011, 2012, 2013, 2014) stipulates otherwise, and in panels consisting of five judges for criminal offences punishable by a term of imprisonment ranging from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction.

The Supreme Court of Cassation decides on requests for protecting legality in panels consisting of five judges (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 5).

Lay judges are citizens who participate in trials alongside professional judges, decide on factual and legal questions, and perform their judicial function temporarily. Although their participation in criminal proceedings, as a form of layman element, is kept until the present day, it is highly limited since they regularly participate in trials during the hearing in first instance procedure.

Every form of civil participation in criminal matter proceedings existing in criminal systems has its deficiencies alongside its advantages, but the fact is

that the impossibility to overcome the existing deficiencies is best illustrated by the tendency of introducing strictly professional courts. In this manner, the new Criminal Procedure Code of Montenegro (2009) provides that the trial panel shall consist solely of professional judges, i.e., it abrogates the institute of lay judges. Taking into consideration the role of lay judges in proceedings up to this moment, with their participation in trials contributing more to the illusion of convocational trial than being of any real influence on deciding upon criminal matters, it could be said that the legislator in Montenegro only verified the actual status and leading part of the professional judge as the chairman of the panel (Radulović, 2009: 84–85).

Based on the aforementioned, it is necessary to note that there is a difference between the composition of the court and its jurisdiction. While the subject-matter jurisdiction of the court defines the right and duty of a certain type of court to proceed in certain criminal matter (basic, higher, appellate court), the provisions on structure of the court define the composition and quality of judges and lay judges participating in certain trial panels of the certain court (Ilić, Majić, Beljanski, & Trešnjev, 2012: 113).

4 SPECIALIZATION OF THE CRIMINAL JUSTICE AUTHORITIES

Finding, proving and trial in cases of all forms of crime have their specific characteristics pertaining to the nature of criminal offences, manner in which they were committed (*modus operandi*), and attributes of perpetrators. All of these impose the need for specialization of the authorities conducting the procedure, primarily public prosecutor's office and court, but also police authorities and other participants in criminal proceedings.

The principle of division of authority secures the specialization of bodies in general, additionally provided by the establishment of necessary special mechanisms (procedures) and introduction of special conditions related to the election of judges and prosecutors. The procedure and conditions for the election of judges and prosecutors secure their abstract ability to perform their duties as a part of their jurisdiction. However, it is not enough, since the position of a judge and a prosecutor implies the need for permanent education during their service, imposed by the very nature of their work. Furthermore, the actual situation shows that, in addition to the aforementioned, criminal prosecution and adjudication for certain types of criminal offences demand from the judge and public prosecutor certain additional and special knowledge in certain areas necessary for successful performance of their work, which is why the principle of specialization of competent bodies has been introduced in some special proceedings. The actual specialization in the Republic of Serbia is usually reached after years of working experience in the areas of criminal law, which is considered the condition for the election of judges for cases of organized crime. The requirement for the election of judges in juvenile proceedings is particular knowledge in the area of children's rights and juvenile delinquency, the requirement for the election of judges in proceedings for offences related to high technology crimes is special knowledge in the area of information technologies, while the election of judges in proceedings

for war crimes requires knowledge and experience in the area of international humanitarian law and human rights.

Special departments or panels have been adjoined to certain courts, such as those specialized for adjudicating certain categories of perpetrators (special department for juvenile proceedings in higher courts), or those specialized for adjudicating perpetrators of particular criminal offences (special department of the Higher Court in Belgrade for organized crime, special department of the Higher Court in Belgrade for high technology crime, War Crime Chamber).

The conditions for the election of judges have been set by the Law on Judges (2008, 2009, 2010, 2012, 2013: Articles 43–45) as follows (general conditions): a citizen of the Republic of Serbia who meets general requirements for the employment in state bodies, who is a law school graduate, who has passed the bar exam and possesses necessary qualifications (possessing theoretical and practical knowledge necessary for performing judicial function), competence (possessing skills that enable efficient use of specific legal knowledge in dealing with cases) and worthiness (ethical characteristics that a judge should possess, and conduct in accordance with such characteristics). The required professional experience for the judge of higher court is six years in legal profession, and ten years for the judge of the Appellate Court. The law itself sets forth moral characteristics of a judge which should include: honesty, thoroughness, diligence, fairness, dignity, perseverance, esteem, and conduct in compliance with these characteristics, upholding the dignity of a judge on duty and off duty; the awareness of social responsibility; preserving independence and impartiality; reliability and dignity on duty and off duty, as well as taking the responsibility for internal organization and positive public image of the judiciary. The High Judicial Council sets the criteria and standards for the assessment of qualification, competence and moral character.

The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other Severe Criminal Offenses (2002, 2003, 2004, 2005, 2009, 2011, 2013: Article 13) established the special department at the Higher Court in Belgrade for dealing with criminal cases under the Article 2 of this Law (criminal offences of organized crimes, criminal offence of murder of top government officials, criminal offences against official duty, criminal offence of abuse of official position, criminal offence of terrorism, criminal offence of money laundering, criminal offences against government authorities, and other listed criminal offences). A special department is managed by the President of the Special Department of the Higher Court who is appointed for a period of four years by the President of the Higher Court in Belgrade from among judges assigned to the special department of the Higher Court. The President of the Special Department of the Higher Court must meet requirements and have at least 10 years of professional experience in the field of criminal law. The President of the Higher Court in Belgrade assigns judges to the special department of the Higher Court for a period of six years, provided their written consent and the compliance with the requirement of having at least eight years of professional experience in the field of criminal law. Apart from provisions of the Law on Judges (2008, 2009, 2010, 2012, 2013), the High Judicial Council may send

a judge from another court to the special department of the Higher Court, for a period of six years, provided his/her written consent and the compliance with the requirement of having at least eight years of experience.

According to Article 14 of the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other Severe Criminal Offenses (2002, 2003, 2004, 2005, 2009, 2011, 2013), a special department is established within the Appellate Court in Belgrade for dealing with criminal cases under the provisions of this law. The President of the Special Department of the Appellate Court manages the aforementioned department. The President of the Special Department of the Appellate Court is appointed by the President of the Appellate Court in Belgrade from among the judges assigned to the Special Department of the Appellate Court for the period of four years with their written consent and with at least 12 years of professional experience in the field of criminal law.

The President of the Appellate Court in Belgrade assigns judges to the special department of the Appellate Court for the period of six years, with their written consent and the requirement of having at least ten years of professional experience in the field of criminal law. As an exception to this rule, it is predicted that the High Judicial Council may send a judge from another court to the Special Department of the Appellate Court for a period of six years, with his/her written consent and the requirement of having at least 10 years of professional experience in the field of criminal law. It is interesting, for example, that Bulgaria does not require fulfilment of special conditions for the appointment of judges to the special court for organized crime (Yordanova & Markov, 2012: 130–131).

According to the Law on Organization and Competences of Government Authorities Combating Cybercrime (2005, 2009: Articles 10 and 11), the Higher Court in Belgrade shall have competent jurisdiction to proceed within the territory of the Republic of Serbia as the court of first instance in the following criminal offences: criminal offences against the security of computer data set forth in the Criminal Code (2005, 2009, 2012, 2013, 2014: Article 3); criminal offences against intellectual property, property, economy and legal instruments, where computers, computer systems, computer data and products thereof in hard or electronic form appear as objects or means of committing a criminal offence, if the number of copies of authors' works exceeds 2,000 or the resulting material damage exceeds the amount of RSD 1,000,000, and criminal offences against freedom and rights of man and citizen, sexual freedoms, public order and constitutional order, and security of the Republic of Serbia, which, due to the manner in which they are committed or means used, may be considered cybercrime offences, in accordance with. The Appellate Court in Belgrade shall have competent jurisdiction to proceed in the second instance. The Higher Court in Belgrade established the Cybercrime Department to proceed in cases involving high technology criminal offences. The judges are assigned to the Department by the President of the Higher Court in Belgrade, from among the judges of this court, with their written consent, for the period of two years, which may be extended by the decision of the President of the Higher Court in Belgrade and with written consent of the person assigned. According to Law on Organization and Competences of Government

Authorities Combating Cybercrime (2005, 2009: Article 12), preference shall be given to judges who possess special knowledge in the field of information technologies. The president of the Higher Court in Belgrade may also assign to the Department other judges seconded to the court, with their consent. According to the Law on Organization and Competences of the Government Authorities in War Crimes Proceedings (2003: Articles 9 and 10), the Higher court in Belgrade (Department for War Crimes) shall have competent jurisdiction to proceed as the court of first instance in cases involving criminal offences against humanity and international law and criminal offences predicted in Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (Law on Organization and Competences of the Government Authorities in War Crimes Proceedings, 2003: Article 2), whereas the Appellate Court in Belgrade shall have the competent jurisdiction to proceed in the second instance. The president of the court appoints judges to the department for war crimes from among the judges assigned to this court, with their consent, for a period of four years. The president of the Court may also assign to the Department other judges seconded to the court, provided their consent. It should also be mentioned that the Law on Organization and Competences of the Government Authorities in War Crimes Proceedings (2003: Article 5, Paragraph 3) does not provide for such a requirement of having years of experience in criminal matters for the judge or the prosecutor, and in the process of election or appointment of prosecutors in these cases the advantage is given to people with knowledge and experience in the field of international humanitarian law and human rights.

As for the specialization of judicial authorities in the proceeding against juveniles according to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (2005: Articles 42–45), first instance proceedings against a juvenile are conducted before a juvenile judge and juvenile court bench. The juvenile bench in the first instance court is comprised of a juvenile judge and two lay judges of different sex as a rule. Juvenile judge presides the bench. Juvenile bench of the higher court, comprised of three judges shall have second instance jurisdiction. It is established by work allocation schedule of that court. When juvenile bench sits in trial, it shall be comprised of two judges and three lay judges.

A juvenile judge and juvenile bench judges must be persons who have acquired special qualifications in the field of children's rights and juvenile delinquency. Lay judges are elected from the ranks of teachers, professors, educators, and other qualified persons experienced in work with children and youth. In addition to factual, specialization of the juvenile judge also has a formal character, meaning that the appropriate official confirms that a specific judge meets the requirements to act as a judge for the juvenile, and this rule applies to other official actors proceeding against juveniles (public prosecutor for juveniles and juvenile officer), as well as to a professional person acting as a juvenile attorney (Škulić, 2011: 91).

In continental Europe countries, whose law is built upon the Roman legal tradition of the Justinian period, professionalism in the performance of judicial functions has the longest history and tradition, and only modalities of judicial professionalism differ from each other (Simović, 2001: 55). The principle of professionalism of the court in criminal cases of organized crime, war crimes and

cybercrime applies without exception in Serbia, and only professional judges may enter the court panels. *Ratio legis* of this solution, which is an exception to the general rule, is in the nature of the criminal offence and the person against whom the proceeding is conducted, and therefore it is to be considered that professional judges are more suitable to proceed in these trials because the people who might act as lay judges in such cases may not show the required degree of resilience to potential problems and possible pressures that such actions might bring. In addition to that, court panels in the first and second instance are determined in some other ways. First instance courts adjudicate in panels consisting of three judges for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 3), while second instance courts adjudicate in panels consisting of five judges entered by invitation (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 2, Item 2).

5 SPECIALIZED CRIMINAL COURTS – PRO AND CONTRA GROUNDS FOR THEIR ESTABLISHMENT AND SOME COMPARATIVE EXAMPLES OF SPECIALIZED CRIMINAL COURTS

When it comes to specialized criminal courts, and also bearing in mind the specialization of the prosecutor's office, there are different opposing views as to the feasibility of their foundation in theory. One of the reasons one may state as an argument against such establishment is the following: the selection of judges and prosecutors in those cases significantly narrows to a very limited number, and therefore they eventually become close to each other and the atmosphere of objectivity and impartiality disappears, as well as their professional detachment (Altbeker, 2003). Some believe that working in specialized courts causes the acting judges and prosecutors to become strictly skilled, one may say experts in a certain field, and therefore the quality of their work may decline over the time because they deal only with a narrow field of law and their knowledge gets restricted to one limited field of criminal law (Zimmer, 2009). The reasons against the establishment of specialized courts are, among others, judicial isolation in terms of tightness for cooperation with other state authorities, especially courts; public access is limited because these courts are primarily established in major cities and each attendance to these proceedings for all other citizens who do not live in major cities is thus limited because it requires additional time and costs; it creates narrowly focused professional groups (Zimmer, 2009).

Nevertheless, all of the reasons speaking against the establishment of specialized courts have their counter-arguments. Accordingly, it is rather logical that the circle of judges and prosecutors acting in proceedings before specialized courts is narrow, because additional conditions are set for their election in order to obtain the required quality to proceed in certain criminal matters. Their mutual cooperation does not exclude fair and objective acting in the proceeding due to their legal obligation, while a high level of professionalism that is required from them can only be a guarantee of their independence, excluding any form of influence on their actions.

It is highly debatable whether judges and prosecutors improve themselves and deal with only a narrow field of the law or if, on the contrary, their work in specialized courts, for example a court for organized crime, requires their specialization in the widest range of legal areas, which is why one may not talk about the decline of their professional quality.

Specialized courts are not isolated in any way because they cooperate with a broad range of not only legal but also other state authorities. Law regulates this cooperation, but it is necessary to point out that the law emphasizes every aspect of communication and cooperation of all government authorities with specialized judicial authorities. Mutual cooperation between courts is common and it is mostly conducted with regard to specific criminal matters, but there are also other forms of cooperation between courts such as conferences, seminars, professional training, and so on.

Public access is nowadays provided through various forms of media, thus providing for indirect general public, due to the fact that the media, as a rule, broadcast to the public all major trials, and especially those conducted before specialized courts.

Creating narrowly focused professional groups, such as lawyers, for example, cannot be an argument against the foundation of specialized courts, because of providing the necessary high quality of the defence which is also required in these proceedings, and, moreover, these groups must be open so that all interested lawyers could have access to them.

In addition to the aforementioned arguments, there are other reasons that speak in favour of the establishment of specialized criminal courts. The efficiency is the main reason for their establishment, in the sense that it ensures making quality decisions due to the fact that they are made by the experts in the field of criminal law, procedures take less time, and, owing to the skills of acting judges, enough space is created within regular courts of general jurisdiction for timely and quality proceeding in criminal matters within their jurisdiction. Apart from the efficiency, which comes first, the establishment of specialized courts affects harmonization of judicial practice within its jurisdiction, while the system becomes more flexible and adjusts quicker and easier to the needs of the practices, and so on (Zimmer, 2009).

Specialized courts are characteristic of judicial systems in many countries, although their jurisdiction and functions vary from one country to another (Zimmer, 2009). Courts for juvenile offenders exist in the form of traditional type of specialized courts in comparative law, and therefore special rules of procedure are applied within these courts with regard to their characteristics (age, level of psychological and physical development, etc.). Contemporary forms of highly sophisticated crime, such as organized crime, certainly require modification of the form of general criminal procedure, besides the additional requirements for the acting judges in the sense that they must possess necessary experience in criminal matters and an extra particular knowledge in certain area. Naturally, judges as well as prosecutors and lawyers in those criminal matters must possess necessary knowledge and skills to be able to proceed in such cases. For example, there are the following public prosecutor's offices of special jurisdiction in Serbia:

public prosecution for organized crime and public prosecution for war crimes. They were established within the territory of the Republic of Serbia with a seat in Belgrade. Special requirements for their election, such as ten years of experience in legal profession after passing the bar exam, are regulated by the Law on Public Prosecution (2008, 2009, 2010, 2011, 2012, 2013: Article 77); attorneys at law are, in the case of professional mandatory defence, assigned from the list of lawyers submitted by the Bar Association. It is important to mention that the Bar Association is obliged to enter the date of the attorney's entry into the register of lawyers, and in addition, while composing the list, the Bar takes into account the fact that the practical and professional work of lawyers in the field of criminal law can presume the effectiveness of the defence. Besides that, one should note that according to Article 17, Paragraph 1 of the Law on Legal Profession (2011), an attorney is obliged to continuously acquire and improve knowledge and skills necessary for professional, independent, autonomous, effective, and ethical practice of law, in accordance with the programme of professional development adopted by the Bar. According to Article 73, Paragraph 2 of the Criminal Procedure Code (2011, 2012, 2013, 2014), in proceedings related to criminal offences punishable by a term of imprisonment of ten or more years, only an attorney with at least five years of experience as an attorney, or an attorney who was a judge, public prosecutor or deputy public prosecutor for at least five years, may act as a defence counsel. The amendments to the Criminal Procedure Code made in 2013 abolished those provisions and introduced a new provision of the Article 73, Paragraph 2, stating that: "In proceedings for criminal offences punishable by imprisonment up to five years, an attorney might be replaced by his apprentice at law." The need for specialization in dealing with those cases finds its justification in great danger connected with those criminal offences, as well as the specificities of their perpetrators, although the number of those criminal cases is significantly lower compared to other criminal cases.

On the other hand, specialized courts are established in connection with criminal offences, which, according to statistics, appear mostly as subjects in criminal proceedings such as economic offences, like in South Africa, for example (Altbeker, 2003). Specialized courts for drugs exist in the USA. At the federal level, specialized courts in criminal matters in the United States are courts for narcotics and juvenile courts, and in addition to those, there are some other specialized courts dealing with administrative, i.e., civil matters such as: courts for family relations, tax courts, courts for land issues, courts for the environment, and so on (Zimmer, 2009). The first court was formed in Florida in 1989 as a result of poor or zero results in achieving the purposes of criminal proceedings in fighting criminal offences related to drugs. The establishment of these courts was aimed at teamwork and continuous operation of all the authorities involved in the procedure, in order to choose the best approach to the treatment of offenders, treatment monitoring, and subsequently, assistance to the offender in terms of re-socialization with regard to employment, working conditions, residence, and so on.

In comparative law one should also mention the specialization of courts dealing with environmental issues. Although the number of criminal cases

related to the environment could not be the reason for the establishment of these courts, the importance of primary object of protection within environmental crime nevertheless brought to their establishment.

6 FINAL CONSIDERATIONS

Bearing in mind specific characteristics of individual forms of criminality, as well as the characteristics of the offenders, the need for specialization of, primarily, relevant judicial authorities, but also the police and other authorities appearing in criminal proceedings, emerged in practice. This specialization of relevant judicial and police authorities involves the acquisition of additional, specific knowledge and skills acquired most efficiently through organized training (courses, seminars, conferences, panels), exchange of experiences with prosecutors from other states, following relevant regulations and scientific and technical literature in this area. In addition to gaining in-depth knowledge in specific areas, professional training should include learning and development of juridical skills, solving case studies and simulations of certain procedural actions, partially or as a whole. Furthermore, cooperation and exchange of experiences with judicial authorities of other countries are extremely important.

In this way, it undoubtedly contributes to the quality of criminal justice system, and it is also important to note that the specialization is required in cases of international legal assistance in criminal matters related to certain offences. Although there are no international legal standards pertaining to the specialization of judicial authorities, a clear trend of specialization of judicial and police authorities occurs in comparative law, and it is fully justified.

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Avi Brisman and Nigel South: Green Cultural Criminology: Constructions of Environmental Harm, Consumerism, and Resistance to Ecocide

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In the 21st century, based on the critical criminological conviction to defend environment as one of fundamental human rights, green criminology developed and became recognized as a new branch of criminology. Its research agenda is based on its assignment to study the known forms of deviant behaviour against the natural environment. It is interested in the human as the perpetrator of environmental crime, in humans as victims of environmental crime, and in possible prevention methods. On the other hand, cultural criminology deals with the study of convergence of cultural and criminal processes in contemporary social life. It focuses on popular culture constructions of crime and crime control and analyses the dynamics of (mass) media and popular culture. Furthermore, cultural criminology devotes its attention to *"how the lives and activities of criminals and their subcultures, the operations of social control and criminal justice converge in everyday life"* (Brisman & South, 2014: 10). The question, therefore, is whether or not these two criminological directions are related and interested in similar issues.

Green criminology is much more than just a debate on environmental issues: it shares some of its characteristics with critical criminology, "modern" criminology, public criminology, and news-making criminology. Nevertheless, it is important that green criminology has an impact on the creation of politics on environmental issues both within the framework of its work and through its findings and proposals. Thus, criminology of the 21st century should have an intellectual base and a legal space to include all elements of the environment as an inseparable and connected field of expertise. Due to these reasons, South and Brisman believe that cultural criminology shares various common interests with green criminology: therefore, in the present book they emphasize the importance of merging of the two most innovative and developed (critical) criminological studies into *green cultural criminology*.

The book Green Cultural Criminology is divided into eight chapters. The first one introduces green criminology as a new direction in criminology, describes its fields of interests in detail, and discusses possible correlations

with cultural criminology. The authors believe the aim of green criminology to defend the environment as one of the fundamental human rights from a critical criminological conviction and to create environmental politics intertwines with cultural criminology from the theoretical and empirical points of view. The goal of the authors is to present green cultural criminology as a new direction in (critical) criminology.

The second chapter, Overview of cultural criminology, very closely presents this branch of criminology to the reader. Brisman and South review the past definitions of cultural criminology (Ferrell, 1999; Ferrell, 2013; Ferrell & Sanders, 1995; Greer, 2009; Hayward & Morrison, 2009; Hayward & Young, 2007; Mooney, 2012; etc.) and summarize that cultural criminology is widespread, dynamic, but sometimes an elusive orientation and perspective focused on (Brisman & South, 2014: 15): *"1) contestation of space; 2) concern for the way(s) in which crime is constructed and represented; 3) interest in transgression and resistance; and 4) consideration of patterns of constructed consumerism."*

In the third chapter, the authors argue that cultural criminologists are already 'practicing' green criminology and present different green fields of cultural criminology (e.g. Broken Windows Theory, graffiti, crime, marginalized groups and urban space, poor and polluted neighbourhoods of ethnic minorities). Furthermore, the fourth chapter focuses on environmental harm as a phenomenon and its construction. Brisman and South emphasize the need that green criminology dedicate a third of its attention to the construction of the environment (i.e., environmental harm and environmental crime). The authors believe that media presentation of the environmental phenomena should receive special attention, especially: 1) the news on true environmental crimes and harms, which are often still not taken seriously enough; and 2) (science)-fictional movie documentaries, which tell a deformed picture about human – environment relationship and can result in fear of environmental crime.

The fifth and sixth chapters talk about contemporary issues of the modern marketing society: consumption, marketing, and consuming nature and the natural as something very essential for human health and happiness. Brisman and South discuss connections between green and cultural criminology from the perspective of the modern capitalist society where the cycle of consumption often includes addiction, cathexis, and enormous amounts of waste. Consequently, we are facing the increase in water deficiency, on one side, and the danger of bottled water sold as a private-owned commodity, on the other. They stress the corporate manipulation of ethical marketing and intentional misleading in order to gain profit. At this point, big companies try to "wrap up" their products in "environmental friendly" labels by using different cultural techniques of neutralization and marketing approaches in order to persuade consumers that they act in accordance with "corporate social responsibility", thus attempting to neutralize consumers' criticism.

The seventh chapter entitled Resistance to environmental harm opens a discussion on possible ways of responding to the damage caused to the environment. The authors try to emphasize the connection between cultural "actions", such as Reclaim the Streets celebrations, Critical Mass riders, Reverend

Billy's "guerrilla theatre", etc., and green criminology. In addition to monitoring corporate and state environmental domination, green criminology should focus on cultural influence and the often-overlooked ongoing forms and rhythms of globalized modern society that often attract the people (i.e., consumers) that are not aware of it. The authors believe that cultural criminology prepared important forays that can even be used as a basic model for green criminology.

The last chapter presents a conclusion and a discussion of possible future directions in the field of this new criminology, green cultural criminology. The authors conclude that it is actually the same if we try to integrate cultural criminology into green criminology or vice versa, because these are already related: cultural criminology is already engaged in environmental issues and concerns, while green criminology has already devoted its attention to the media and the political forces related to presentation of environmental phenomena and informing of the public. They hope that the connection between the two criminological directions will continue and result in a new branch of criminology, green cultural criminology, 'perceptive of and responsive to' emerging cultural environmental issues.

The book Green Cultural Criminology represents an excellent contribution to the field of green criminology due to the following reasons: 1) it opens a new possible direction for green (cultural) criminology after a decade of void due to the issues concerning the name and definition of green criminology in the 21st century together with its field of study; and 2) it introduces a new point of view on environmental harm and responses to it. The book is a step forward in the field of (green and cultural) criminology that will bring essential environmental issues closer to society. What is specific in this book is that the authors have invited both sides to participate: the green criminologists to focus more on culture and its impact on the environment, and the cultural criminologists to include studies of cultural dimensions of environmental harm.

At first glance, it may seem to the reader that they have to deal with professional and demanding literature. The examples are so vivid and the discussion so detailed that it is very easy to follow the thoughts of the authors. What is more, this book opens criminologists a new perspective on environmental harm. It is a novelty for criminologists, representing a new direction in criminology concerning environmental issues and opening a new perspective on the culture of the modern society and its behaviour towards the environment. Furthermore, the book can be interesting for those sociologists studying the relation(s) between (human) society and environment, including cultural patterns. Talking about specific (new) criminological direction, the book is, thereby, much easier to read to the people interested in environmental issues and cultural patterns related to nature and contemporary environmental problems and responses. Nevertheless, it can also be very useful to students: as it presents specific perspectives on environmental harm and thereto related issues and criminological directions, we would recommend it for the postgraduate level.

Undoubtedly, a book connecting the most exciting new areas in criminology, green criminology and cultural criminology at this precise moment raises hopes and desires that criminology would be more successful in responding to

environmental harm and solving environmental issues all over the globe. Brisman and South clearly show us that micro and macro levels of human life need to be analysed and included in environmental protection efforts and politics. In the past, (green) criminology put enormous efforts into addressing everything, from individual-level environmental crimes and victimization to business/corporate violations and state transgressions, but at that point success was unfeasible. In *Green Cultural Criminology,* they discovered that green criminology failed to include culture and social habits that can, and do, have an enormous impact on the environment. Therefore, any changes in culture and the behaviours of people towards the environment, also known as raising awareness, present a solution to the protection of our environment. Definitely, this goal will be easier to achieve with the support of green cultural criminological research and the recommended responses.

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